

NEW JERSEY REGISTER



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THE JOURNAL OF STATE AGENCY RULEMAKING

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 22, 1991
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE: SUPPLEMENT FEBRUARY 19, 1991

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **May 1, 1991**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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| Proposals | May 17 |
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NEW JERSEY REGISTER

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR

Governor James J. Florio

Executive Order No. 27(1991)

Governor's Cabinet Action Group on Juvenile Justice

Issued: March 11, 1991.

Effective: March 11, 1991.

Expiration: Indefinite.

WHEREAS, there continues to be an absence of a comprehensive, coordinated range of services for juveniles who become involved in the juvenile justice system; and

WHEREAS, the Department of Corrections, Division of Juvenile Services, has shown that alternative correctional programs for troubled youth are appropriate and cost-effective; and

WHEREAS, there continues to be a lack of sufficient alternatives to costly institutional care; and

WHEREAS, substantial numbers of juveniles require timely prevention and intervention services; and

WHEREAS, it is essential that we avoid duplication and make the best possible use of public funds; and

WHEREAS, there are a number of separate departments and agencies involved in providing services to troubled youth; and

WHEREAS, effective prevention and intervention services for youth at risk of involvement with the juvenile justice system will require cooperative and coordinated efforts of various departments of state, county and local governments as well as business, religious and community organizations; and

WHEREAS, the Attorney General has developed and released an Attorney General Directive to police and prosecutors on the handling of juvenile matters;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created a Governor's Cabinet Action Group on Juvenile Justice (hereafter referred to as the Action Group). The Action Group shall consist of the Attorney General, who shall serve as chairperson; the Commissioner of Education; the Commissioner of Health; the Commissioner of Human Services; the Commissioner of Corrections; the Commissioner of Labor; the Commissioner of Community Affairs; and the Public Advocate. The Administrative Director of the Courts should be invited to participate in the activities of the Action Group.

2. The responsibilities and functions of the Action Group shall include:

a. Identifying, developing and implementing a range of services, both residential and non-residential, for juvenile justice system involved youth so that more uniform, timely, cost-effective and appropriate alternatives to institutional care are made available to youth for whom institutional care is not warranted.

b. Consistent with the Code of Juvenile Justice, working cooperatively to expand the range of disposition options available to the Court, including the sharing of resources to allow for more appropriate intervention services at the local level.

c. Substantially increasing the availability of drug treatment services to juvenile justice system involved youth and youth at risk of involvement with the juvenile justice system.

d. Developing formal interdepartmental policy and planning agreements in order to improve coordination and cooperation among state departments of government in the provision of services to youth at risk of involvement with the juvenile justice system. These agreements must include cross training sessions including cultural and ethnic sensitivity training, the willingness to share state and federal resources, and a mechanism to share data and department policy decisions affecting juvenile justice system involved youth.

e. Developing more efficient, cost-effective community-based prevention and intervention services to prevent youth from proceeding further into the juvenile justice system. This shall include expanded efforts to keep troubled youth within the educational system and an emphasis by each department of state government on the development of public/private partnerships in their service delivery systems for youth.

f. Reporting to the Governor on an ongoing basis as to issues, programs and the setting of budgetary and policy priorities.

3. The Action Group shall begin its efforts immediately. The Action Group shall work cooperatively with the Judiciary and Legislature and shall consult with the State Youth Services Commission, the Association for Children of N.J., the Governor's Committee on Children's Services Planning, the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee, the Juvenile Delinquency Commission, the Governor's Council on Alcoholism and Drug Abuse, and any other agencies and organizations involved with policy and program issues for delinquent and pre-delinquent youth.

4. The Office of the Attorney General shall coordinate staffing needs of the Action Group. Each member of the Action Group shall assign a representative of his or her department to be designated as staff support to the Action Group. The Action Group is authorized to call upon any department or agency of state government to provide such information, resources or other assistance deemed necessary to discharge their responsibilities under this Executive Order.

5. This order shall take effect immediately.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Division of Motor Vehicles Cases

Proposed Amendments: N.J.A.C. 1:13-1.1 and 1:13-4.1

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

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

Proposal Number: PRN 1991-155.

Submit comments by May 1, 1991 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
Quakerbridge Road, CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Office of Administrative Law (OAL) is proposing amendments to N.J.A.C. 1:13-1.1, Applicability and 1:13-4.1, Agency conferences to conform its special motor vehicle rules to recent proposed amendments in the Division of Motor Vehicles' rules and to specify the time period a licensee has to accept a settlement offer made by the Division.

The proposed amendment deleting text at N.J.A.C. 1:13-1.1 expands the scope of the special rules to all motor vehicle hearings. However, the provisions concerning discovery, N.J.A.C. 1:13-10.1, and proceedings on the papers, N.J.A.C. 1:13-14.1, are not being amended and apply only to excessive points and surcharge cases. The effect of this proposal then is to apply the proposed amendments to N.J.A.C. 1:13-4.1 concerning conferences and settlement offers to all motor vehicle cases.

N.J.A.C. 1:13-4.1 now provides that the DMV shall schedule a conference in every excessive points or surcharge case. Under that practice, the Division conducted many conferences and subsequently transmitted many cases for hearing even though the licensee was not raising any factual or legal issues and therefore neither the Division nor the OAL could offer any relief under the law. The proposed amendments to N.J.A.C. 1:13-4.1 provide that the Division shall conduct a conference whenever the hearing request sets forth disputed facts. If the hearing request sets forth legal issues the Division may conduct a conference, may transmit the case directly to OAL for a hearing or may render a decision on the written record.

The proposed amendment conforms OAL's rules to the recently proposed revisions of the rules of the Division of Motor Vehicles, N.J.A.C. 13:19-1 and 13:19-12 (see 22 N.J.R. 3446(a)). The proposed amendment should eliminate the conferencing and hearing of matters where no relief could be provided because there were no factual or legal issues in dispute. Additionally, the amendment requires a conference in any case where disputed material facts are raised by the licensee. The Division and the OAL have found that such conferences are most helpful and have often resulted in either a settlement of the case or, if not, a clarification of the issues.

Finally, under the proposed amendment to N.J.A.C. 1:13-4.1(e) a licensee may accept a settlement offer made by the Division of Motor Vehicles at the settlement conference at any time before the hearing begins by notifying the administrative law judge unless the Division has previously notified the licensee that the offer has been withdrawn because of changed circumstances or the discovery of additional information. It has been the policy of the OAL and the Division to permit licensees to accept the settlement offer at any time prior to the hearing; the proposed amendment formally notifies the public of this option.

Social Impact

The proposed amendments inform licensees requesting hearings of the procedures which will be followed by the Division of Motor Vehicles and the Office of Administrative Law. These proposed amendments, when read in conjunction with the rules of the Division of Motor Vehicles,

provide that conferences and hearings will occur only when some meaningful relief is possible, depending on the merits. The proposed amendments therefore eliminate conferences and hearings in cases which do not raise any issues and where the Division and the OAL therefore could not offer the licensee any relief. This should result in fewer hearings for the Office of Administrative Law.

The proposed amendment to N.J.A.C. 1:13-4.1(e) informs affected licensees of their option to accept a settlement offer at any time prior to hearing and so should encourage settlements. By permitting the Division to withdraw the offer prior to acceptance, the rule permits sufficient flexibility to allow the agency to act when circumstances warrant a change in its position.

Economic Impact

By eliminating conferences and hearings in cases where the agency cannot offer any remedy to the licensee, the proposed amendments should result in fewer hearings and reduce costs both to the agencies and the licensees. The proposed amendment to N.J.A.C. 1:13-4.1(e) should encourage settlements and therefore eliminate the need for a full hearing with associated costs. However, this amendment may cause some licensees to wait until the day of hearing to accept a settlement offer. Should this result in increased transmittal of cases that should have been settled earlier, the rule may have to be reexamined.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because these proposed amendments do not impose reporting, record keeping 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 amendments modify special motor vehicles rules to adjust the processing of Division conferences, settlement offers and transmission of cases to the OAL.

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

CHAPTER 13

DIVISION OF MOTOR VEHICLES CASES [INVOLVING EXCESSIVE POINTS, SURCHARGE AND CERTAIN FAILURES TO APPEAR]

1:13-1.1 Applicability

(a) The rules of this chapter shall apply to hearings transmitted by the Division of Motor Vehicles (DMV). [involving;

1. Disciplinary actions, other than license revocations, for accumulating excessive points;
2. Proposed license suspensions for failure to pay a surcharge under the New Jersey Merit Rating Plan;
3. Licensees who fail to participate in evidentiary hearings after attending an agency settlement conference.]

(b) (No change.)

1:13-4.1 Agency conference; failure to reach a settlement

(a) [In a case dealing with excessive points or surcharge, DMV shall attempt to settle the dispute through a conference with the licensee. In surcharge cases, agency conferences are conducted pursuant to N.J.A.C. 13:19-12.3 through 12.9.] **The Division of Motor Vehicles shall, pursuant to N.J.A.C. 13:19-1.2, conduct a conference in any case where the hearing request sets forth disputed material facts which the licensee intends to raise at the hearing. The conference shall be conducted pursuant to N.J.A.C. 13:19-1.3 through 13:19-1.8. If the hearing request does not set forth disputed material facts but does present legal issues and arguments, the Director of the DMV may decide the case based upon the written record, may schedule a conference pursuant to N.J.A.C. 13:19-1.3 through 13:19-1.8 or may transmit the matter directly to the OAL for a hearing.**

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

(e) **The licensee may accept the settlement offers by DMV by notifying the judge at any time before the hearing begins unless the Division has notified the licensee that the offer has been withdrawn because of changed circumstances or the discovery of additional information.**

PROPOSALS

Interested Persons see Inside Front Cover

BANKING

AGRICULTURE
(a)

DIVISION OF DAIRY INDUSTRY

Producers

Proposed Amendments: N.J.A.C. 2:50-1.1 and 2.1

Authorized By: Woodson W. Moffett, Jr., Director, Division of Dairy Industry.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.
Proposal Number: PRN 1991-162.

Submit comments by May 1, 1991 to:
Woodson W. Moffett, Jr., Director
Division of Dairy Industry
New Jersey Department of Agriculture
CN 332
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 2:50-1.1 requires that before a dairy farmer discontinues selling milk to a dealer he shall provide 60 days written notice of his intent to discontinue. N.J.A.C. 2:50-2.1 requires that before a dealer discontinues purchasing milk from a dairy farmer, such dealer shall provide 60 days notice of intent to discontinue purchasing.

At the time the rules were adopted in the late 1960's and amended in 1982, two months were often required for a dairy farmer to find a new market. Current market conditions provide a dairy farmer many more options for marketing his milk, and it is now possible to obtain new buyers with little or no notice. The Division has received a request that the time required to change buyers be reduced from 60 days to 21 days. This is the time required by dairy farmers in both Pennsylvania and New York to change buyers or for milk dealers in these states to discontinue purchasing from a farmer. Given current market conditions, it is appropriate that such changes be made.

Social Impact

The amendment to N.J.A.C. 2:50-1.1 and the companion amendment to N.J.A.C. 2:50-2.1 will benefit dairy farmers in that they have more flexibility to negotiate for better prices from buyers. The ability by farmers to move freely from dealer to dealer should be of great benefit. For consistency among dairy farmers throughout the market area, the requirement should not be completely removed.

Economic Impact

The change in the rule should provide dairy farmers with more flexibility in negotiating better terms of sale.

Regulatory Flexibility Analysis

Most, if not all, dairy farmers in the state are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All milk dealers are large businesses pursuant to the Act. The proposed amendment affects both of these entities only insofar as it eases a compliance requirement, the 21 day versus 60 day notification period, found to be inappropriate for both. The proposed change does not impose any reporting or record keeping requirements. For the above reasons, no differing standards based on business size are necessary.

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

2:50-1.1 Dairy farmers notice to dealers of intent to discontinue sales of milk

(a) Before a dairy farmer selling milk to New Jersey dealers may discontinue selling milk to such dealer, he shall give the dealer at least [60] 21 days written notice of his intent to discontinue such sale.

(b) The notice of discontinuance shall be sent to the dealer by letter or on forms supplied by the Division of Dairy Industry. A copy of such letter or form shall be filed with the Division of Dairy Industry and the [60] 21-day period shall begin on the date that such notice is received by the [division] Division.

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

2:50-2.1 Dealer notice to dairy farmers of intent to discontinue purchase of milk

(a) Before a dealer purchasing milk from New Jersey dairy farmers may discontinue such purchase, he shall give the dairy farmer(s) at least [60] 21 days written notice of his intent to discontinue such purchase.

(b) The notice of discontinuance shall be sent to the dairy farmer and a copy filed with the Division of Dairy Industry on forms supplied by the [division] Division for this purpose. The [60] 21-day notice period shall begin on the day that such notice is received by the Division of Dairy Industry.

(c) (No change.)

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

Savings and Loan Associations, Savings Banks, Conversions

Proposed New Rules: N.J.A.C. 3:6-8 and 3:32-2

Proposed Amendments: N.J.A.C. 3:1-2.25 and 2.26; 3:32-1.11

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

Authority: P.L.1991, c.42, effective February 26, 1991; N.J.S.A. 17:9A-333; and 17:12B-226.

Proposal Number: PRN 1991-160.

Submit written comments by May 1, 1991 to:
Robert M. Jaworski, Assistant Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department proposes to supplement its rules regarding savings banks and associations in accordance with recent legislation, P.L. 1991, c.42, effective February 26, 1991, which allows associations to convert to savings banks, and savings banks to convert to associations.

In particular, the proposed rules require the savings bank or association applying to convert to submit the following: (1) a certified copy of the resolution of the board of directors authorizing the conversion; (2) a certified copy of the resolution adopted by the stockholders or members; (3) a certificate of incorporation for the converted institution; (4) biographical information; (5) completed requests for criminal history information; (6) a copy of the institution's most recent quarterly financial report; (7) financial projects for the next three years; and (8) copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or a statement or opinion of counsel for the savings bank or association that no Federal regulatory approvals are required.

In addition, the applicant must submit a nonrefundable application fee. This fee is set by these proposed rules at \$10,000.

Social Impact

These proposed rules will help to provide a mechanism for savings banks to convert to associations, and for associations to convert to savings banks. Upon such a conversion, the depository will remain in place with no adverse impact upon the community it serves.

Economic Impact

The proposed rules set the application fee for conversions at \$10,000. It will therefore have a negative economic impact upon the depository. This fee is necessary to reimburse the Department for the administrative costs of reviewing the application.

However, the rules will permit associations to convert to savings banks for the first time. Associations which convert in this way will be able to avoid costs associated with duplicative regulation by the Office of Thrift Supervision, so these institutions will sustain a positive economic impact as a result of the regulation.

BANKING

PROPOSALS

Regulatory Flexibility Analysis

These proposed rules impose compliance requirements on savings banks and associations applying for conversion. In particular, the proposed rules require a converting institution to file several items with the Department. About one-half of these institutions are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is essential that the Department receive this information from all converting institutions so that it may review compliance with statutory requirements. In addition, this information permits the Department to review the soundness of the institution and the competence of its management. This review is necessary for all institutions, so no differentiation is made based on the size of the institution.

The proposed rules also impose a \$10,000 application fee. This fee reimburses the Department for the administrative costs for reviewing the application. These costs are incurred regardless of the size of the depository. Accordingly, no differentiation is made here either.

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

3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

- 1.-9. (No change.)
- 10. For filing an application for conversion [from]:
 - i. From a mutual to a stock [savings bank] association \$3,500.00
 - ii. From a savings bank to an association \$10,000.00
- 11.-22. (No change.)
- (b) (No change.)

3:1-2.26 Fees; State associations

(a) Every State association shall pay to the Commissioner the following fees:

- 1.-3. (No change.)
- 4. Application for a conversion:
 - i. From a mutual to a stock association \$3,500.00
 - ii. From an association to a savings bank \$10,000.00
- 5.-20. (No change.)
- (b) (No change.)

SUBCHAPTER 8. [(RESERVED)] CONVERSIONS OF SAVINGS BANKS

3:6-8.1 Definitions

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

- “Capital stock association” shall have the meaning ascribed to it in N.J.S.A. 17:12B-244.
- “Capital stock savings bank” shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.
- “Mutual savings bank” means any savings bank organized pursuant to N.J.S.A. 17:9A-1 et seq. without capital stock.
- “Savings bank” shall have the meaning ascribed to it in N.J.S.A. 17:9A-1.
- “State association” and “mutual association” shall have the meanings ascribed to those terms in N.J.S.A. 17:12B-5.

3:6-8.2 Authorization for conversion

(a) Any mutual savings bank may apply to the Commissioner to convert itself to a mutual association with the same force and effect as though originally incorporated as a mutual association, and any capital stock savings bank may apply to the Commissioner to convert itself to a capital stock association with the same force and effect as though originally incorporated as a capital stock association.

(b) Before applying to the Commissioner for a conversion pursuant to (a) above, the savings bank shall obtain a resolution of the savings bank’s board of directors indicating that the conversion is advisable and in the best interests of the members or shareholders.

(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days’ written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the

members or shareholders shall vote on whether the savings bank shall convert to an association. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

3:6-8.3 Application for conversion

(a) An application for a conversion from a savings bank to an association shall contain the following:

- 1. A certified copy of the resolution of the board of directors authorizing the conversion;
- 2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:
 - i. The total number of votes eligible to be cast;
 - ii. The total number of votes represented in person or by proxy at the special meeting;
 - iii. The total number of votes cast in favor and against each matter; and
 - iv. The percentage of votes cast in favor and against each matter.
- 3. A certificate of incorporation for the new association;
- 4. Biographical information for each of the incorporators and/or directors on forms approved by the Commissioner;
- 5. A completed form from the New Jersey State Police requesting criminal history record information for each director and/or incorporator, along with a cashier’s check, certified check or money order for the applicable amount, payable to the State Police, stapled to the front of each form;
- 6. A copy of the savings bank’s most recent quarterly financial report;
- 7. Financial projections for the converted associations for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year;
- 8. Copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or, if no application or approval is required, a statement or opinion of counsel to that effect; and
- 9. The application fee for the conversion.

CHAPTER 32. [STOCK ASSOCIATIONS] CONVERSIONS OF ASSOCIATIONS

3:32-1.11 Fees; conversion from mutual to capital stock association

[A filing fee of \$1,500] An application fee as set forth in N.J.A.C. 3:1-2.26 shall accompany every application for the conversion of a mutual association to a capital stock association.

SUBCHAPTER 2. CONVERSION OF AN ASSOCIATION TO A SAVINGS BANK

3:32-2.1 Definitions

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

- “Capital stock association” shall have the meaning ascribed to it in N.J.S.A. 17:12B-244.
- “Capital stock savings bank” shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.
- “Mutual savings bank” means any savings bank organized pursuant to N.J.S.A. 17:9A-1 et seq. without capital stock.
- “Savings bank” shall have the meaning ascribed to it in N.J.S.A. 17:9A-1.
- “State association” and “mutual association” shall have the meanings ascribed to those terms in N.J.S.A. 17:12B-5.

3:32-2.2 Authorization for conversion

(a) Any mutual association may apply to the Commissioner to convert itself to a mutual savings bank with the same force and effect as though originally incorporated as a mutual savings bank, and any capital stock association may apply to the Commissioner to convert itself to a capital stock savings bank with the same force and effect as though originally incorporated as a capital stock savings bank.

(b) Before applying to the Commissioner for a conversion pursuant to (a) above, the association shall obtain a resolution of the association’s

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board of directors indicating that the conversion is advisable and in the best interests of the members or shareholders.

(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days' written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the members or shareholders shall vote on whether the association shall convert to a savings bank. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

3:32-2.3 Application for conversion

(a) An application for a conversion from an association to a savings bank shall contain the following:

1. A certified copy of the resolution of the board of directors authorizing the conversion;
2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:
 - i. The total number of votes eligible to be cast;
 - ii. The total number of votes represented in person or by proxy at the special meeting;
 - iii. The total number of votes cast in favor and against each matter; and
 - iv. The percentage of votes cast in favor and against each matter.
3. A certificate of incorporation for the new savings bank;
4. Biographical information for each of the incorporators and/or directors on forms approved by the Commissioner;
5. A completed form from the New Jersey State Police requesting criminal history record information for each director and/or incorporator, along with a cashier's check, certified check or money order for the applicable amount, payable to the State Police, stapled to the front of each form;
6. A copy of the association's most recent quarterly financial report;
7. Financial projections for the converted savings bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year;
8. Copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or, if no application or approval is required, a statement or opinion of counsel to that effect; and
9. The application fee for the conversion.

(a)

DIVISION OF REGULATORY AFFAIRS

**Consumer Loan Act Regulations
Advertisements**

**Proposed New Rule: N.J.A.C. 3:17-1.1
Proposed Amendment: N.J.A.C. 3:17-1.4**

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

Authority: N.J.S.A. 17:10-13; N.J.S.A. 17:16H-2.

Proposal Number: PRN 1991-161.

Submit comments by May 1, 1991 to:

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

The agency proposal follows:

Summary

In response to complaints by consumers, the Department of Banking proposed to amend its rules so as to prohibit an advertising practice by consumer loan licensees (see 22 N.J.R. 2626(a), New Jersey Register, September 4, 1990). These licensees send solicitations to consumers in the form of a check or draft. On the back of the check or contained with the solicitation are the necessary disclosures required by Truth in Lending, 15 U.S.C. §1601 et seq. and Regulation Z. The consumer merely signs

the back of the check and deposits it to borrow money from the licensee. Secondary mortgage lenders are specifically prohibited from making this type of solicitation, N.J.A.C. 3:18-7.5(a), and the Department proposed to extend this prohibition to consumer loan lenders.

The Department received several comments to this proposal which suggested that the public would be better served by a rule which limited, but did not prohibit, this practice. In this way, consumers retain the option of borrowing in this convenient manner, while deceptive practices are specifically prohibited.

The Department was first concerned that these solicitations would be continually sent to consumers who did not want them. To protect this class of consumers, this proposed new rule and amendment would allow the licensee to only send check solicitations to current or prior customers. Further, each such solicitation would specifically allow the customer an option not to receive further check solicitations from the licensee.

The Department was also concerned that a consumer might cash a check solicitation while not understanding that it was a solicitation for a loan. To remedy this concern, this proposed new rule and amendment would require specific disclosure that it was a solicitation for a loan. This disclosure must state as follows in 10-point print: "THIS IS A SOLICITATION FOR A LOAN—READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!"

Finally, the Department feared that these solicitations would fall into the hands and be negotiated by improper persons. This proposed new rule and amendment addresses this concern by requiring that the instrument be negotiable for not more than six months, and by requiring a statement advising the consumer to destroy the solicitation if it is not going to be negotiated.

The Department does not intend for this proposal to supersede and replace the proposal published on September 4, 1990. Following consideration of the comments received on each proposal, the Department will adopt the new rule and amendment it considers most appropriate.

Social Impact

The proposed new rule and amendment will have the beneficial social impact of avoiding confusion by consumers regarding check solicitations by licensed consumer loan lenders.

Economic Impact

The proposed new rule and amendment will have a marginal negative economic impact on licensees. Consumers when required to apply for a loan may choose on reflection not to borrow funds. Correspondingly, consumers are expected to receive an incidental economic benefit to the extent that they do not enter into consumer loan agreements which, upon reflection, may not be in their best interests.

Regulatory Flexibility Analysis

The financial institutions regulated by this proposed new rule and amendment are predominantly small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance merely requires the licensee to refrain from sending a solicitation in the form of a check except to certain consumers with specified disclosures. It is not therefore anticipated that this will necessitate professional services or require capital costs. Since the benefits of this proposed amendment can only be obtained by imposing these requirements upon all consumer loan licensees, no differentiation is made for small businesses.

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

3:17-1.1 Definition of advertisement

For purposes of this subchapter, "advertisement" means any announcement, statement, assertion, or representation which is placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station or in any other way.

Recodify existing 3:17-1.1 through 3:17-1.3 as 3:17-1.2 through 3:17-1.4 (No change in text.)

3:17[1.4]1.5 Certain types of advertising prohibited

(a) The following types of advertisements are prohibited on the ground that they are deceptive or misleading, or negatively affect the public's confidence in the licensee or financial institutions in general:

1. The placing by licensee of tags or other advertising material on automobiles, in public or semipublic places, or the house-to-house issuance of circulars, handbills or any other similar types of advertising[, is prohibited]; and

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2. The advertisement by use of a negotiable check, money order, draft or other instrument which may be used for the transfer of funds, unless:

- i. The licensee sends this type of solicitation only to current or prior customers of the licensee;
- ii. Each such solicitation allows the customer an option not to receive future solicitations of this type;
- iii. The instrument is negotiable for not more than six months, and the consumer is advised to destroy the instrument if it is not going to be negotiated; and
- iv. The solicitation prominently contains the following statement in 10-point print: "THIS IS A SOLICITATION FOR A LOAN—READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!".

(a)

DIVISION OF EXAMINATION

Check Cashers; General Ledger

Proposed Amendment: N.J.A.C. 3:24-2.7

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

Authority: N.J.S.A. 17:15A-16.

Proposal Number: PRN 1991-151.

Submit comments by May 1, 1991 to:

Robert M. Jaworski, Assistant Commissioner
Division of Legal Affairs
Department of Banking
20 West State Street, CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment would permit check cashers to post to their general ledger on a quarterly basis rather than monthly. It also requires that postings to the general ledger be made no later than 30 days following the close of each quarter.

Social Impact

The proposed amendment would have no social impact other than relieving the effected businesses of burdensome monthly postings.

Economic Impact

The proposed amendment will have no financial impact on the State. It will benefit check cashers by relieving them of the burden of posting to their general ledger on a monthly basis.

Regulatory Flexibility Analysis

The proposed amendment will lessen the administrative burden on check cashers, the overwhelming majority of which are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is the view of the Department that the monthly postings which are required by the current form of the rule impose an undue burden on check cashers. The quarterly postings which would be required following the amendment represent a reasonable balance between the burden imposed on check cashing businesses and the need of the Department to have recent updated general ledgers from which to conduct examinations. No differentiation based on business size, in this reporting requirement is needed as it represents a significant relief from previous regulation.

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

3:24-2.7 General Ledger

(a) A General Ledger containing all assets, liability, capital, income, and expense accounts shall be maintained. The General Ledger shall be posted from the daily records of checks cashed, summary of business, or any other records or original entry, at least [monthly] **quarterly**, and shall be so kept as to facilitate the preparation of an accurate trial balance. **Posting shall be completed no later than 30 days following the close of each quarter.**

(b) (No change.)

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(b)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding Houses

Administration and Enforcement

Proposed Amendment: N.J.A.C. 5:27-1.3

Authorized By: Melvin R. Primas, Jr., Commissioner,

Department of Community Affairs.

Authority: N.J.S.A. 55:13B-4.

Proposal Number: PRN 1991-163.

Submit comments by May 1, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

This proposed amendment would require licensees to keep valid proof of compliance with the Uniform Fire Code on the premises and to make it available to representatives of the Bureau of Rooming and Boarding House Standards on request.

Social Impact

Under the current rules, the Bureau relies upon inspections by local fire departments and other agencies that enforce the Uniform Fire Code for determinations that buildings do not have fire safety violations. In the interest of efficiency, it is necessary that proof of fire code compliance be available to Bureau evaluators at the premises.

Economic Impact

Bureau representatives can complete their evaluations of rooming and boarding houses more quickly if they do not have to go beyond the premises to have proof of a satisfactory fire safety inspection having been conducted. This allows the Bureau to make more efficient use of the funds appropriated to it. Maintenance of the record imposes no economic burden on the licensee.

Regulatory Flexibility Statement

The proposed requirement to maintain valid proof of compliance with the Uniform Fire Code will affect all rooming and boarding houses, most of which can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

This amendment will impose no discernible costs upon any licensee, "small business" or not. Being required to retain a certificate from the fire safety enforcing agency at the premises does not impose any significant burden and, in any event, the amendment is intended to promote fire safety and must apply equally to all licensees. For this reason, no differentiation based on business size has been provided in the rule.

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

5:27-1.3 Administration and enforcement

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

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

1.-3. (No change.)

4. Every licensee shall keep valid proof of compliance with the Uniform Fire Code on the premises and shall make it available to representatives of the Bureau upon request.

(a)

**DIVISION OF LOCAL GOVERNMENT SERVICES
Local Government Financial Regulation
Cooperative Pricing and Joint Purchasing Systems
Proposed Amendments: N.J.A.C. 5:34-7.1 through
7.4, and 7.7**

Authorized By: Barry Skokowski, Sr., Director, Division of Local Government Services.

Authority: N.J.S.A. 40A:11-11.

Proposal Number: PRN 1991-165.

Submit comments by May 1, 1991 to:

Nelson S. Silver, P.P.

Bureau of Local Management Services

Division of Local Government Services

CN 803

Trenton, NJ 08625-0803

The agency proposal follows:

Summary

This proposed rulemaking has four purposes: (1) to clarify which joint purchasing systems are required to be registered with the Division of Local Government Services and which are not; (2) to make certain changes in the specific documentation required to be submitted for registration of cooperative purchasing systems; (3) to clarify when a contract awarded under a cooperative purchasing agreement must be awarded by resolution, and when a contracting agent may issue a purchase order in lieu of a formal resolution; and (4) to change the requirement that the aggregate total of a cooperative pricing contract purchase does not exceed 120 percent of the original total cost awarded for that category.

The proposal amends existing rules. The amendments are necessary in order to eliminate confusion among boards of education as to registration requirements for participation in cooperative pricing and joint purchasing systems. Also, these amendments will clarify certain local responsibilities required for participation in a cooperative purchasing system.

The changes are as follows:

N.J.A.C. 5:34-7.2 and 5:34-7.4(a): These amendments will make it clear that joint purchasing systems comprised entirely of boards of education are not subject to registration with the Division of Local Government Services; rather, they are authorized under N.J.S.A. 18A:18A-11. Cooperative pricing systems comprised solely of boards of education would still be required to register with the Division.

N.J.A.C. 5:34-7.3(a)4: An ordinance or resolution is required, depending upon the type of governmental unit, before participation is permitted in a cooperative purchasing system. The current rule also states that motions made and carried at business meetings may not be substituted for resolutions. The amendment would allow a certified copy of motions made, carried, and recorded in the minutes of a business meeting of a board of education to be substituted for a formal resolution. For purposes of cooperative purchasing, this would serve as the equivalent of a formal municipal or county resolution.

N.J.A.C. 5:34-7.3(b): The current rule spells out the seven minimum requirements for the language of a formal cooperative purchasing agreement. The amendment would add, as an eighth requirement, a provision stating that the identification code assigned to the system by the Director of the Division of Local Government Services must appear on all documents related to purchases made through the system. This is in keeping with one of the purposes of the requirement to register cooperative purchasing systems: improvement of the audit trail to track purchases made through these systems in excess of the statutory bid threshold.

N.J.A.C. 5:34-7.7(h)2: The amendment would make it clear that, where authorized to do so, the contracting agent of a contracting unit may issue a purchase order to the successful vendor of a cooperative purchasing contract when the purchase does not exceed the statutory bid threshold. When the purchase does exceed the bid threshold, a contract award by resolution of the governing body is required. This distinction is unclear in the current rules.

N.J.A.C. 5:34-7.7(e)2i(2): The lead agency in a cooperative pricing system is currently required to monitor the contract purchases of the other participating members to assure that the total aggregate purchase does not exceed by more than 20 percent the total cost awarded for that category. The proposed amendment would change this provision to reflect

current requirements of the rules concerning the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

Social Impact

The proposed amendments will have a negligible social impact, as they are basically a clarification of existing rules. If anything, they make the registration requirements for boards of education easier by allowing a certified copy of motions made, carried, and recorded in the minutes of a business meeting to be substituted for a formal resolution. The proposed amendments also relieve the lead agency in a cooperative pricing system of part of its current administrative responsibility.

Economic Impact

Because there are no fees being established or amended, and because the amendments are basically a clarification of existing rules, there will be no economic impact as a result of their adoption.

Regulatory Flexibility Statement

These rules are necessitated by N.J.S.A. 40A:11-11(5) and other statutes. Because the adoption of these rules would apply only to local governmental units, these rules do not apply to, or affect, small businesses as defined 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]):

5:34-7.1 Applicability

This subchapter is adopted under the authority of N.J.S.A. 40A:11-11, as amended[, and 52:27BB-1 et seq.]. The subchapter applies to contracting units as defined in the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and boards of education (hereinafter also referred to as contracting units), as authorized by N.J.A.C. 6:20-8.7 by the Commissioner of Education.

5:34-7.2 Definition

As used in this subchapter, "cooperative purchasing" refers to all forms of joint, cooperative or interlocal purchasing or pricing agreements or systems by whatever name known and regardless of statutory authorization, participated in by contracting units. **This definition shall not include joint purchasing systems comprised only of boards of education, as authorized under N.J.S.A. 18A:18A-11.**

5:34-7.3 Basis for cooperative purchasing

(a) All cooperative purchasing shall be based on a formal agreement entered into between the participating contracting units, authorized by resolution or ordinance, as described in (a)1[,] through 4[,] below.

1.-3. (No change.)

4. All other participating contracting units, including, but not limited to, boards of education, county colleges, authorities, boards, and commissions, shall first adopt resolutions to authorize creation and/or participation in a system and execution of a formal agreement among participating contracting units. Motions made and carried at business meetings cannot be substituted for resolutions, **except that a certified copy of a motion made, carried and recorded in the written minutes of a business meeting of a board of education may be substituted for a resolution.**

(b) The formal agreement shall include, at a minimum, the following:

1.-7. (No change.)

8. **A provision stating that the identification code assigned to the system by the Director of the Division of Local Government Services must appear on all documentation related to purchases made through the system, including bidding documents, purchase orders, vouchers and contracts.**

(c) (No change.)

5:34-7.4 Approval and registration

(a) All cooperative purchasing agreements or systems hereafter entered into or participated in by any contracting units regardless of statutory authorization, shall be subject to registration with and approval by the Director, Division of Local Government Services, Department of Community Affairs. This provision [of the regulation] shall not extend to local participation in the cooperative purchasing program administered by the Division of Purchase and Property

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pursuant to N.J.S.A. 40A:11-12, except as may be specifically set forth in N.J.A.C. 5:34-7.8, **nor shall this provision extend to joint purchasing systems comprised only of boards of education as authorized under N.J.S.A. 18A:18A-11.**

(b)-(e) (No change.)

5:34-7.7 Local administrative responsibilities

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

(e) The Lead Agency, in seeking bids shall:

1. (No change.)

2. If obtaining prices for items to be ordered by the Lead Agency for its own needs and directly by other participating contracting units (a Cooperative Pricing Service), include in the specifications:

i. Two categories upon which bids are sought:

(1) (No change.)

(2) Other Participating Contracting Units, stated as an estimated total quantity of the needs of all other participating agencies[, which total shall not be exceeded in the aggregate by more than 20 percent of the total cost awarded for that category]. **Total contract purchase for each participating agency must be in conformance with the change order requirements of N.J.A.C. 5:34-4.** The specifications for this category shall list the other Participating Contracting Units, their delivery address, their estimated maximum quantities and other relevant information to permit the bidder to understand what is potentially involved.

ii.-iv. (No change.)

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

(h) Financing and contractual details for cooperative pricing systems are as follows:

1. (No change.)

2. The Lead Agency shall supply the other participating contracting units of the cooperative pricing system copies of the specifications, name of the successful bidder, prices awarded and the contract identification number. Each participating contracting unit may then order directly from [that] the vendor[, by purchase order if under the appropriate statutory bid limit or by contract of the governing body if over the appropriate statutory bid limit]. **If the cost of the order is under the bid threshold, and if the contracting agent is authorized to do so, then the contracting agent may issue a purchase order, pursuant to N.J.S.A. 40A:11-3. If the cost of the order exceeds the bid threshold, then the contract must be awarded by resolution of the governing body.** The identification number assigned by the Director shall be affixed to each purchase order or contract and shown on all forms pertaining thereto.

3.-5. (No change.)

(i)-(j) (No change.)

(a)

DIVISION ON AGING

Congregate Housing Services Program Income, Program Costs, and Service Subsidy Formula

Proposed Amendment: N.J.A.C. 5:70-6.3

Authorized By: Melvin R. Primas, Jr., Commissioner,

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-188.

Proposal Number: PRN 1991-156.

Submit comments by May 1, 1991 to:

Lois Hull, Director

Division on Aging

CN 807

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Congregate Housing Services Program (CHSP) has been in operation since August 16, 1982. The program provides a supportive environment to frail, elderly tenants living in subsidized housing facilities through the provision of selected services such as daily meal, homemaking and

personal care services. In addition, the program provides subsidies to those meeting the income eligibility guidelines formulated under the rules of the program.

The CHSP is proposing to amend the categories used to determine disposable income per the requirement of N.J.A.C. 5:70-6.3(f) that "service subsidies shall be adjusted annually on January 1. The adjustment shall be made on the basis of the percentage increase in Social Security benefits given to Social Security recipients pursuant to 42 U.S.C.A. 415 for the immediately preceding calendar year."

The adjustment in categories of disposable income reflects the increase in Social Security benefits. Under the contract rules, the participants in the Congregate Housing Services Program may be required to pay an additional amount for program costs if they receive an increase in Social Security. With the adoption of this amendment, they should not be required to pay this additional amount.

Social Impact

A growing and major social problem is the need to plan for the health and welfare of tens of thousands of "young old" people who moved into the many senior citizen housing projects developed during the 1960's and 1970's and who are still residing in these housing projects. They are now in their late 70's and 80's; some are approaching or are in their 90's.

Approximately half of the tenants using congregate housing services could be defined as pre-nursing home candidates, and at least 25 percent would probably be Medicaid eligible for nursing home entry if not maintained in their independent setting.

The Congregate Housing Services Program is having a profound impact upon the management of subsidized housing facilities. There is growing evidence that persons can now be admitted to these facilities with a higher degree of frailty than was previously possible and can, therefore, remain in their apartments longer. In addition, tenants are able to return to the facility after a hospital or nursing home stay because of the availability of the program.

Economic Impact

The adjustment in the categories of disposable income has an economic impact on the older tenant living in subsidized housing facility who is currently receiving congregate housing services and who is eligible for a subsidy. Each income category set forth is adjusted according to the percentage increase given to the Social Security Recipients pursuant to 42 U.S.C.A. 415, in the immediately preceding calendar year. This will have a positive economic impact on the participants of the Congregate Housing Services Program; they will not be disadvantaged by having to pay more when they receive a percentage increase in Social Security benefits pursuant to 42 U.S.C.A. 415.

Use of the HUD method for determining adjusted income will reduce the time needed by the coordinator to calculate Disposable Income. It should have no major impact on what participants will pay.

Regulatory Flexibility Analysis

This proposed amendment applies to qualified housing agencies under the Congregate Housing Services Act, N.J.S.A. 52:27D-184 et seq. Such agencies include nonprofit and those limited dividend housing sponsors which qualify as small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq.

The proposed amendment requires such agencies to prepare and maintain the same type of records and reports as have been required under the Department's existing rules for the Congregate Housing Services Program. The reports and records concern the individuals receiving program subsidies for certain living expenses they incur while residing at housing projects owned and operated by these agencies and the manner in which such agencies utilize program funds in defraying the costs of providing certain services to such individuals. As these requirements are mandated by other Department rules, their satisfaction under these rules should not cause small businesses to incur additional expense in compliance. The Department has, therefore, determined that no differentiation based on business size is appropriate or necessary.

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

5:70-6.3 Income, program costs and service subsidy formula

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

(e) Service subsidies for eligible program participants will be provided in accordance with the following formula:

1. (No change.)

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CORRECTIONS

2. The following STEP II shall be operative from January 1, 1991 through December 31, 1991:

D.I. of \$0.00 to \$181.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of \$182.00 to \$304.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of \$305.00 to \$428.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of \$429.00 to \$551.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of \$552.00 to \$675.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

[2.]3. The following STEP II shall be operative from January 1, [1990] 1992 through December 31, [1990] 1992:

D.I. of \$0.00 to [\$173.00] \$191.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of [\$174.00 to \$290.00] \$191.01 to \$320.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of [\$291.00 to \$409.00] \$320.01 to \$451.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of [\$410.00 to \$526.00] \$451.01 to \$581.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of [\$527.00 to \$645.00] \$581.01 to \$711.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

[3. The following STEP II shall be operative from January 1, 1991 through December 31, 1991:

D.I. of \$0.00 to \$181.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of \$182.00 to \$304.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of \$305.00 to \$428.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of \$429.00 to \$551.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of \$552.00 to \$675.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

(f) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

**Notice of Administrative Correction
Dam Restoration Grant Regulations**

Proposed Readoption with Amendments: N.J.A.C. 7:24

Take notice that the Department of Environmental Protection has discovered an error in the notice of proposal for the readoption with amendments of N.J.A.C. 7:24, published in the March 4, 1991 New Jersey Register at 23 N.J.R. 650(a). The DEP Docket Number set forth in the notice heading is incorrect; the correct number is 007-92-01. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

(b)

DIVISION OF WATER RESOURCES

Notice of Future Proposal

Clean Water Enforcement Act—Civil Administrative Penalties

Take notice that the Department of Environmental Protection (Department) intends to propose new rules and amendments to existing rules as required by the Clean Water Enforcement Act, P.L. 1990, c.28 (the "Act"). The Act requires the Department to impose mandatory minimum penalties for certain violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-49 et seq. The proposed new rules and amendments will implement those requirements.

The Department intends to publish the proposal in the April 15, 1991 New Jersey Register, and accept written comments until May 15, 1991. The Department has scheduled a public hearing on the rule for 10:00 A.M. on May 2, 1991. The hearing will be held at:

Labor Education Center, IMLR
Rutgers University
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey

To obtain a copy of the proposal, please contact:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

CORRECTIONS

(c)

THE COMMISSIONER

**Municipal and County Correctional Facilities
Processing and Housing Juveniles in Municipal
Detention Facilities**

Proposed New Rules: N.J.A.C. 10A:34-3

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 2A:4A-37.

Proposal Number: PRN 1991-157.

Submit comments by May 1, 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

New Jersey law prohibits certain classes of juvenile offenders, such as runaways, truants and incorrigible juveniles, from being placed in secure custody and juvenile delinquents from placement in adult detention facilities.

The proposed new rules set forth the process and physical conditions under which juveniles may be detained and supervised in municipal detention facilities, the monitoring of these facilities by the Department of Corrections and the reporting requirements for unusual incidents. The Department of Corrections proposes these new rules to promote uniformity among municipalities in the processing and detaining of juveniles in accordance with the statutes of the State of New Jersey.

Social Impact

The proposed rules will promote cooperative relationships between local law enforcement agencies and the general public by clarifying existing law concerning the processing and confinement of juveniles in municipal detention facilities. The uniformity among municipalities in the processing and detaining of juveniles will result in improved care and treat-

CORRECTIONS**PROPOSALS**

ment being provided to the juveniles admitted to municipal detention facilities. Such improvement in the care and treatment of juveniles will result in a reduction in the number of suicides or suicide attempts within these facilities.

Economic Impact

The proposed rules do not require municipalities to construct or develop new holding areas or secure cells for juveniles; however, in the event a municipality elects to construct new facilities for holding juveniles, the requirements as set forth in N.J.A.C. 10A:34-3.11 shall apply. When a municipality elects to construct new facilities for detaining juveniles, the cost of such a project may result in an increase in taxes or reduction in services or other circumstances which have a financial impact on the municipality.

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 rules impact on juvenile offenders, juvenile delinquents, municipalities and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the proposed new rules follows:

SUBCHAPTER 3. PROCESSING AND HOUSING JUVENILES IN MUNICIPAL DETENTION FACILITIES

10A:34-3.1 Definitions

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

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

1. A crime;
2. A disorderly persons offense or petty disorderly persons offense; or
3. A violation of any other penal statute, ordinance or regulation (see N.J.S.A. 2A:4A-23).

"Detention" means the temporary care of juveniles in physically restricting facilities pending court disposition (see N.J.S.A. 2A:4A-22c).

"Juvenile" means an individual who is under the age of 18 years (see N.J.S.A. 2A:4A-22a).

"Juvenile-family crisis" means behavior, conduct or a condition of a juvenile, parent or guardian or other family member which presents or results in:

1. A serious threat to the well-being and physical safety of a juvenile;
2. A serious conflict between a parent or guardian and a juvenile regarding rules of conduct which has been manifested by repeated disregard for lawful parental authority by a juvenile or misuse of lawful parental authority by a parent or guardian;
3. Unauthorized absence by a juvenile for more than 24 hours from his home; or
4. A pattern of repeated unauthorized absences from school by a juvenile subject to the compulsory absences from school by a juvenile subject to the compulsory education provision of Title 18A of the New Jersey Statutes. (See N.J.S.A. 2A:4-22g.)

"Municipal detention facility" means a holding or lockup facility, usually located in and operated by a municipal police department, which receives and temporarily detains for a brief period of time, juveniles who have been taken into custody who are awaiting release or transfer to other authorities.

"Secure detention" means physical detainment or confinement of a juvenile in a locked room, set of rooms, or cell, or physically securing a juvenile to a cuffing rail or other stationary object.

10A:34-3.2 Taking juveniles into custody

(a) Pursuant to N.J.S.A. 2A:4A-31, a juvenile may be taken into custody as follows:

1. Pursuant to an order or warrant of any court having jurisdiction; or

2. For delinquency, by a law enforcement officer when there has been no process issued by a court, pursuant to the laws of arrest and the Rules of Court.

(b) Except where delinquent conduct is alleged, a juvenile may be taken into short-term custody by a law enforcement officer without order of the court when:

1. The law enforcement officer has reasonable grounds to believe that the health and safety of the juvenile is seriously endangered and taking the juvenile into immediate custody is necessary for the protection of the juvenile;

2. The law enforcement officer has reasonable grounds to believe the juvenile has left the home and care of his or her parents or guardian without the consent of such persons; or

3. An agency legally charged with the supervision of a child has notified the law enforcement agency that the child has run away from out-of-home placement, provided, however, that in any case where the law enforcement officer believes that the juvenile is an "abused or neglected child" as defined in N.J.S.A. 9:6-8.21, the law enforcement officer shall handle the case pursuant to the procedure set forth in the act (see N.J.S.A. 9:6-8.21 et seq.).

(c) The taking of a juvenile into custody shall not be construed as an arrest, but shall be deemed a measure to protect the health, morals and well-being of the juvenile.

10A:34-3.3 Custody of juveniles

(a) A juvenile delinquent may be held in a police station only for a brief period if such holding is necessary to allow release to his parent, guardian, other suitable person, or approved facility (see N.J.S.A. 2A:4A-37c).

(b) Under no circumstances shall any juvenile taken into custody pursuant to a juvenile-family crisis be held more than six hours (see N.J.S.A. 2A:4A-32a).

10A:34-3.4 Notification to parents

(a) Any person taking a juvenile into custody shall immediately notify the juvenile's parents or guardian, if any, that the juvenile has been taken into custody (see N.J.S.A. 2A:4A-33).

(b) Such notice shall be given notwithstanding that further processing time may be required before a decision is made to release or detain the juvenile.

10A:34-3.5 Processing juveniles

(a) Juveniles taken into short-term custody for a juvenile-family crisis shall be held and processed in an unlocked area of the police department (see N.J.S.A. 2A:4A-32a).

(b) Every effort shall be made to process juvenile delinquents in an unlocked area of the police station such as:

1. A booking area;
2. A juvenile aid bureau office;
3. A detective area; or
4. An interview room.

(c) Only in extraordinary situations when juvenile delinquents are assaultive, disruptive, unmanageable or charged with a serious violent crime shall they be placed in a secure cell or holding room.

(d) When the conditions delineated in (c) above are met, in lieu of placing a juvenile in a secure cell or holding room, a cuffing bar may be used provided that:

1. The juvenile is under continuous face-to-face visual supervision by a law enforcement officer or other facility staff; and
2. The juvenile does not have regular contact with adults in secure detention or confinement.

(e) If a juvenile is in custody during a regular meal period, the juvenile shall be provided with a meal.

10A:34-3.6 Separation from adult prisoners or detainees

A juvenile detainee or adjudicated delinquent shall be held in a place separate and apart from any adult charged with or convicted of crime (see N.J.S.A. 2A:4A-37c).

10A:34-3.7 Recordkeeping

(a) Whenever a juvenile is placed in secure detention (secure cell, secure holding room or cuffing bar), an entry shall be made in a separate logbook or in a separate section of the adult cell logbook.

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Such entry shall contain, at minimum, the following information about the juvenile:

1. Name;
2. Age;
3. Sex;
4. Charge;
5. Date and time of admission into the cell or holding room;
6. Date and time of release from the cell or holding room;
7. Cell number;
8. Time of each physical cell check (continuous face-to-face visual supervision if confined in a barred front cell); and
9. Signature of law enforcement officer conducting each physical cell check.

10A:34-3.8 Reporting suicides or suicide attempts, sexual or physical assaults or substantial injury

(a) All cells or holding rooms in which juveniles are placed shall be free of suicide hazards.

(b) If a juvenile, while in custody at a municipal police department, attempts or commits suicide, is sexually or physically assaulted, or has a substantial injury which requires medical attention, Form 192-I INCIDENT REPORT shall be completed and forwarded within three working days to the Juvenile Monitoring Unit, New Jersey Department of Corrections.

(c) A follow-up detailed internal report must be furnished to the Juvenile Monitoring Unit which includes, at minimum, the following:

1. A detailed chronology of events regarding the incident;
2. The reason for placement into the cell or holding room;
3. Logbook entries noting the times of each physical cell check;
4. Statements by all appropriate law enforcement officers; and
5. Copies of all reports from outside agencies such as:
 - i. The Division of Youth and Family Services (D.Y.F.S.);
 - ii. The Prosecutor's Office;
 - iii. The Medical Examiner's Office; and
 - iv. The hospital(s).

(d) In the event of a death of a juvenile from a suicide or any other reason, the Juvenile Monitoring Unit shall be notified immediately by telephone at (609) 984-6539.

(e) If a death of a juvenile occurs during the evening, weekend or holiday, the telephone report to the Juvenile Monitoring Unit shall be made immediately on the morning of the next regular working day.

(f) All juvenile suicides in municipal lockups shall be thoroughly evaluated by the New Jersey Department of Corrections to determine if all applicable policies and procedures were adhered to as well as to identify possible physical plant problems.

(g) At the discretion of the New Jersey Department of Corrections, juvenile suicide attempts, sexual and physical assaults, and substantial injuries to juveniles may be evaluated.

10A:34-3.9 Supervision of juveniles

(a) As noted in N.J.A.C. 10A:34-3.5(d), in lieu of placing juveniles in a secure cell or holding room, a cuffing bar may be used provided that:

1. The juvenile is under continuous face-to-face visual supervision by a law enforcement officer or other facility staff; and
2. The juvenile does not have regular contact with adults in secure detention or confinement.

(b) Juveniles placed in cells or holding rooms with security type hollow core metal doors shall be checked at least every 15 minutes.

(c) A reporting form shall be placed on the door whenever a juvenile is placed in the holding room, and the person checking on the juvenile shall initial the form during each check.

(d) Continuous face-to-face visual supervision shall be provided by a law enforcement officer or other facility staff, if the juvenile placed in the holding room is:

1. Visibly intoxicated;
2. Under the influence of drugs, or
3. Shows outward signs of depression.

(e) Extreme caution should be exercised before admitting juveniles in the condition outlined in (d) above into municipal detention facili-

ties. Existing municipal police policies and procedures should be reviewed to determine if the situation warrants a medical clearance.

(f) For juveniles placed in cells or holding rooms with barred fronts, continuous face-to-face visual supervision shall be provided by a law enforcement officer or other facility staff.

(g) While audio/video monitoring systems provide an added measure of safety and security, these systems shall not be used as a substitute for continuous face-to-face visual supervision of juveniles.

10A:34-3.10 Physical facilities

(a) Municipal detention facilities shall conform to all applicable public health and safety codes, set forth by:

1. The State of New Jersey;
2. The county; and
3. The municipality in which the municipal detention facility is located.

(b) New construction, alterations, additions and repairs of municipal detention facilities shall comply with:

1. The State Uniform Construction Code Act, N.J.S.A. 52:27D-1.19 et seq.;
2. The Uniform Construction Code Rules, N.J.A.C. 5:23;
3. The New Jersey Uniform Fire Code, N.J.A.C. 5:18; and
4. With this subchapter.

10A:34-3.11 The construction and renovation of juvenile holding rooms

(a) The requirements in (b) through (k) below shall be followed when juvenile holding rooms are constructed or renovated at municipal police departments.

(b) The need for a newly constructed or renovated juvenile holding room(s) shall be determined by:

1. Past practice;
2. The volume of juveniles processed; and
3. Current compliance with appropriate laws and regulations.

(c) The Bureau of County Services, New Jersey Department of Corrections, is available to provide technical assistance from the conceptual planning stage through final blueprint review upon request.

(d) Prior to construction, blueprints for the construction of a juvenile holding room(s) shall be reviewed and approved by the Bureau of County Services, New Jersey Department of Corrections.

(e) Juveniles shall be separated by "sight and sound" from all adult detainees. The juvenile holding room should be as far removed from the adult cellblock as is practical.

(f) The holding room shall be located in an area which facilitates separate processing of juveniles (admission and release).

(g) The entrance to the holding room shall be situated so that juveniles have no contact with adult detainees being admitted or released and, if possible, away from areas utilized by the general public.

(h) The juvenile holding room shall be as non-jail like as possible, but must be secure and provide for controlled entry and exiting, and must not be a room or cell which is ordinarily used for the detention of adults.

(i) Steel mesh detention screens and/or impact-resistant security glazing must be used in place of traditional bars to secure windows and provide observation ports.

(j) When a separate holding room is provided, it must include the following:

1. A minimum of 60 square feet of floor space, with a seven foot width and an eight foot ceiling for single occupancy;
2. A minimum of 100 square feet of floor space for multi-occupancy holding rooms;
3. A bench or other seating secured to the floor and/or wall;
4. Adequate lighting, which provides a minimum of 20 foot candle illumination, with tamperproof security fixtures;
5. A minimum of 10 cubic feet per minute of fresh or purified air for each juvenile;
6. An audio or audio/video system to monitor detainees, if the need for such a system is determined by the New Jersey Department of Corrections based upon the design of the juvenile holding room(s);

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7. Audio/video monitoring devices, if installed in the juvenile holding room(s), shall not provide any means by which a suicide attempt may be made;

8. No projections over two feet from the floor from which a juvenile could hang himself or herself;

9. Grills covering the air vents, that are designed to prevent articles of clothing from being tied to the grills to minimize the occurrence of suicide or suicide attempts;

10. A security type hollow core metal door, which swings outward, equipped with:

i. A viewport which shall be at least 10 inches by 12 inches, and constructed of 9/16 inch security glazing or 1/2 inch lexan;

ii. A detention type lock; and

iii. No inside doorknob;

11. A detention type combination toilet/lavatory with drinking font, preferably of stainless steel construction;

12. Floors constructed of terrazzo or sealed concrete which slope to a floor drain secured with a cover held in place by tamper-resistant screws;

13. Exterior corridor walls constructed of six inch reinforced concrete or eight inch concrete block filled with cement containing reinforcement rods every 12 inches; and

14. Ceilings constructed of pre-cast concrete slabs or reinforced concrete.

(k) A written exemption from the rules in this subchapter may be granted by the New Jersey Department of Corrections (see N.J.A.C. 10A:1-2.7) in instances where:

1. The juvenile holding room is not in compliance with one or several of the requirements listed above; but

2. The juvenile holding room(s) is in compliance with the general intent and purpose of the rules; and

3. The New Jersey Department of Corrections has determined that to require the municipal facility to comply strictly with all the rules in this section would result in an undue hardship to the overall management of the juvenile holding room(s).

10A:34-3.12 Forms

(a) The following form related to processing and housing juveniles in municipal detention facilities may be reproduced by each municipal detention facility from an original that is available by contacting the Juvenile Monitoring Unit of the Department of Corrections:

1. 192-I INCIDENT REPORT.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

New Jersey Medical Malpractice Reinsurance Recovery and Fund Surcharge

**Proposed Amendments: N.J.A.C. 11:18-1.4 and 1.5
Proposed New Rules: N.J.A.C. 11:18-1.7 and
Appendices A through C**

Authorized By: Samuel F. Fortunato, Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6e, 17:30D-1 et seq. and
52:14B-1 et seq.

Proposal Number: PRN 1991-171.

Submit comments by May 1, 1991 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On December 18, 1989, N.J.A.C. 11:18-1 became effective (see 21 N.J.R. 3927(a)). These rules provide for additional premium charges for medical malpractice liability insurance policies for the purpose of provid-

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ing monies necessary to establish the New Jersey Medical Malpractice Reinsurance Recovery Fund ("Fund") in an amount sufficient to meet the requirements of the Medical Malpractice Liability Insurance Act (N.J.S.A. 17:30D-1 et seq.). The Fund is used by the New Jersey Medical Malpractice Reinsurance Association ("Association") to eliminate the Association's deficit. The surcharges apply to the medical malpractice insurance policies of health care providers as defined in this subchapter.

The surcharge currently imposed upon physicians and doctors and hospitals presently licensed in New Jersey who were insured (or reinsured) by the Association from 1976 to 1982 does not take into account the relatively short time in which some health care providers received coverage during that period. The Department proposes amendments to N.J.A.C. 11:18-1.4 which will place a minimum duration of three consecutive months of coverage between 1976 and 1982 in order to be subject to the higher surcharge of five percent in the case of physicians and doctors, and three and seventy-five hundredths percent in the case of hospitals. If the physician or doctor or hospital had coverage for less than three months, a lower surcharge of two and one-half percent will apply. These proposed amendments to N.J.A.C. 11:18-1.4(a), (b) and (c) are intended to establish a "de minimis" threshold by requiring that coverage was provided (either reinsurance or direct insurance) for a minimum period of three consecutive months.

It is the Department's intent that these changes not be retroactive so that no refund rights would accrue to any physician or hospital which had been subject to the higher surcharge. Upon adoption, the phrase "effective date of the amendment" will be substituted by the date of adoption.

In terms of administration, proposed amendments to N.J.A.C. 11:18-1.5 provide that each medical malpractice insurer must remit the collected surcharge to the Department with a monthly report form that shows how the amount sent was computed. The funds themselves are thereafter transmitted to the Treasurer. Rather than the current biannual report, these proposed amendments require an insurer to submit annual reports of its surcharge collection and remittance activities to the Department. As a matter of practice for administrative convenience and consistency, the function of collecting the surcharge has been performed by the Department which then remits the collected surcharges to the Treasurer.

New N.J.A.C. 11:18-1.7 sets forth the previous N.J.A.C. 11:18-1.5(b) as a separate rule.

Social Impact

The proposed amendments reestablish and streamline the procedures for medical malpractice liability insurance surcharge remittance and for data reporting from insurers collecting the surcharge. In addition, the proposed amendments recognize that physicians and doctors and hospitals who were not insured or reinsured by the Association between 1976 and 1982 for at least three consecutive months (a relatively short period of time) should not have to bear the same cost for eliminating the Association's deficit as those doctors and hospitals who were insured for three or more months during that period.

Physicians and doctors and hospitals who were insured (or reinsured) by the Association for less than three consecutive months between 1976 and 1982 will save an average of two and one-half percent of their malpractice premium based upon the proposed amendments.

The forms that the Department requests pursuant to proposed N.J.A.C. 11:18-1.5 includes information that insurers would have to submit in requesting monies received by the Fund. The forms will aid the Department in the administration and collecting of the surcharge.

Economic Impact

The proposed amendments will not result in any adverse economic impact upon insurers. Insurers may experience a minimal increase in costs due to modifications in their surcharge systems which may be needed to comply with amendments to this subchapter. Some physicians and doctors, and some hospitals, may experience a surcharge reduction due to the proposed "de minimus" threshold.

The Department does not expect to incur any additional expenses as a result of the proposed amendments.

Regulatory Flexibility Analysis

Some insurers affected by the proposed amendments may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments will not result in any adverse effects on insurer small businesses. The proposed amendments will not require

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INSURANCE

insurers to hire or utilize professional services of any kind. Initial and annual compliance costs for surcharge collection are inestimable, but would be a function of the insurer's administrative efficiency.

The proposed amendment to N.J.A.C. 11:18-1.5 imposes a new monthly reporting requirement, to accompany each surcharge remittance. It reduces the current reporting requirement in subsection (d) (proposed as (e)) from a biannual to an annual submission. The proposed amendments will not require insurers to hire or to utilize professional services of any kind. Initial and annual compliance costs for surcharge collection and reporting are inestimable, but would be a function of the insurer's administrative efficiency.

Because the reported information is necessary for proper maintenance of the Fund, no differentiation in reporting requirements based upon business size is possible.

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

11:18-1.4 Imposition of surcharge

(a) A surcharge of five percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering physicians and doctors presently licensed in New Jersey who were insured (primary or excess) or reinsured by the Association from 1976 to 1982, whether currently practicing individually or as a professional association or employee thereof, or in affiliation or employment with any hospital or health maintenance organization, and those covering health maintenance organizations which were insured (primary or excess) or reinsured by the Association from 1976 to 1982. **Anything aforesaid to the contrary notwithstanding, for policies issued or renewed on or after the effective date of this amendment the surcharge shall be two and one-half percent on the total premium of any person subject to surcharge provided in this paragraph who was not insured or reinsured by the Association for at least three consecutive months.**

(b) A surcharge of three and seventy-five hundredths percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering hospitals that were insured (primary or excess) or reinsured by the Association from 1976 to 1982. **Anything aforesaid to the contrary notwithstanding, for policies issued or renewed on and after the effective date of this amendment the surcharge shall be two and one-half percent of the total premium of any hospital subject to the surcharge provided in this paragraph which was not insured or reinsured by the Association for at least three consecutive months.**

(c) A surcharge of two and one-half percent is imposed on the total premiums for all policies of medical malpractice liability insurance covering physicians, doctors, hospitals and health maintenance organizations presently licensed in New Jersey who were not insured (primary or excess) or reinsured by the Association from 1976 to 1982, **or who were insured (primary or excess) or reinsured for a period of less than three consecutive months by the Association from 1976 to 1982.**

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

11:18-1.5 Collection and remittance of surcharge

(a) (No change.)

(b) The insurer shall remit each collected surcharge to the Department for transmittal to the Treasurer for the account of the fund not later than 10 days from the end of the calendar month in which the surcharge was collected. **Insurers shall make checks payable to "State of New Jersey, General Treasury." The Commissioner shall remit the collected surcharge to the Treasurer no later than three days after receipt of the surcharge.**

(c) The monies collected and a report in the form set forth in Appendix A, incorporated herein by reference, shall be submitted to:

Fiscal Office
New Jersey Department of Insurance
CN-325
Trenton, New Jersey 08625
Attn: MMRRF Surcharge.

[(c)](d) [Not later than April 1 and October 1 of each year.] **When requesting monies received by the Fund, the Association shall file such request with the Commissioner in the form set forth in Appendix B, incorporated herein by reference. Upon a determination that the information set forth in the form is complete and accurate, the Commissioner shall notify the Treasurer and the Treasurer shall remit the [total amount of monies received by the Fund, plus] amount requested to the fund balance, including all accrued interest thereon, to the Association pursuant to N.J.S.A. 17:30D-11.**

[(d)](e) Not later than March 1 [and September 1] of each year, each insurer shall file [with the Department of Insurance] **with the Commissioner in the form set forth in Appendix C, incorporated herein by reference, the following:**

1. A listing of each Fund surcharge collected during the preceding [reporting period] **calendar year** and to which class of health care provider the surcharge applies;
2. A listing of each Fund surcharge remitted to the [Treasurer] **Commissioner** during the preceding [reporting period] **calendar year** and to which class of health care provider the surcharge applies;
3. The total amount of Fund surcharges collected during the preceding [reporting period] **calendar year;**
4. The total amount of Fund surcharges remitted to the [Treasurer] **Commissioner** during the preceding [reporting period] **calendar year;** and
5. A statement from an officer of the company certifying that the information submitted is accurate and complete to the best of his or her knowledge.

[(e)](f) The information required in [(d)](e) above shall be submitted to:

[Statistical Service
Property Liability Division] **Fiscal Office**
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625
Attention: MMRRF Surcharge

[(f)] Failure by an insurer to submit the information required in (d) above in a timely manner may result in the imposition of penalties and/or sanctions pursuant to N.J.S.A. 17:33-2 and/or other provisions of law.]

(g)-(h) (No change.)

11:18-1.7 Penalties

Failure by an insurer to comply with this subchapter may result in the imposition of penalties or sanctions pursuant to N.J.S.A. 17:33-2 or other provisions of law.

APPENDIX A

MONTHLY STATEMENT ON THE
MEDICAL MALPRACTICE REINSURANCE RECOVERY FUND
SURCHARGE ON MEDICAL MALPRACTICE LIABILITY
INSURANCE PREMIUMS

(Note: This statement does not have to be filed if no medical malpractice insurance premiums were collected during the month.)

For The Calendar Month Ending _____, 19__

1. Name and address of Insurer

Name

Address

INSURANCE

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- 2. A 3.75% Surcharge On The Total Premiums (i.e., Direct Written Medical Malpractice Liability Premiums) For Insurance On The Professional Services Of Hospitals which were Insured (Primary or Excess) or Reinsured By The Medical Malpractice Reinsurance Association From 1976 to 1982.
 - a) Medical Malpractice Liability Insurance Of This Category—Direct Written Premiums (Any contained on p. 14 of Annual Statement) \$ _____
 - b) Surcharge of 3.75% (or .0375) \$ _____
- 3. A 2.50% Surcharge On The Total Premiums (i.e., Direct Written Medical Malpractice Liability Premiums) For Insurance On The Professional Services Of Physicians, Hospitals, Health Maintenance Organizations Who Were Not Insured (Primary or Excess) or Reinsured By The New Jersey Medical Malpractice Reinsurance Association From 1976 to 1982.
 - a) Medical Malpractice Liability Insurance Of This Category—Direct Written Premiums (Any contained on p. 14 of Annual Statement) \$ _____
 - b) Surcharge of 2.50% (or .025) \$ _____
- 4. Direct Written Medical Malpractice Premiums Not Subject To The Surcharge (include a brief definition of the items in this category).
 - a) Any Direct Written Premiums (contained on p. 14 of the Annual Statement detailed by type of coverage) \$ _____

2. Surcharge Reconciliation

Total Surcharges (Excl Surcharge Monies Returned To Policyholders) Based On Written Premiums For the Calendar Year. (1b)+2b)+3b)). _____

Total Surcharges Collected During The Year (Total Should Reconcile To The Sum of All Amounts Remitted Per The Monthly Reports) _____

Difference Between The Surcharge Totals _____

CERTIFICATION

I hereby certify that the above information is accurate and complete. I am fully aware that if any of the above information is willfully false, I am subject to the penalties and/or sanctions pursuant to N.J.S.A. 17:33-2 and/or other provisions of the law.

_____ Date _____

_____ Name of Company _____

_____ Address of Company _____

_____ NAIC Number _____

_____ Signature of Company Officer _____

_____ Print Name and Title _____

_____ Telephone Number _____

NOTE: SEPARATE REPORTS MUST BE FILED FOR EACH COMPANY.

PUBLIC UTILITIES
(a)

BOARD OF PUBLIC UTILITIES

Nuclear Generating Plant Decommissioning
Pre-Proposed New Rules: N.J.A.C. 14:5A

Authorized By: Board of Public Utilities, George Barbour, Commissioner.

Authority: N.J.S.A. 48:2-13 and 48:2-21.

BPU Docket Number: EX91020247

Pre-Proposal Number: PPR 1991-6.

Take notice that the Board of Public Utilities, pursuant to its authority at N.J.S.A. 48:2-13 and 48:2-21, will receive preliminary comments with respect to the initiation of subsequent rulemaking proceedings covering the decommissioning of nuclear generating plants.

While it is the responsibility of the Board to implement a process that will provide secure and adequate funds for decommissioning activities, the Board notes that there is presently an uncertainty with respect to the magnitude of funds needed because of the lack of experience with regard to large (over 200 megawatt) plant decommissioning. Therefore, to the greatest extent possible, accurate cost estimates are required if the Board is to properly balance the need for providing sufficient funds for the safe and timely decommissioning of nuclear facilities against the need to fairly assess current ratepayers for their share of these costs. The present funding levels for decommissioning costs provided for in New Jersey base rates generally reflect generic Nuclear Regulatory Commission guidelines and utility estimates.

Although review of decommissioning cost estimates has historically taken place within the context of electric utility base rate proceedings, the timing of base rate filings can vary substantially and can be driven by factors that have little to do with developments related to nuclear plant decommissioning. Accordingly, the Board believes that there is a need for a mechanism to ensure periodic review of decommissioning cost estimates.

The pre-proposed rules would require electric utilities to concurrently file once every three years the latest estimates for decommissioning costs

SUMMARY

1. Premium Reconciliation

Direct Written Medical Malpractice Premiums Subject To The Surcharge (1a)+2a)+3a)) _____

Direct Written Medical Malpractice Premiums Not Subject To The Surcharge (4a)) _____

Total Of The Above (Should Equal All Direct Written Medical Malpractice Liability Insurance Premiums Shown On p. 14 Of Annual Statement) _____

Total Medical Malpractice Liability Insurance Premiums Collected During The Calendar Year _____

Difference Between Total Direct Written and Collected Medical Malpractice Liability Insurance Premiums Reported Above _____

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at their respectively owned nuclear generating plants. The Board would then conduct a generic review within the context of these filings to assess all decommissioning activity developments since the prior review.

The purpose of the Board's review would be to verify and/or identify a need to refine the magnitude of decommissioning funds required. The pre-proposed rules would allow the joint submission of generic industry information by the affected utilities. The pre-proposed rules also provide for a mandatory public hearing and written comment process and, if deemed necessary by the Board, evidentiary hearings. At the conclusion of this procedure, the Board would issue a "Nuclear Facility Decommissioning Report" which would summarize the generic state of the decommissioning experience and technology, reach findings as to the continue efficacy of present decommissioning funding levels at each of the subject nuclear facilities and discuss methods for revising funding levels where appropriate.

Interested persons may submit written comments relevant to the pre-proposal on or before May 1, 1991. These submissions, and any inquiries should be addressed to:

Robert Chilton, Director
Division of Electric
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The pre-proposal is as follows:

**CHAPTER 5A
NUCLEAR PLANT DECOMMISSIONING COST REVIEW**

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS**14:5A-1.1 Purpose and scope**

The rules contained in this chapter are designed to provide a mechanism for periodic review of the estimated costs of decommissioning nuclear generating stations owned by New Jersey electric utilities for the purpose of assuring that adequate funds are available at the cessation of commercial operation of each of the facilities to assure completion of decommissioning activities.

14:5A-1.2 Definitions

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

"Decommissioning" means to safely remove a nuclear facility from service and to reduce its residual radioactivity to a level that permits release of the property for unrestricted use and for termination of the U.S. Nuclear Regulatory Commission (NRC) license and to the satisfaction of other regulatory bodies with jurisdiction in the matter. It is the responsibility of the NRC to ensure that the activities which must be performed to accomplish this end are carried out by the licensee with a minimal adverse effect on the health and safety of the workers, the public, and the environment.

"DECON" means the "immediate" removal of radioactive materials and results in access to the site shortly after cessation of operations. It entails removing from the site all fuel assemblies and spent fuel, fission and corrosion products, and all other radioactive materials with radioactivity above certain levels after which the licensee has unrestricted use of the site. With DECON, the site is cleared of above grade structures and the land returned to a state consistent with adjacent areas.

"DEP" means the New Jersey Department of Environmental Protection or its successor.

"DOH" means the New Jersey Department of Health or its successor.

"DOTNJ" means the New Jersey Department of Transportation or its successor.

"DOTUS" means the United States Department of Transportation or its successor.

"Electric public utility" means all electric public utilities as defined by N.J.S.A. 48:2-13, but does not mean municipally owned electric public utilities.

"ENTOMB" means to defer access for many years by sealing radioactive materials with concrete and steel. All fuel is removed from the site before entombment, and the reactor internals may also be removed before the facility is sealed. Residual radioactive materials are allowed to decay over many years in the entombed structure. Other activities consist of processing and removing radioactive waste, and implementing security and surveillance plans.

"NRC" means the United States Nuclear Regulatory Commission or its successor.

"Public Advocate" means the New Jersey Department of the Public Advocate or its successor.

"SAFSTOR" or "Mothballing" means to defer access to a later date while allowing residual materials to decay to an acceptable level of radioactivity. However, while the entombment option actually seals the plant with concrete in order to safeguard the plant, SAFSTOR relies upon a manned security force during the dormancy period. Once fuel is removed from the site, activities consist of general plant decontamination, radiation surveys, removal of radioactive waste materials, and implementation or security, surveillance and maintenance plans for the delay period.

SUBCHAPTER 2. DECOMMISSIONING COST UPDATE**14:5A-2.1 Filing**

Every New Jersey electric public utility having an ownership interest in one or more nuclear generating stations shall file by January 1, 1992, and every three years thereafter, unless otherwise directed by the Board, a "Decommissioning Cost Update" (Update) with the Board for its consideration.

14:5A-2.2 Update elements

(a) The Update filing shall consist of the following elements, each of which shall be accompanied by technical support sufficient to provide the Board with a basis to evaluate the filing:

1. For the initial filing on January 1, 1992, a generic assessment of the current status and developing trends on all activities that affect the costs of nuclear facility decommissioning. For each subsequent filing made pursuant to this chapter, an update of the current status and trends which have developed concerning all activities that affect the cost of nuclear facility decommissioning since the previous filing. The activities required to be assessed under this paragraph shall include, at a minimum, the following:

- i. Actual facility decommissioning costs both foreign and domestic;
- ii. Development and use of state of the art equipment and techniques such as robotics, heavy duty cutting methods, computer monitoring, remote observation systems and chemical cleaning methods which will increase efficiency and/or reduce radiation exposures;
- iii. Development of both high level and low level radioactive waste disposal sites and their cost or pricing structures;
- iv. Transportation methods and hardware; and
- v. Applicable regulatory changes undertaken or specific clean up standards adopted by the NRC, DEP, DOH, DOTNJ, DOTUS or other appropriate governmental bodies.

2. For each nuclear generating facility owned in whole or in part by an electric public utility, the utility shall provide the latest cost estimate for decommissioning, along with all supporting documentation. In support of the information filed under this paragraph, each utility shall indicate the following for each facility:

i. The current projected date for cessation of commercial operation and the current projected date for commencement of decommissioning activities;

ii. The status of any efforts by the utility to extend the date for cessation of commercial operation;

iii. The planned decommissioning option to be employed upon cessation of commercial operation, from the following list of options:

- (1) DECON;
- (2) ENTOMB;
- (3) SAFSTOR; or

(4) Other options as deemed appropriate by the NRC, electric public utility and/or other applicable entities;

iv. The source of and supporting data for the decommissioning cost estimate, either resulting from a site-specific study of the particular facility or via generic NRC guidelines or some other means;

(1) In the event that the decommissioning cost estimate provided pursuant to this chapter is based upon a site-specific study, the electric public utility must provide that study, as well as any such studies previously performed for that facility.

(2) In the event that the decommissioning cost estimate provided pursuant to this chapter is based upon generic NRC guidelines, the electric public utility must provide all information which led the utility to translate these guidelines into the particular cost estimate for each facility;

v. The decommissioning cost estimate and assumed commercial operation cessation date which formed the basis for the existing level of decommissioning funding in the public electric utility's base rates;

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- vi. The current level of monies in the decommissioning account, including ratepayer contributions and accrued interest, as well as any other contributions to the decommissioning fund; and
- vii. A description of the specific manner in which the information filed pursuant to (a)1 above affect the decommissioning cost estimate provided to this chapter.

14:5A-2.3 Joint submissions

(a) For purposes of avoiding the filing of duplicative information, the electric public utilities subject to this chapter may jointly file information with respect to the following:

- 1. The generic industry activities required in N.J.A.C. 14:5A-2.2(a); or
- 2. In the event of co-ownership of a nuclear facility, the information concerning cost estimates pursuant to N.J.A.C. 14:5A-2.2(a)2 excluding N.J.A.C. 14:5A-2.2(a)2v and vi which is required to be filed by each public electric utility.

SUBCHAPTER 3. PROCEDURES

14:5A-3.1 Public notification

(a) Concurrent with the filing with the board as required in this chapter, each utility shall provide public notice of said filing in newspapers of general circulation in its service territory, in a form deemed appropriate by the Board.

(b) Notice of the filing shall also be provided to the Public Advocate, NRC and DEP.

(c) Each utility shall make available for distribution to members of the public upon request an Executive Summary of the filing made pursuant to this chapter. Said Executive Summary shall:

- 1. Summarize the information supplied pursuant to each section of N.J.A.C. 14:5A-1 and 2; and
- 2. Not exceed 10 pages in length.

14:5A-3.2 Party status and intervention

(a) The Public Advocate shall be granted party status with respect to the Update proceeding.

(b) Any person may make a Motion for Intervention to the Board with respect to the Update proceeding. Such motion shall be decided pursuant to guidelines set forth in N.J.A.C. 14:1-9.2.

14:5A-3.3 Discovery

(a) Any party or intervenor as established in N.J.A.C. 14:5A-3.2 may propound discovery upon any public electric utility regarding its respective Update filings.

(b) The schedule for propounding discovery and for utility responses thereto shall be established by the Board subsequent to the filing.

14:5A-3.4 Public and evidentiary hearings.

(a) Within 90 days of the filing of each utility's Update, the Board shall schedule and convene a public hearing at which members of the public, interested parties and intervenors shall be provided the opportunity to submit comments with respect to the Update.

(b) The Board shall, if it deems appropriate, convene evidentiary hearings and additional public hearings concerning the Update.

14:5A-3.5 Findings

(a) Subsequent to the conclusion of hearings, the Board shall issue and distribute to parties and intervenors a draft Nuclear Facility Decommissioning Report (Report) which will address the following issues:

- 1. A summary of the state of industry experience and technology concerning nuclear facility decommissioning;
- 2. Proposed findings as to the continued efficacy of present decommissioning funding levels for each of the nuclear facilities wholly or partly owned by New Jersey electric utilities; and
- 3. Proposed methods for revising funding levels where deemed appropriate.

(b) Parties and intervenors shall be provided an opportunity to submit written comments to the Board within 30 days of the distribution of the draft Report released pursuant to (a) above.

(c) Upon receipt and review of comments received, the Board shall issue a final Report.

(a)

BOARD OF PUBLIC UTILITIES

Gas Service

Proposed New Rules: N.J.A.C. 14:6

Authorized By: Board of Public Utilities, George H. Barbour, Commissioner.

Authority: N.J.S.A. 48:2-13.

DPU Docket Numbers: GX 90121360 and GX91020252.

Proposal Number: PRN 1991-167.

Submit written comments by May 1, 1991 to:

Nusha Wyner, Director
Division of Gas
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the provisions of N.J.A.C. 14:6, Gas, expired on March 3, 1991. Said rules had served over an extended period of time in the regulation of gas utilities subject to the jurisdiction of the Board of Public Utilities (Board) in such areas as the construction, inspection, and maintenance of utility plant, the testing and accuracy of gas meters, and the maintenance and preservation of records and accounts.

The rules herein proposed closely resemble the expired rules previously adopted at N.J.A.C. 14:6 and which remain in the Administrative Code at that cite. Said rules are necessary in that they relate directly to the provision of safe service by New Jersey gas utilities. The only changes to the expired rules of any substance are the addition of N.J.A.C. 14:6-2.15, which pertains to Federally mandated drug testing for gas company employees, and modifications to N.J.A.C. 14:6-3.1, 3.2 and 3.3 pertaining to meter testing and meter accuracy. Thus, although this chapter is proposed as a new rulemaking, it continues procedures previously in effect.

The substantive provisions of the rules proposed to be adopted by the Board are summarized as follows:

N.J.A.C. 14:6-1.1 requires that the construction, installation, operation and maintenance of plant and facilities of gas utilities must be in accord with applicable Federal codes.

N.J.A.C. 14:6-1.2 requires a leak test to be performed on each service installation.

N.J.A.C. 14:6-1.3 requires the prompt inspection of gas leaks and that a gas utility maintain a sufficient number of reliable devices to detect the presence of combustible gas and to ascertain the pressure existing in the gas system. It also requires the annual inspection of regulator stations for leaks and the retention of records related to tests and inspections.

N.J.A.C. 14:6-1.4 requires the installation of an outside shutoff valve on every new or renewed service line.

N.J.A.C. 14:6-1.5 requires a gas utility to be able to shutdown any section of its system in an emergency and to train its employees in procedures necessary to reduce the flow of gas because of an emergency.

N.J.A.C. 14:6-1.6 requires a gas utility to provide combustible gas detecting equipment and training in the use of said equipment to all employees involved in the detection of gas leaks.

N.J.A.C. 14:6-1.7 prohibits the use of mechanical equipment within 12 inches of a gas pipe or facility unless said pipe or facility has been located and exposed by hand excavation.

N.J.A.C. 14:6-2.1 pertains to the furnishing of service connections to customers and the costs thereof.

N.J.A.C. 14:6-2.2 pertains to service connections for interruptible gas customers.

N.J.A.C. 14:6-2.3 pertains to the maintenance, calculation and reporting by gas utilities of the heating value of the gas being distributed.

N.J.A.C. 14:6-2.4 provides standards regarding the purity of gas distributed to customers.

N.J.A.C. 14:6-2.5 pertains to pressure requirements.

N.J.A.C. 14:6-2.6 requires the venting of all customer service regulators.

N.J.A.C. 14:6-2.7 requires a gas utility to test a customer's piping for leakage prior to the establishment of service.

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N.J.A.C. 14:6-2.8 requires the odorization of all gas that does not naturally possess a distinctive odor.

N.J.A.C. 14:6-2.9 requires that customers be supplied with information concerning the odor and characteristics of gas, the potential hazards of gas, the correct procedures for using gas appliances and the action to be taken if gas is detected. The rule also requires printed information to be easily understood and available in languages other than English which are spoken by a substantial number of non-English speaking people residing in a gas utility's service area. In addition, the utility is required to periodically inform the general public in its service area of the odor of gas and its hazards as well as procedures to follow if gas is detected.

N.J.A.C. 14:6-2.10 requires gas utilities to maintain liaison with emergency personnel of each municipality in its service area.

N.J.A.C. 14:6-2.11 is reserved.

N.J.A.C. 14:6-2.12 requires gas utilities to maintain a listed telephone number at which leak, odor or emergency calls may be received on a 24-hour a day basis. The utilities are also required to maintain a log which shows the receipt and handling of each leak, odor or emergency report received.

N.J.A.C. 14:6-2.13 requires a gas utility to have available on a 24-hour, seven days a week system wide basis, adequately trained emergency personnel.

N.J.A.C. 14:6-2.14 requires that all gas utility employees be adequately trained and have knowledge of the characteristics and hazards of natural gas.

The new rule at N.J.A.C. 14:6-2.15 requires that gas utility employees be tested for drugs as required by Federal mandate.

N.J.A.C. 14:6-3.1 requires gas utilities to maintain equipment necessary for the testing of meters.

N.J.A.C. 14:6-3.2 pertains to the periodic testing of meters.

N.J.A.C. 14:6-3.3 pertains to the determination of gas meter accuracy.

N.J.A.C. 14:6-4.1 adopts by reference the Uniform System of Accounts for gas utilities.

N.J.A.C. 14:6-4.2 adopts by reference rules concerning the preservation of records by gas utilities.

Social Impact

The proposed rules relate directly to the provision of safe, adequate and proper service by gas distribution companies. Said rules are necessary to ensure that gas utility plant is constructed and installed pursuant to acceptable standards and is maintained and inspected in a manner that will protect the safety and well-being of the public.

Economic Impact

As a result of the proposed rules, gas utilities, as they have in the past, will incur expenses in inspecting and testing their plant and meters. Since these items represent appropriate business activities, all reasonable levels of costs associated therewith will be allowed to be passed along to ratepayers through rates for service. The Board is of the further opinion that economic benefits will be derived from the proposed rules in that plant inspections will lead to reduced operational and maintenance expenses while meter inspections will assist in the production of reliable and accurate customer billings.

Environmental Impact

Through the testing of gas utility plant, the proposed rules will have a positive environmental impact by reducing the escape of methane into the atmosphere. In addition, the implementation of a sampling program for meter testing will reduce the on-road use of utility vehicles therefore reducing, to some extent, the level of air pollution caused by automotive exhaust.

Regulatory Flexibility Statement

The proposed new rules will not impose reporting, recordkeeping or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. The rules impact solely upon gas utilities, none of which are small businesses as defined under the Act, as each employ more than 100 people.

Full text of the rules proposed as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 14:6.

Full text of the proposed new rules which are affectively amendments to the expired rules follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

14:6-1.1 Plant Construction

(a) (No change.)

(b) As a portion of this subchapter [to] on utility plant, and all aspects of construction and operation thereof, and as a portion of all other subchapters under [Chapter] N.J.A.C. 14:6, Gas, the Board hereby adopts, by reference, as though set out in full, the following:

1. [Current] **The current** edition (and amendments as issued) of Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards: Part 192, Title 49 of the Code of Federal Regulations (Federal Code).

2. [Current] **The current** edition (and amendments as issued) of Liquefied Natural Gas Facilities: Federal Safety Standards: Part 193, Title 49 of the Code of Federal Regulations (Federal Code).

(c) Any such plant and its facilities which were designed and constructed prior to [(the effective date of this regulation)] **March 3, 1986** shall be subject to all the provisions of the Federal Code herein adopted by reference, including effective dates set forth in the Federal Code. When existing facilities are replaced, relocated or significantly altered, the siting, design and construction requirements of the Federal Code sections cited above in (b)1 and 2 shall apply.

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

14:6-1.2 Tests on service installations

[A] **Each gas utility shall perform a** leak test on each service installation.

14:6-1.3 Inspection of property

Prompt investigation of gas leaks [should] **shall** be made by **each gas utility** and such corrective action taken as is required by the facts and circumstances disclosed. A sufficient number of reliable portable devices for detecting the presence of combustible gas in the atmosphere shall be maintained as well as sufficient number of reliable devices which assure a substantially accurate knowledge at all times of the pressure existing in the system. Regulator stations shall be inspected for gas leaks with a combustible gas indicating device. These regulators shall be inspected at least once a year and repaired as necessary. Individual district regulators shall be inspected in such manner and with such frequency as may be necessary to maintain these regulators in condition to render safe and adequate service. A complete record shall be kept for two years of all such inspections, tests, conditions found and the corrective measures taken, in accordance with N.J.A.C. 14:3-6.2, [(Plant and operating)].

14:6-1.4 Service line valves

[An] **Each gas utility shall install an** outside shutoff valve on every new and every renewed service line.

14:6-1.6 Gas detectors

(a) Combustible gas detecting instruments shall be assigned to all service[men] and other personnel who may be involved in the detection of gas leaks. The instruments shall be properly maintained and periodically calibrated in accordance with the manufacturer's reasonable specifications. Records shall be kept of such calibrations.

(b) (No change.)

14:6-2.3 Heating value

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

(c) Each gas utility shall provide itself with a standard calorimeter outfit constructed and calibrated as approved by the National [Bureau of Standards] **Institute of Standards and Technology** with which periodic tests of the gas shall be made. The utility may use a recording calorimeter which shall be maintained in proper working order and checked periodically with a standard calorimeter or against a standard gas. Such equipment shall be available, at all reasonable times, for the inspection by and the use of any authorized representative of the Board.

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

14:6-2.15 Drug testing; incorporation by reference of Federal regulations

(a) **The Board hereby adopts, by reference, as though set out in full, the current edition (and amendments as issued) of Drug Testing, Part 199 of the Code of Federal Regulations (Federal Code).**

(b) **Each gas company employee (as defined in Part 199 of the Code of Federal Regulations) shall be tested for the presence of prohibited drugs and shall be provided with an employee assistance program as required by Part 199 of the Code of Federal Regulations.**

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14:6-3.1 Testing of gas meters

[(a)] Each gas utility shall provide itself with equipment necessary for testing meters, such equipment to consist of, as a minimum, a standard meter prover with suitable accessories. Utilities may cooperate in arranging for such facilities. [Each prover will be inspected by the Board and furnished with an inspection tag or plate. Provers will be set up permanently in the location where they are to be used, and will be tested by an inspector of the Board, using a standard cubic-foot bottle which has been previously calibrated and certified by the National Bureau of Standards at Washington, D.C.] **Bell type provers will be set up permanently in the location where they are to be used. All provers will be calibrated according to ANSI B109. Calibration will be witnessed and approved by the Board. Each prover will be furnished an inspection and approval tag by the Board.**

[(b)] Large volume displacement, rotary or orifice meters, may be tested by use of devices customarily used in the industry other than the standard as prover, provided the test method proposed to be followed is acceptable to the Board.]

14:6-3.2 Periodic meter testing

[Unless it has been otherwise authorized by the Board, no gas utility shall allow a gas meter to remain in service for a period longer than six years without checking it for accuracy and readjusting it if found to be incorrect beyond the limits established by Section 3 (Determination of gas meter accuracy) of this subchapter.]

No gas utility shall allow a gas meter to remain in service for a period longer than 10 years, except where a sampling program has been established in accordance with ANSI B109 and approved by the Board. Meters shall neither remain in service after testing nor be placed in service if the meters are outside the adjustment limits in accordance with ANSI B109. For any group of meters in a sampling program to remain in service, at least 80 percent of the meters in the sample tested must be within the accuracy limits of 98 percent (two percent error slow) to 102 percent (two percent error fast) at the low flow (check) rate, with no more than 10 percent of the meters exceeding 102 percent (two percent error fast). If a group of meters does not meet the performance standard, then corrective action shall be taken.

14:6-3.3 Determination of gas meter accuracy

A gas meter shall be considered correct if it, when passing gas at the [rate of 20 percent] **flow rates of 20 to 35 percent** of its rated capacity, [it] shows in comparison with a standard gas prover, an error which is not greater than two [per cent] **percent**.

14:6-4.1 Adoption by reference of the Uniform System of Accounts

The Board adopts by reference the Uniform System of Accounts for Classes A and B Gas Utilities that have been promulgated by the Federal [Power] **Energy Regulatory** Commission as well as all present and subsequent amendments, revisions, deletions and corrections which the Federal [Power] **Energy Regulatory** Commission may adopt insofar as they relate to gas utilities subject to the jurisdiction of the Board and are in accordance with the Board's policies and procedures.

14:6-4.2 Adoption by reference of rules concerning preservation of records; Gas utilities

(a) On September 14, 1972, the **then** Board of Public Utility Commissioners in the Department of Public Utilities, pursuant to authority of N.J.S.A. 48:2-1 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted by reference the "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities" originally proposed to various states for adoption by the National Association of Regulatory Utility Commissioners as promulgated and published in April, 1972, for use by the electric, gas and water utilities.

(b) The Board of Public [Utility Commissioners] **Utilities** adopts these rules as its' modified regulations governing the preservation and destruction of records for all classes of electric, gas and water utilities subject to its jurisdiction and as a supplement to its uniform system of accounts for all classes of electric, gas and water utilities.

(c) Copies of the full text of these rules are available for examination in the Board's offices at Two Gateway Center, Newark, New Jersey 07102, and are included in the case files in these dockets.

[Additional copies may be purchased from the National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, D.C. 20044.] **Copies of these rules may be purchased from the New Jersey Board of Public Utilities, Attention Secretary Office.**

(a)

BOARD OF PUBLIC UTILITIES

Notice of Public Hearings

Regulation of Alternate Operator Services

Pre-Proposed Amendments: N.J.A.C. 14:10-6
Rules for the Resale of Telecommunications
Services

Pre-Proposed New Rules: N.J.A.C. 14:10-7

Rules for Customer Provided Pay Telephone Service

Pre-Proposed New Rules: N.J.A.C. 14:10-8

Take notice that, pursuant to N.J.S.A. 52:14B-4(e), the Board of Public Utilities (Board) has decided to conduct a preliminary proceeding for the purpose of eliciting comments concerning contemplated rulemaking proceedings regarding the regulation of Alternate Operator Services, N.J.A.C. 14:10-6 (BPU Docket No. TX90111300); Resale of Telecommunications Services, N.J.A.C. 14:10-7 (BPU Docket No. TX90111298); and Customer Provided Pay Telephone Service, N.J.A.C. 14:10-8 (BPU Docket No. TX90111299). The text of each pre-proposed rule was published in the March 4, 1991 New Jersey Register at 23 N.J.R. 676(b), 679(a) and 680(a), respectively. Written comments regarding these pre-proposed rules may be submitted to the Board through April 18, 1991.

On April 4, 1991, at 10:00 A.M. the Board will hold a public hearing regarding these pre-proposed rules. The Board has also scheduled a second public hearing on April 15, 1991, at 10:00 A.M. The hearings will be held in the Board's Tenth Floor Hearing Room, Two Gateway Center, Newark, New Jersey. **Anyone wishing to testify** at either hearing should contact Anthony Centrella, Division of Telecommunications at the above address or at (201) 648-7865.

(b)

BOARD OF PUBLIC UTILITIES

Water and Sewer Adjustment Clauses

Proposed New Rules: N.J.A.C. 14:10-8 and 9.

Authorized By: Board of Public Utilities, Scott A. Weiner,
President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: WX8706-0524.

Proposal Number: PRN 1991-149.

A **public hearing** concerning this proposal will be held on:

April 22, 1991, at 10:00 A.M.

Board of Public Utilities

Hearing Room, 10th Floor

Two Gateway Center

Newark, New Jersey 07102

Submit written comments by May 16, 1991, to:

I. Paul Slevin, Director

Division of Water and Sewer

Board of Public Utilities

Two Gateway Center

Newark, New Jersey 07102

The agency proposal follows:

Summary

These proposed new rules would establish a purchased water adjustment clause and a sewerage treatment adjustment clause proceeding to enable the Board to annually evaluate the effect of increased or decreased purchased water charges and purchased sewerage treatment charges to a water and/or sewer utility and to true up any deviation therefrom on such a water and/or sewer utility and adjust said utility's rates accordingly. They would permit such adjustment to be made on a timely basis without the need for a complete base rate case filing.

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The adjustment clause proceeding is intended to expeditiously pass through increased or decreased charges for purchased water and purchased sewerage treatment which are uncontrollable by water and/or sewer utilities because such charges are set by governmental entities, pursuant to law. The proceeding will effect those utilities whose purchased water and/or sewerage treatment costs exceed 10 percent of their total operating and maintenance expenses.

A petitioning water and/or sewer utility must establish all pertinent data relating to its cost of purchased water and/or purchased sewerage treatment, for example, the contract, the base volume, the base number of customers, and the base cost per unit within the framework of a base rate case. Once this base data has been established, the petitioner would be required to file for any deviation in those specific costs through the adjustment clause. This data would then be reviewed within the framework of a fully litigated adversarial adjustment clause proceeding after notice and public hearing.

The standard criteria, for example, base data, consumption levels and, in the case of a sewer utility, sewerage treatment levels, are to be used in establishing a foundation for adjustment clause proceedings. These base costs, water consumption and sewerage treatment levels will be trued up in each subsequent purchased water and purchased sewerage treatment adjustment clause filing. This will tend to stabilize the cost of water and sewer billings, since only the incremental difference between the cost and the water consumption and sewerage treatment levels set in the previous case and the new contract costs, water consumption and sewerage treatment levels will be factored into a future adjustment.

When a utility is notified that the Municipal Utilities Authority (MUA) or other purveyor of water or sewerage treatment services has decided to change its rates, the utility will be required to immediately file all available information with the Board and with the Division of Rate Counsel in order that the process of review may begin. Normally, the MUA or other purveyor will notify a utility of its new charges some months before the effective date of such changes. It would be advantageous for the Board to be advised on a timely basis of all changes in the contracts.

Concurrent with filing for an adjustment clause, a water and/or sewer utility will be required to: (1) Use due diligence to investigate and analyze the basis for any increase or decrease proposed by the MUA or other purveyor; and (2) Actively participate in the process to assure that these rates are just and reasonable. Water and sewer utilities must be conscientious in order to assure that increased charges and rates for water and/or sewerage treatment services are not set in a manner which will result in subsidization by the purchasing utility's customers who have no say in or control over the purveyor's operations. The water and/or sewer utility will have to present evidence to the Board and all parties of what it has done to fulfill its obligations.

Under the proposed new rules, water and sewer utilities will be required to file for any increases or decreases to their adjustment clause levels and for a truing up procedure on an annual basis.

Social Impact

The proposed new rules will provide a method for water and sewer utilities to promptly reflect in their rates the effect of increased or decreased purchased water and purchased sewerage treatment charges which are established by public entities pursuant to law.

Economic Impact

By encouraging the filing of petitions for purchased water and purchased sewerage treatment adjustment charges and requiring the filing of updated data concerning said charges, the proposed rules will necessitate the expenditure of additional time, effort and resources by the Board and its staff. However, the level of overall efficiency will be enhanced since the rules will eliminate the need for a full base rate case proceeding to evaluate the effect of changes in the cost of purchased water and purchased sewerage treatment. Utility regulatory costs incurred in processing a base rate case should be reduced. The prompt reflection of purchased water and purchased sewerage treatment charges in rates should also encourage public conservation by sending an economic signal that customer usage has a direct financial consequence.

Regulatory Flexibility Analysis

There are currently 77 water companies in the State. Eleven companies are considered Class A companies which although they may employ less than 100 employees could still be considered large businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The remaining 66 water utilities and all 22 sewer utilities are all small businesses as defined by the Act.

The proposed rules will provide a low cost method of regulating the rates of all water and/or sewer utilities that purchase water and purchased sewerage treatment. They do not impose any significant new record keeping or reporting requirements since the information required by the proposed rules would be compiled by affected utilities for presentation in a base rate case in any event.

Although there may be administrative and professional costs, for example attorney fees, attached to the proceedings herein proposed, these costs are legitimate costs of doing business and therefore are considered for pass through to the ratepayers.

The Board does not consider it appropriate to differentiate between small and large businesses since the same data would be needed from all affected water and sewer utilities, regardless of size, which would utilize or be subject to the purchased water and purchased sewerage treatment adjustment clause.

Full text of the proposed new rules follows:

SUBCHAPTER 8. PURCHASED WATER ADJUSTMENT CLAUSE**14:10-8.1 Scope**

The rules contained in this subchapter shall apply to the increase or decrease purchased water charges incurred by a water utility, as defined in N.J.S.A. 48:2-13.

14:10-8.2 Definitions

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

"Base consumption" means the level of consumption as established in the most recent base rate or adjustment clause case of a water utility.

"Base cost of purchased water" means the cost of contractually purchased water as established in the most recent base rate or adjustment clause case of a water utility. Actual cost shall be reflected as cost per 1,000 gallons.

"Deferred accounting treatment" means the deferring on the books and records of a water utility the difference between the expense imposed upon it by a water purveyor for purchased water, and the amount of expense currently approved by the Board for inclusion in rates for recovery of this expense.

"New cost of purchased water" means the Board recognized new contracted price of water from a purveyor to a water utility.

"Public entity" means any governmental entity, including a utilities authority, empowered by law to establish rates or charges for the sale of water.

"Purchased water adjustment clause" means the methodology by which a water utility obtains recognition in its rates of an increase or decrease in the cost of water purchased by it from a water purveyor.

"Revenue tax factor" means the tax factor applied to recoup the Gross Receipts and Franchise Taxes at the rate established in a water utility's last base rate or adjustment clause case.

"Water purveyor" means any owner of water facilities who sells water to a water utility and whose rates or charges therefor are established by itself or by a public entity pursuant to law.

"Water utility using a flat rate basis" means any water utility whose rates and tariffs are not designed on a metered flow basis.

"Water utility" means any investor owned water utility subject to the regulation of the Board which purchases water from a water purveyor.

"Water utility using a metered basis" means any water utility whose rates and tariffs are designed on a metered flow basis.

"Truing Up Schedule" means a detailed analysis reconciling the proposed or new cost of purchased water with the most recent base cost approved by the Board.

14:10-8.3 Petitions for Purchased Water Adjustment Clauses; Truing Up Schedules; time for filing

(a) A water utility with purchased treatment costs exceeding 10 percent of its total Operating and Maintenance expense shall file a petition with the Board for approval of a purchased water adjustment clause to reflect in its rates an increase or decrease in the cost of

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water purchased by it. The petition shall be filed as soon as the water utility can reasonably compile the data required by this subchapter after notification of an increase or decrease in charges by its water purveyor, but in no event later than 30 days after such notification.

(b) No purchased water adjustment clause shall be approved unless a water utility, within the prior three years, has had its base rates set by the Board in a decision and order which established base level data against which the new cost of purchased water can be measured.

(c) Within 30 days after its purchased water adjustment clause has been in effect for one year, a water utility shall file schedules with the Board which true up its actual recovery of costs under the clause with the previous Board allowed recovery of such costs.

14:10-8.4 Petitions for Purchased Water Adjustment Clauses; content; procedures

(a) A petition for approval of a purchased water adjustment clause, for an increase or decrease therein, and for the filing for approval of a truing up schedule shall include the following:

1. A copy of the contract for purchased water approved in the water utility's most recent base rate case or water adjustment clause case, whichever is later, and copies of the present and the proposed purchased water contracts, including price and detailed financial statements of associated expenses;

2. The actual number and classes of customers as approved in the water utility's most recent base rate case or purchased water adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

3. The actual volume of water purchased as approved in the water utility's most recent base rate case or purchased water adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

4. A calculation of a proposed cost per unit of volume using the methodology approved by the Board in the water utility's most recent base rate case or purchased water adjustment clause case, whichever is later;

5. Copies of the Board's Orders, including stipulations, if any, in the water utility's latest base rate case and in its most recent intervening purchased water adjustment clause case;

6. A proposed tariff schedule, entitled "Purchased Water Adjustment Clause," to implement the proposed purchased water adjustment clause. Said schedule shall set forth all rate schedules in the water utility's tariff which are affected by the clause;

7. Volumes and costs under the water utility's present contract and the proposed contract, with specific calculations showing the basis of any volume and/or cost differential from the base cost of purchased water on a cost per unit basis;

8. A schedule truing up the proposed cost of purchased water with the most recent level of base cost of purchased water and the most recent level of Board approved rates. This schedule shall contain an adjustment for any under/over recovery of revenues related to the cost of purchased water allowed in the adjustment clause; and

9. A detailed description of the efforts of the water utility to investigate and analyze the basis for any increase in rates proposed by its water purveyor as well as a detailed description of the water utility's findings. The utility shall also fully describe its efforts in actively participating in the process to assure that these rates are just and reasonable.

(b) Base consumption and base costs as set forth in the water utility's previous base rate case shall be established in each subsequent base rate filing.

(c) Interest on any over recovery shall be considered in each purchased water adjustment clause proceeding.

(d) The amount of a rate adjustment allowed by the Board in a purchased water adjustment clause proceeding shall be listed separately and identified on customer bills.

(e) A copy of the petition and all exhibits shall be served upon the Department of the Public Advocate, Division of Rate Counsel, simultaneously with the filing thereof with the Board.

(f) In reviewing the petition, the Board may consider such additional relevant information or financial analysis as it deems appropriate.

(g) Filings pursuant to these rules shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

14:10-8.5 Formula for determination of basic costs by a water utility using a flat rate basis

$$\begin{aligned} & \text{Adjustment Clause} = \text{New Cost of Purchased Water} \\ & \pm \text{Compression or Deferred Accounting} \\ & \times \text{Revenue Tax Factor} \\ & \div \frac{\text{Annual Charge Per Customer}}{\text{Number of Customers by Class}} = \text{Annual Charge Per Customer} \\ & \div \frac{\text{Annual Charge Per Customer}}{\text{Billing Cycle}} \end{aligned}$$

14:10-8.6 Formula for determination of Base Costs by a water utility using a metered basis

$$\begin{aligned} & \text{Adjustment Clause} = \text{New Cost of Purchased Water} \\ & \pm \text{Compression or Deferred Accounting} \\ & \times \text{Revenue Tax Factor} \\ & \div \frac{\text{Base Consumption (Pumpage less unaccounted for water)}}{\text{Base Consumption (Per Tariff Units)}} \\ & \div \text{Billing Cycle} \end{aligned}$$

SUBCHAPTER 9. PURCHASED SEWERAGE TREATMENT ADJUSTMENT CLAUSE

14:10-9.1 Scope

The rules contained in this subchapter shall apply to the increase or decrease in purchased sewerage treatment charges incurred by a sewer utility, as defined in N.J.S.A. 48:2-13.

14:10-9.2 Definitions

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

"Base sewerage treatment" means the level of sewerage treatment as established in the most recent base rate or adjustment clause case of a sewer utility.

"Base cost of purchased sewerage treatment" means the cost of contractually purchased sewerage treatment as established in the most recent base rate or adjustment clause case of a sewer utility. Actual cost shall be reflected as cost per 1,000 gallons.

"Deferred accounting treatment" means the deferring on the books and records of a sewer utility the difference between the expense imposed upon it by a sewerage treatment purveyor for purchased sewerage treatment, and the amount of expense currently approved by the Board for inclusion in rates for recovery of this expense.

"New cost of purchased sewerage treatment" means the Board recognized new contracted price of purchased sewerage treatment from a purveyor to a sewer utility.

"Public entity" means any governmental entity, including a utilities authority, empowered by law to establish rates or charges for the sale of sewerage treatment.

"Purchased sewerage treatment adjustment clause" means the methodology by which a sewer utility obtains recognition in its rates of an increase or decrease in the cost of sewerage treatment purchased by it from a sewerage treatment purveyor.

"Revenue tax factor" means the tax factor applied to recoup the Gross Receipts and Franchise Taxes at the rate established in a sewer utility's last base rate or adjustment clause case.

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"Sewerage treatment purveyor" means any owner of a sewerage treatment facility who sells sewerage treatment to a sewer utility and whose rates or charges therefor are established by itself or by a public entity pursuant to law.

"Sewerage treatment utility using a flat rate basis" means any sewer utility whose rates and tariffs are not designed on a metered flow basis.

"Sewer utility" means any investor owned sewer utility subject to the regulation of the Board which purchases sewerage treatment from a sewerage treatment purveyor.

"Sewer utility using a metered basis" means any sewer utility whose rates and tariffs are designed on a metered flow basis.

"Truing Up Schedules" means a detailed analysis reconciling the proposed or new cost of purchased sewerage treatment with the most recent base cost approved by the Board.

14:10-9.3 Petitions for Purchased Sewerage Treatment Adjustment Clauses; Truing Up Schedules; time for filing

(a) A sewer utility with purchased sewerage treatment costs exceeding 10 percent of its total Operating and Maintenance expense shall file a petition with the Board for approval of a purchased sewerage treatment adjustment clause to reflect in its rates an increase or a decrease in the cost of sewerage treatment purchased by it. The petition shall be filed as soon as the sewer utility can reasonably compile the data required by this subchapter after notification of an increase or decrease in charges by its sewerage treatment purveyor, but in no event later than 30 days after such notification.

(b) No purchased sewerage treatment adjustment clause shall be approved unless a sewer utility, within the prior three years, has had its base rates set by the Board in a decision and order which established base level data against which the new cost of purchased sewerage treatment can be measured.

(c) Within 30 days after its purchased sewerage treatment adjustment clause has been in effect for one year, a sewer utility shall file schedules with the Board which true up its actual recovery of costs under the clause with the previous Board allowed recovery of such costs.

14:10-9.4 Petitions For Purchased Sewerage Treatment Adjustment Clauses; content; procedures

(a) A petition for approval of a purchased sewerage treatment adjustment clause, for an increase or decrease therein, and for the filing for approval of a truing up schedule shall include the following:

1. A copy of the contract for purchased sewerage treatment approved in the sewer utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and copies of the present and the proposed purchased sewerage treatment contracts, including price and detailed financial statements of associated expenses;

2. The actual number and classes of customers as approved in the sewer utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

3. The actual volume of sewerage treatment purchased as approved in the sewer utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

4. A calculation of a proposed cost per unit of volume using the methodology approved by the Board in the sewer utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later;

5. Copies of the Board's Orders, including stipulations, if any, in the sewer utility's latest base rate case and in its most recent intervening purchased sewerage treatment adjustment clause case;

6. A proposed tariff schedule, entitled "Purchased Sewerage Treatment Adjustment Clause," to implement the proposed purchased sewerage treatment adjustment clause. Said schedule shall set forth all rate schedules in the sewer utility's tariff which are affected by the clause;

7. Volumes and costs under the sewer utility's present contract and the proposed contract, with specific calculations showing the basis

of any volume and/or cost differential from the base cost of purchased sewerage treatment on a cost per unit basis;

8. A schedule truing up the proposed cost of purchased sewerage treatment with the most recent level of base cost of purchased sewerage treatment and the most recent level of Board approved rates. This schedule shall contain an adjustment for any under/over recovery of revenues related to the cost of purchased sewerage treatment allowed in the adjustment clause; and

9. A detailed description of the efforts of the sewer utility to investigate and analyze the basis for any increase in rates proposed by its sewerage treatment purveyor as well as a detailed description of the sewer utility's findings. The utility shall also fully describe its efforts in actively participating in the process to assure that these rates are just and reasonable.

(b) Base levels of sewerage treatment and base costs as set forth in the sewer utility's previous base rate case shall be established in each subsequent base rate filing.

(c) Interest on any over recovery shall be considered in each purchased sewerage treatment adjustment clause proceeding.

(d) The amount of a rate adjustment allowed by the Board in a purchased sewerage treatment adjustment clause proceeding shall be listed separately and identified on customer bills.

(e) A copy of the petition and all exhibits shall be served upon the Department of the Public Advocate, Division of Rate Counsel, simultaneously with the filing thereof with the Board.

(f) In reviewing the petition, the Board may consider such additional relevant information or financial analysis as it deems appropriate.

(g) Filings pursuant to these rules shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

14:10-9.5 Formula for determination of basic costs by a sewer utility using a flat rate basis

$$\begin{aligned} &\text{Adjustment Clause} = \text{New Cost of Purchased Sewerage Treatment} \\ &\pm \text{Compression or Deferred Accounting} \\ &\times \text{Revenue Tax Factor} \\ &\div \text{Number of Customers by Class} = \text{Annual Charge Per Customer} \\ &\div \text{Billing Cycle} \end{aligned}$$

14:10-9.6 Formula for determination of Base Costs by a sewer utility using a metered basis

$$\begin{aligned} &\text{Adjustment Clause} = \text{New Cost of Purchased Sewerage Treatment} \\ &\pm \text{Compression or Deferred Accounting} \\ &\times \text{Revenue Tax Factor} \\ &\div \text{Base Sewerage Treatment Costs} \\ &\div \text{Base Sewerage Treatment (Per Tariff Units)} \\ &\div \text{Billing Cycle} \end{aligned}$$

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Routes U.S. 46 in Morris County and N.J. 49 in Cumberland County

Proposed Amendment: N.J.A.C. 16:28-1.10 and 1.81

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 1991-154.

Submit comments by May 1, 1991 to:

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

The agency proposal follows:

Summary

The proposed amendments will establish revised "speed limit" zones along Routes U.S. 46, including Routes U.S. 1, 9 and 46, in the Town of Dover, Morris County, and N.J. 49 in the City of Bridgeton, Cumberland 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 highway conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a survey. The survey proved that the establishment of revised "speed limit" zones along Routes U.S. 46, including Routes U.S. 1, 9 and 46, in the Town of Dover, Morris County, and N.J. 49 in the City of Bridgeton, Cumberland County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.10 and 1.81, based upon the survey.

Social Impact

The proposed amendments will establish revised "speed limit" zones along Routes U.S. 46, including Route U.S. 1, 9 and 46, in the Town of Dover, Morris County, and N.J. 49 in the City of Bridgeton, Cumberland 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 sign costs vary based upon the material used, their size and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine, as established by N.J.S.A. 39 and the State of New Jersey "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or other 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 amendments primarily affect the motoring public and governmental entities responsible for enforcement of the rule.

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

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9 and 46

(a) The rate of speed designated for the certain parts of State Highway U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

- 1.-3. (No change.)
- 4. For both directions of traffic:
- i.-x. (No change.)

[xi. Zone 21: 40 mph to the Bridge over Central Railroad of New Jersey, Town of Dover (milepost 38.18); thence].

[xii.] xi. In the Town of Dover, Morris County:

(1) **Zone 21: 40 mph between the Wharton Borough line and the Bridge over Central Railroad of New Jersey (mileposts 37.33 to 38.18); thence**

Recodify existing (1) and (2) as (2) and (3) (No change in text.) 5.-6. (No change.)

(b) The rate of speed designated for the certain [part] **parts** of State highway Route [US] U.S. 46 and Route [US] U.S. 1, 9 and 46 described [herein below] in **this subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. (No change.)

16:28-1.81 Route 49

(a) The rate of speed designated for the certain part of State highway Route 49 described in this subsection shall be established and adopted as the maximum legal rate of speed:

- 1. (No change.)
- 2. For both directions of traffic in Cumberland County:
 - i.-iii. (No change.)
 - iv. In the City of Bridgeton:
 - (1)-(2) (No change.)

(3) Zone 3: 40 miles per hour between Bank Street Extension and [Ramblewood Drive] **800 feet east of S. East Avenue** (approximate mileposts 25.75 to [26.63]**26.23**); thence

(4) **Zone 4: 35 miles per hour between 800 feet east of S. East Avenue and Park Avenue (approximate mileposts 26.23 to 26.72); thence**

[(4)](5) Zone [4]5: 45 miles per hour between [Ramblewood Drive] **Park Avenue** and the Fairfield Township westerly line (approximate mileposts [26.63]**26.72** to 27.20); thence

- v.-vii. (No change.)
- 3.-6. (No change.)

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Gross Income Tax

Partnerships

Proposed Amendment: N.J.A.C. 18:35-1.14

Proposed New Rule: N.J.A.C. 18:35-1.25

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54A:9-17(a).

Proposal Number: PRN 1991-164.

Submit comments by May 1, 1991 to:

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

The agency proposal follows:

Summary

The proposed amendment is necessary to make the current partnerships rule consistent with the ruling in the court case *Smith v. Director, Div. of Taxation*, 108 N.J. 19, 527 A2d 843 (1987), and to make certain other clarifications. Prior to the *Smith* decision, the partnerships rule (N.J.A.C. 18:35-1.14) required each individual partner to report on the NJ-1040 his or her share of the gross amount of all interest and dividend income and gains or losses from disposition of property either earned or incurred by the partnership. The rule also required each individual partner to report such income (interest, dividend, gains or losses from disposition of property) in the appropriate category of income rather than to include it in the distributive share of partnership income category. The *Smith* case held that the application of paragraph (c)4 of the partnerships rule (N.J.A.C. 18:35-1.14(c)4) was inconsistent with legislative intent with respect to dividend and interest income and gains and losses from disposition of

property realized by a securities partnership in the ordinary course of its securities business. Thus, the proposed amendment provides that the distributive share of partnership income reported on an individual partner's NJ-1040 must represent that partner's share of net income earned in the ordinary course of business of the partnership. However, income earned outside the ordinary course of business of the partnership is not includible in the distributive share and will continue to be reported in a gross amount in the appropriate category of income.

Under the proposed amendment, interest and dividend income and gains and losses from disposition of property that are not included in the partnership's ordinary income or loss for Federal income tax purposes will be presumed to have been either earned or incurred outside the ordinary course of business for New Jersey income tax purposes, unless shown to be otherwise. Also, when such interest, dividends, gains and losses are included in the partnership's ordinary income or loss for Federal income tax purposes, the partnership must provide the Division with a statement justifying the inclusion of such amounts for gross income tax purposes.

The proposed amendment clarifies the proper treatment of Federally deductible expenses that are not deductible for gross income tax purposes, as well as the gross income tax adjustment that must be made to an individual partner's distributive share amount as determined for Federal income tax purposes. Five new examples are included to illustrate the requirements as proposed.

The proposed amendment states the Division's current policies concerning how part-year residents and part-year nonresidents are to report partnership income on the New Jersey resident and nonresident returns. The proposed amendment also contains clarification of both the partnership's and partners' requirements with respect to the forms, reconciliations, statements and schedules that must be provided to the Division.

Also proposed is a new rule which sets out the current law and the Division's interpretation concerning how to calculate income earned in the ordinary course of business. Under this proposed new rule, interest and dividend income, and gains or losses from the disposition of property are presumed to be earned or incurred outside the ordinary course of business, unless shown to be otherwise.

Social Impact

The proposed amendment and new rule directly impact only the business community, particularly those who are members of partnerships. However, the impact is minimal because the proposed amendment and new rule merely serve to codify and clarify existing law and policies and the application of the *Smith* decision (discussed in the "Summary" above). Nevertheless, it is possible that the rules as proposed, by virtue of the information being more public, could influence taxpayers in their decisions concerning what form a business should take or keep (that is, partnership, corporation or sole proprietorship).

Economic Impact

Since the main purpose and effect of the proposed amendment and new rule is to merely clarify existing law and policies, there should be little effect on government revenues or costs. However, the clarifications could conceivably cause an increase in revenues due to more accurate reporting of gross income.

Regulatory Flexibility Statement

The proposed amendment and new rule do not impose additional reporting, recordkeeping or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The amendments impose requirements on the individuals who are members of partnerships, but not on the partnerships themselves. Accordingly, a regulatory flexibility analysis is not required. The proposed amendments and new rule only clarify existing laws and requirements and make some minor technical changes.

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

18:35-1.14 Partnerships

(a) [Partnership and partner defined] **The following words and terms when used in this subchapter shall have the following meanings:**

1. "Partnership" means and shall include a syndicate, group, pool, joint venture and any other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a corporation or trust or estate within the meaning of the New Jersey Gross Income Tax Act. **"Partnership"**

shall not include a master limited partnership or limited partnership association having the essential characteristics of a corporation and taxable as a corporation.

2. "Partner" means and shall include [a member of such a syndicate, group, pool, joint venture or organization] **both general and limited members of a partnership, but shall not include corporate partners, since they are not subject to the gross income tax.**

(b) Taxability of partners:

1. A partnership as such is not subject to the gross income tax. However, the **income, gains or losses of the individual [partner of a partnership] partners shall be subject to tax as provided in this section. The tax shall be imposed on [his] each individual partner's share of the income or gain, whether or not distributed, which was received or accrued by the partnership for its taxable year ending within or with [the] each partner's taxable year.**

2. A partner who is a resident taxpayer of New Jersey shall report his or her entire share of the income [or gain], **gains or losses from [a resident or nonresident] every partnership in which he or she has an interest, regardless of where such income or gain was earned.**

3. A partner is a nonresident taxpayer of New Jersey shall report only the income [or gain], **gains or losses of the partnership which are derived from sources within this State. [Where a partnership's business is carried on solely within this State, all of the income or gain from the partnership would be derived from sources within this State. Where a partnership's business is carried on both inside and outside New Jersey, the income attributable to sources within New Jersey for the nonresident partner should be determined by the use of the New Jersey gross income tax business allocation schedule, form NJ-1040-NR-A.]**

4. **Where a partnership's business is carried on solely within this State, all of the income, gain or losses from the partnership is deemed to be derived from sources within this State. Where a partnership's business is carried on both inside and outside New Jersey, the portion of income, gains or losses attributable to sources within New Jersey shall be determined by use of the New Jersey Business Apportionment Schedule (Form NJ-1040-NR-A) as prepared by the partnership.**

(c) Determination of a distributive share of partnership income:

[1. A partner shall report, as provided in (c)4 below, his share of the income or gain or a partnership for its taxable year ending within or with the partner's taxable year. A partner's share of the net income of the partnership shall include his share of guaranteed payments received from the partnership in the same manner as for federal income tax purposes.

2. Net income of a partnership shall be determined and reported on the basis of accepted accounting principles and practices after provision for all cost and expenses incurred in the conduct thereof. No deduction from gross income shall be allowed for:

- i. Taxes based on income;
- ii. Expenses unrelated to the production of taxable income.]

1. **The distributive share of partnership income for the taxable year reported by a partner on the NJ-1040 shall represent his or her share of the net income earned by the partnership in the ordinary course of business, as defined in N.J.A.C. 18:35-1.25, whether or not distributed.**

i. **Income earned or received by the partnership outside the ordinary course of its primary business must be reported by each partner in the category in which such income falls pursuant to N.J.S.A. 54A:5-1.**

Example 1: A partnership shows the following income on its Federal Partnership Return of Income (form 1065):

| | |
|--|-----------------|
| Partnership ordinary income of | \$25,000 |
| Included in partnership ordinary income is interest income of \$500 from U.S. Treasury bills | |
| Excluded from partnership ordinary income is income of \$300 from State of New York bonds | |
| Dividend income from stock before exclusion | 1,200 |
| Long term capital gain on sale of capital assets | 1,000 |
| Total | \$27,200 |

TREASURY-TAXATION

PROPOSALS

Partner A has a 50 percent interest in the partnership and is entitled to a 50 percent share of partnership profits or losses. How does partner A report his share of the partnership income or gain on his New Jersey form NJ-1040?

Partner A reports as follows:

| | |
|--|-----------------|
| Distributive share of partnership ordinary income | \$12,500 |
| Adjustment for New Jersey gross income tax purposes: | |
| Add: Interest on New York State Bonds | 150 |
| | <u>\$12,650</u> |
| Deduct: Interest on U.S. Treasury Bills | 250 |
| Partner A's distributive share of income—Line 41 | \$12,400 |
| Dividend income, before exclusion—Line 15 | 600 |
| Gain from disposition of partnership property—Line 35 | <u>500</u> |
| Total income from partnership as reported on New Jersey tax return | \$13,500 |

Example 2: A taxpayer has the following income:

| | |
|--|----------|
| Distributable share of partnership income including \$5,000 of guaranteed payments | \$12,000 |
| Share of Partnership Capital Gain | 2,000 |
| Salary and Wages from Employment Other than from Partnership | 15,000 |
| Capital loss on sale of individually owned stock | (4,000) |

What is reportable as income for New Jersey gross income tax purposes on taxpayer's form NJ-1040?

The taxpayer will report income for New Jersey gross income tax purposes as follows:

| | |
|--|-----------|
| Salary and wages from employment other than from partnership—Line 13 | \$15,000 |
| Distributable share of partnership income—Line 41 | 12,000 |
| Loss on sale of individually owned stock | (\$4,000) |
| Less: Share of Partnership Gain | 2,000 |
| Line 50* | <u>0</u> |
| Total New Jersey gross income—Line 17c | \$27,000 |

*Note: The taxpayer may offset the loss on the sale of individually owned stock against his share of the partnership gain only to the extent of the loss within the same category and, therefore, can not report an excess of loss from the sale or exchange of property.

Example 3: A taxpayer has the following income:

| | |
|--|----------|
| Salary and wages from employment other than from partnership | \$10,000 |
| Share of partnership ordinary loss | (3,000) |
| Share of partnership capital loss on sale of stock | (2,000) |
| Capital gain on sale of individually owned stock | 5,000 |

What income is reportable for New Jersey gross income tax purposes on form NJ-1040?

| | |
|---|----------------|
| Individual salary and wages other than from partnership—Line 13 | \$10,000 |
| Gain on sale of stock | \$5,000 |
| Less: Share of partnership loss from disposition of property | <u>(2,000)</u> |
| Net gains or income from disposition of property—Line 35 | 3,000 |
| Share of partnership ordinary loss—Line 41* | <u>0</u> |
| Total New Jersey gross income—Line 17c | \$13,000 |

*Note: The taxpayer cannot deduct his distributive share of the partnership ordinary loss. The taxpayer can only deduct a distributive share of a partnership loss from a distributive share of partnership income in another partnership. Losses within one category of gross income may be applied against other sources of gross income within the same category of gross income during the taxable year. A net loss in one category of gross income may not be applied against gross income in another category of gross income.

2. Net income of a partnership shall be the ordinary income or loss from business activities as determined and reported in accordance with the method used for federal income tax purposes, after provision for all ordinary and necessary costs and expenses incurred in the production of such income, and then adjusted in accordance with (c)4 below. No deduction shall be allowed for taxes based on income.

i. Interest and dividend income and gains and losses which for Federal income tax purposes are not included in the ordinary income or loss of the partnership are presumed to be earned or incurred outside the ordinary course of the primary business of the partnership, unless the partnership shows them to be otherwise.

3. A partner's distributive share of the net income of the partnership shall include his or her guaranteed payments unless such payments represent remuneration or compensation for services rendered by the partner. Guaranteed payments which are remuneration shall be reported by the individual partner as salaries or wages on his or her New Jersey gross income tax return.

[3.]4. Each partner's distributive share of partnership income, gains and losses shall be determined in the same manner as for [federal] Federal income tax purposes and then modified as required under the New Jersey Gross Income Tax Act [to include items such as interest income which is subject to tax in New Jersey and to exclude income or loss items such as:]. Adjustments shall be made to the Federal amount as follows:

i. [Interest income which is not subject to tax in New Jersey; and] To include items which are subject to tax in New Jersey but are not subject to Federal tax;

ii. [Gain or loss from the sale, exchange or other disposition of property which was reportable for federal income tax purposes; for example, the sale of federal obligation.] To include interest income which is not taxable Federally but is taxable in New Jersey.

iii. To include the amount of allowable loss, deduction or expense items which are not recognized in the current year either fully or partially, for Federal income tax purposes, but are allowable under the Gross Income Tax Act, for example, passive activity losses which are disallowed in whole or in part; and

iv. To exclude interest income and gains which are taxable Federally but are not subject to tax in New Jersey because they are attributable to obligations described in N.J.S.A. 54A:6-14.

5. In determining the amount of a partner's share of partnership income for New Jersey gross income tax purposes, the amount as determined for Federal income tax purposes shall not be reduced by:

i. Expenses which, for Federal income tax purposes, are not directly deductible by the partnership or must be reported by each partner as either adjustments to income or itemized deductions; and

ii. Expenses incurred by a partner which are not reimbursed or deductible by the partnership.

Example 1: The Federal form Schedule K-1 (form 1065) issued to a partner of a medical partnership contained the following information:

| | |
|---|----------|
| Partnership Ordinary Income | \$25,000 |
| Portfolio Income: | |
| Interest (Includes \$500 from U.S. Treasury Bills and does not include \$300 from New York State Bonds) | 1,800 |
| Dividends | 1,200 |
| Royalties | 500 |
| Net long term capital gain | 600 |
| Net gain under §1231 | 400 |

The taxpayer will report this information on his NJ-1040 as follows:

| | |
|--|--------------|
| Partnership Ordinary Income | \$25,000 |
| Adjustments | <u>0</u> |
| | <u>0</u> |
| New Jersey Distributive Share of Partnership Income to line 48 | \$25,000 |
| Interest Income | <u>1,800</u> |

PROPOSALS

Interested Persons see Inside Front Cover

TREASURY-TAXATION

Adjustments:

| | | |
|--|--------------|--------------|
| Net Interest Income from U.S. Treasury Bills | (500) | |
| Net Interest Income from New York Bonds | 300 | |
| | <u>(200)</u> | |
| Interest Income to line 16 | | 1,600 |
| Dividend Income to line 17 | | <u>1,200</u> |
| Royalties to line 41 | | 500 |
| Net Gains From Disposition of Property: | | |
| Long Term Capital Gain | 600 | |
| §1231 Gain | <u>400</u> | |
| Net Gain to line 40 | | <u>1,000</u> |

Example 2: The Federal form Schedule K-1 (form 1065) issued to a partner of a securities partnership contained the following information:

| | | |
|---|-------|------------|
| Partnership Ordinary Income | | \$25,000 |
| Portfolio Income: | | |
| Interest (Includes \$500 from U.S. Treasury Bills and does not include \$300 from New York State Bonds) | 1,800 | |
| Dividends | 1,200 | |
| Royalties | 500 | |
| Net long term capital gain | 600 | |
| Net gain under §1231 | | <u>400</u> |

The taxpayer will report this information on his NJ-1040 as follows:

| | |
|-----------------------------|-----------------|
| Partnership Ordinary Income | \$25,000 |
| Interest | 1,800 |
| Dividends | 1,200 |
| Royalties | 500 |
| Net Long Term Capital Gain | <u>600</u> |
| | <u>\$29,100</u> |

Adjustments:

| | | |
|--|--------------|-----------------|
| Net Interest Income from U.S. Treasury Bills | (500) | |
| Net Interest Income from New York State Bonds | 300 | |
| | <u>(200)</u> | |
| New Jersey Distributive Share of Partnership Income to line 46 | | <u>\$28,900</u> |
| Net Gains from Property: | | |
| §1231 Gain | <u>400</u> | |
| Net Gain to line 40 | | <u>400</u> |

Example 3: Taxpayer is a partner in two partnerships. Partnership A is a medical partnership and Partnership B is a securities partnership. The federal forms Schedule K-1 (form 1065) issued to the taxpayer contained the following information:

| | Partnership A | Partnership B |
|--------------------------------|---------------|---------------|
| Partnership Ordinary Income | \$100,000 | (\$240,000) |
| Portfolio Income: | | |
| Interest | 5,000 | 1,000 |
| Dividends | | 25,000 |
| Net long term capital gain | 12,000 | 20,000 |
| Net gain or loss under §1231 | | (5,000) |
| Unreimbursed Business Expenses | 15,000 | 8,000 |

The taxpayer will report this information on his NJ-1040 as follows:

| | Partnership A | Partnership B |
|-------------------------------|---------------|------------------|
| Partnership Ordinary Income | \$100,000 | |
| Adjustments | <u>-0-</u> | <u>-0-</u> |
| New Jersey Distributive Share | | \$100,000 |
| Partnership B | | |
| Partnership Ordinary Income | (\$240,000) | |
| Interest | 1,000 | |
| Dividends | 25,000 | |
| Net Long Term Capital Gain | <u>20,000</u> | |
| | (194,000) | |
| | | <u>(194,000)</u> |
| Income to line 46 | | <u>(94,000)*</u> |
| Interest Income to line 16 | | 5,000 |

Net Gains from Disposition of Property

| | |
|--|----------------|
| Long Term Capital Gain (Partnership A) | 12,000 |
| §1231 Loss (Partnership B) | <u>(5,000)</u> |
| Net Gain to line 40 | <u>7,000</u> |

*Note: Taxpayer would report "0" on line 46 of the NJ-1040. However, up to \$94,000 of distributive share of income from another partnership could be offset by this \$94,000 loss.

Example 4: The Federal form Schedule K-1 (form 1065) issued to a New Jersey resident partner of a New York law partnership contained the following information:

| | |
|---|----------|
| Partnership Ordinary Income | \$10,000 |
| Guaranteed Payments | 5,000 |
| Portfolio Income: | |
| Interest (Includes \$2,000 from U.S. Treasury Bills and does not include \$2,000 from New York State Bonds) | 5,000 |
| Net gain under §1231 | 4,000 |
| §179 Deduction | 1,000 |
| Taxes Based on Income (UBT) | 2,000 |
| Cost to Carry New York State Bonds | 1,000 |
| Keogh Deductions | 2,000 |
| Charitable Contributions | 3,000 |
| Unreimbursed Business Expenses | 3,000 |

The taxpayer will report this information on his NJ-1040 as follows:

| | |
|-----------------------------|----------------|
| Partnership Ordinary Income | \$10,000 |
| Guaranteed Payments | <u>5,000</u> |
| | 15,000 |
| Adjustments: | |
| Taxes Based on Income | 2,000 |
| §179 Deduction | <u>(1,000)</u> |
| | <u>1,000</u> |

| | | |
|---|--------------|-----------------|
| New Jersey Share of Partnership Income to line 46 | | <u>16,000**</u> |
| Interest Income | | |
| Net Interest Income | | |
| U.S. Treasury Bills | (2,000) | |
| Net Interest Income from New York State Bonds | <u>2,000</u> | |
| | | <u>-0-</u> |
| Interest Income to line 16 | | <u>5,000**</u> |
| Net Gains from Property | | |
| §1231 Gain | <u>4,000</u> | |

*Note: Keogh deductions, charitable contributions and unreimbursed business expenses are not deductible for gross income tax purposes. See (c)5i and ii above and (h)2 below.

**Note: The cost to carry the New York bonds cannot be deducted because investing is not in the ordinary course of business of a law partnership.

Example 5: Taxpayer is a partner in two partnerships. Partnership A is a New York based securities partnership and Partnership B is a New Jersey based accounting partnership. The federal forms Schedule K-1 (form 1065) issued to the taxpayer contained the following information:

| | Partnership A | Partnership B |
|---|---------------|---------------|
| Partnership Ordinary Income | (\$10,000) | (\$15,000) |
| Guaranteed Payments | 2,000 | |
| Portfolio Income: | | |
| Interest | 8,000 | 3,000 |
| Interest from U.S. Treasury Bills included in the interest above | 7,000 | |
| Interest from Pennsylvania State Bonds not included in interest above | 5,000 | |
| Dividends | 5,000 | |
| Net Short Term Capital Gains or Losses | (2,000) | |
| Net Long Term Capital Gains or Losses | 18,000 | (1,000) |
| Net Gain under §1231 | 1,500 | |
| Taxes Based on Income (UBT) | 2,500 | |
| Cost to Carry Pennsylvania Bonds | 1,000 | |
| Keogh Deductions | 2,000 | |
| Unreimbursed Business Expenses | | 3,000 |

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Taxpayer is also a shareholder in a New York S corporation. The Schedule K-1 issued by the S corporation showed ordinary income of (\$5,000).

The taxpayer will report this information on his NJ-1040 as follows:

| | | |
|--|------------|----------|
| Partnership A | | |
| Partnership Ordinary Income | (\$10,000) | |
| Guaranteed Payments | 2,000 | |
| Interest | 8,000 | |
| Dividends | 5,000 | |
| Net Short Term Capital Loss | (2,000) | |
| Net Long Term Capital Gain | 18,000 | |
| | | \$21,000 |
| Adjustments: | | |
| Interest Income from U.S. Treasury Bills | (7,000) | |
| Interest Income from Pennsylvania State Bonds | 5,000 | |
| Taxes Based on Income | 2,500 | |
| Cost to Carry Pennsylvania Bonds | (1,000) | |
| | | (500) |
| Distributive Share of Income from Partnership A | | 20,500 |
| Partnership B | | |
| Partnership Ordinary Income | (15,000) | |
| Adjustments | —0— | |
| | | —0— |
| Distributive Share of Income (Loss) from Partnership B | | (15,000) |
| New Jersey Distributive Share of Partnership Income to line 46 (\$20,500-15,000) | | 5,500 |
| Interest Income to line 16 | | 3,000 |
| Net Gain From Disposition of Property | | |
| Net Gain under §1231 (Partnership A) | 1,500 | |
| Net Long Term Capital Loss (Partnership B) | (1,000) | |
| Total to line 40 | | \$ 500 |

[4. A partner shall report his share of partnership income for the taxable year within which or with which the taxable year of the partnership ends, whether or not distributed, as:

- i. A distributive share of partnership income;
- ii. Dividend income; and
- iii. Gain from the sale, exchange or other disposition of property.

Example 1: A partnership shows the following income on its Federal Partnership

| | |
|--|----------|
| Return of Income (form 1065): | |
| Partnership ordinary income of | \$25,000 |
| Included in partnership ordinary income is interested income of \$500 from U.S. Treasury bills | |
| Excluded from partnership ordinary income is income of \$300 from State of New York bonds | |
| Dividend income from stock before exclusion | 1,200 |
| Long term capital gain on sale of capital assets | 1,000 |
| Total | \$27,200 |

Partner A has a 50 percent interest in the partnership and is entitled to a 50 percent share of partnership profits or losses. How does partner A report his share of the partnership income or gain on his New Jersey form NJ-1040?

Partner A reports as follows:

| | |
|--|----------|
| Distributive share of partnership ordinary income | \$12,500 |
| Adjustment for New Jersey gross income tax purposes: | |
| Add: Interest on New York State Bonds | 150 |
| | \$12,650 |
| Deduct: Interest on U.S. Treasury Bills | 250 |
| Partner A's distributive share of income—Line 41 | \$12,400 |
| Dividend income, before exclusion—Line 15 | 600 |
| Gain from disposition of partnership property—Line 35 | 500 |
| Total income from partnership as reported on New Jersey tax return | \$13,500 |

Example 2: A taxpayer has the following income:

| | |
|--|----------|
| Distributable share of partnership income including \$5,000 of guaranteed payments | \$12,000 |
| Share of Partnership Capital Gain | 2,000 |
| Salary and Wages from Employment Other than from Partnership | 15,000 |
| Capital loss on sale of individually owned stock | (4,000) |

What is reportable as income for New Jersey gross income tax purposes on taxpayer's form NJ-1040?

The taxpayer will report income for New Jersey gross income tax purposes as follows:

| | |
|--|-----------|
| Salary and wages from employment other than from partnership—Line 13 | \$15,000 |
| Distributable share of partnership income—Line 41 | 12,000 |
| Loss on sale of individually owned stock | (\$4,000) |
| Less: Share of Partnership Gain | 2,000 |
| Line 50* | 0 |
| Total New Jersey gross income—Line 17c | \$27,000 |

*Note: The taxpayer may offset the loss on the sale of individually owned stock against his share of the partnership gain only to the extent of the loss within the same category and, therefore, can not report an excess of loss from the sale or exchange of property.

Example 3: A taxpayer has the following income:

| | |
|--|----------|
| Salary and wages from employment other than from Partnership | \$10,000 |
| Share of partnership ordinary loss | (3,000) |
| Share of partnership capital loss on sale of stock | (2,000) |
| Capital gain on sale of individually owned stock | 5,000 |

What income is reportable for New Jersey gross income tax purposes on form NJ-1040?

| | |
|---|----------|
| Individual salary and wages other than from partnership—Line 13 | \$10,000 |
| Gain on sale of stock | 5,000 |
| Less: Share of partnership loss from disposition of property | (2,000) |
| Net gains or income from disposition of property—Line 35 | 3,000 |
| Share of partnership ordinary loss—Line 41* | 0 |
| Total New Jersey gross income—Line 17c | \$13,000 |

*Note: The taxpayer cannot deduct his distributive share of the partnership ordinary loss. The taxpayer can only deduct a distributive share of a partnership loss from a distributive share of partnership income in another partnership. Losses within one category of gross income may be applied against other sources of gross income within the same category of gross income during the taxable year. A net loss in one category of gross income may not be applied against gross income in another category of gross income.]

(d) Different taxable year:

1. [Where] If a partner's taxable year differs from that of the partnership, the [partner's] partner is to report his or her share of income [or], gain or loss [to be reported by the partner shall be based upon the income] of the partnership for any taxable year of the partnership ending with or within [the partner's] his or her taxable year.

i. Example: [When a] A partner's taxable year ends on December 31, 1979, while the [partnership] partnership's fiscal year ends on June 30, 1979[, the]. The partner [reports] is to report his or her share of the income [or], gain or loss from the partnership's taxable year ended June 30, 1979 on his or her 1979 [return] NJ-1040.

(e) Part year residents:

1. A partner who was a resident taxpayer for part of the tax year and a nonresident taxpayer for part of the year shall be required to report amounts received from the partnership as follows:

i. The part year resident return shall include:

(1) The portion of the distributive share of partnership income determined by multiplying the partner's entire distributive share by the percentage which the number of days of the partnership's fiscal year that the partner was a New Jersey resident bears to 365; plus

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(2) All amounts which are not properly includible in distributive share of partnership income, which were earned or lost by the partnership during the period covered by the return.

ii. The part year nonresident return shall include:

(1) The portion of the distributive share as follows:

(A) If the distributive share of partnership income was derived entirely in New Jersey, the portion of that distributive share, determined by multiplying the partner's entire distributive share by the percentage which the number of days of the partnership's fiscal year that the partner was not a New Jersey resident bears to 365; or

(B) If the distributive share of partnership income was derived partly within New Jersey and partly outside New Jersey, the portion of that distributive share, determined by first multiplying the partner's entire distributive share by the apportionment percentage determined by the partnership by use of the NJ-1040NR-A, Business Allocation and Apportionment Schedule, and then multiplied by the percentage which the number of days of the partnership's fiscal year that the partner was not a New Jersey resident bears to 365; and

(2) All amounts which are properly excludible from the distributive share or partnership income, which were earned or lost by that partnership, in connection with New Jersey sources, during the period covered by the return.

2. If the partner can demonstrate to the Director's satisfaction that the above reporting method does not properly reflect the reportable income, gains and losses incurred during the period of residency and nonresidency, then the partner may allocate to the part year resident and part year nonresident return the portion of the distributive share of partnership income realized by the partnership during the period of the return.

3. In all cases a partner who was a resident taxpayer for part of the tax year and a nonresident taxpayer for the remainder of the tax year must attach a schedule to the part year NJ-1040 and the part year NJ-1040NR showing the calculations used to determine the amounts reported on each with respect to income, gains, or losses of a partnership.

(e)(f) Partnership filing requirements:

1. Partnerships having a New Jersey resident [taxpayer] partner or having any income derived from New Jersey sources shall [file] provide the Division with a complete copy of the [federal] Federal form 1065, U.S. Partnership Return of Income required to be filed with the Internal Revenue Service, along with the [individual partners Schedule K-1 with the Division of Taxation, Trenton, New Jersey 08646,] requisite schedules and attachments. Such information filing must be made on or before the 15th day of the fourth month following the close of [each] the partnership's taxable year.

2. Every partnership which earns income from sources both inside and outside this State and which has nonresident partners shall complete a New Jersey Business Apportionment Schedule (NJ-1040-NR-A), the terms of which shall be binding on the partners. The partnership shall attach a copy of the Schedule to the Federal form 1065 which it submits to the Division, and must also provide a copy of the Allocation Schedule to each nonresident partner.

[2.]3. [Partnerships are] Each partnership is required to make available to [the individual] its partners the Schedule K-1[,] of the [federal] Federal form 1065[, a copy of which shall be attached to the individual partner's gross income tax return (form NJ-1040 or form NJ-1040NR, whichever is applicable)].

4. Any partnership which for Federal income tax purposes includes gains or losses from the disposition of property, or interest or dividends in the ordinary income or loss of the partnership, must include a statement justifying the inclusion of such income items for gross income tax purposes with the copy of the Federal form 1065 that it submits to the Division.

(g) Partner filing requirements:

1. Any nonresident who is a partner in a partnership having income, gains or losses derived from New Jersey sources shall, for each such partnership, include a copy of each of the following with his or her NJ-1040-NR:

- i. Federal Schedule K-1;
- ii. Federal Schedules B, D, and E, including all supporting forms and schedules;

iii. Reconciliation of his or her share of partnership income as determined for Federal purposes, in accordance with section (c)4;

iv. A statement as to the principal business activity of the partnership applicable; and

v. The New Jersey Business Apportionment Schedule (NJ-1040-NR) as provided by the partnership applicable.

2. A resident taxpayer of New Jersey shall include a copy of each of the items specified in (g)li through iv above, for each partnership in which he or she is a partner, regardless of where the partnership's income, gains, or losses are derived.

[(f)](h) Keogh Plan:

1. [Contributions by a partnership] Partnership contributions to a Keogh Plan made on behalf of employees and deductible as ordinary and necessary business expenses for [federal] Federal income tax purposes [are] shall also be deductible for New Jersey gross income tax purposes in determining the net income of [a] the partnership. The employees on whose behalf such contributions [to a Keogh Plan] were made [by the partnership] are not subject to gross income tax on [such] the amounts contributed [by their employer until withdrawals from the Keogh Plan are made by them] in the taxable year. The employees are not [deemed] considered to have actually or constructively received the [employer] contributions at the time they were made to the Keogh Plan. [At the time of the withdrawal by an employee] When the employee makes a withdrawal from the Plan both the employer contribution and accumulated interest [is] are subject to tax.

2. [Contributions by a partnership] Partnership contributions to a Keogh Plan made on behalf of the partners are not [a] deductible business [expense on the partnership return] expenses. Such [Keogh] contributions [made by the partnership on behalf of the individual partners] are taxable income to the individual partners for New Jersey gross income tax purposes. [There is no provision in the gross income tax law for the deduction of such partnership Keogh contributions.] These amounts are not subject to tax when subsequently withdrawn by the partners.

3. The interest income accumulated on the Keogh Plan contributions made [to a Keogh Plan] by the partnership on behalf of the partners is not subject to tax during the period of a partner's participation. Such interest shall become [subject to tax at the time of withdrawal] taxable when the partner withdraws it from the plan [by the participant]. When [periodic withdrawals are made by a partner,] a partner makes periodic withdrawals the accumulated interest in the Plan is subject to tax in the ratio that the interest bears to the total amount in the partner's account.

Examples 1-2. (No change.)

18:35-1.25 Income earned in the ordinary course of business

(a) Income earned in the ordinary course of business shall be the net income from the operation of a business, profession or other activity.

1. Income earned in the ordinary course of business shall be determined either on a cash or accrual basis in accordance with the method of accounting allowed for Federal income tax purposes.

2. No deduction is permitted for taxes based on income.

3. Expenses incurred in the production of income which is not earned in the ordinary course of business and is not subject to tax under the act may not be deducted in determining net income.

4. Income and expenses shall be defined in the same manner as for Federal income tax purposes unless specifically provided otherwise in the Gross Income Tax Act or rules.

(b) Interest and dividend income as well as gains are presumed to be earned outside the ordinary course of business unless established to the contrary by the taxpayer.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Contributions by 900 Line Telephone Service

Proposed New Rule: N.J.A.C. 19:25-11.12

Authorized By: The Election Law Enforcement Commission,

Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1991-158.

Submit written comments by May 1, 1991 to:

Gregory E. Nagy, Legal Director
Election Law Enforcement Commission
CN 185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, the Commission) recently issued an advisory opinion permitting solicitation of campaign contributions through the use of a "900 line telephone service" (see Advisory Opinion No. 09-1990). This proposed rule sets forth standards for establishing a "900 line telephone service," and for recordkeeping and reporting of contributions and expenditures related to its operation.

As envisioned by the Commission, a "900 line telephone service" entails a system that permits a contributor to call a designated "900 phone number," hear a message, and receive a phone bill that includes a charge for access to that message. The provider of the service collects proceeds from paid phone bills, retains a portion of those proceeds for the service, and ultimately passes the remainder of those proceeds to the candidate or other filing entity (that is, political committee or continuing political committee) that has established the service as a means of receiving political contributions. The Commission notes that an individual may also establish such a political fundraising enterprise, and therefore may acquire reporting obligations pursuant to N.J.S.A. 19:44A-11.

Under this proposed new rule, the candidate or filing entity may not receive from any contributor any contribution, or aggregate contributions, in excess of \$20.00 for an election or, in the case of a continuing political committee, in excess of \$20.00 for a calendar year. The Commission views the operation of a "900 line telephone service" as a fundraising method analogous to conducting a "public solicitation," as that term is defined in N.J.S.A. 19:44A-3(j). A "public solicitation" is defined as one which solicits "on the spot" contributions not exceeding \$20.00 per person. An example would be "passing the hat" at a public function where recordkeeping of individual contributions might be impractical, or impossible.

In recognition of the reporting difficulty of deeming a contribution by "900 line telephone service" as being made on the date of the phone call, subsection (d) provides that reporting requirements for any contribution attach on the date the proceeds generated by the phone call are passed to the candidate or reporting entity from the telecommunication service provider. Subsection (e) provides that the contribution amount that is subject to reporting is the amount paid by the contributor, and therefore any portion of a contribution withheld for service costs may not be netted out or deducted by the recipient candidate or filing entity.

Other requirements are that the fees withheld by the telecommunication service provider be reported as expenditures of the candidate or filing entity (subsection (f)), that an executed contract as well as an authorization permitting access to records be filed (subsection (g)), and that the candidates or filing entity obtain and keep records for four years including the telephone numbers from which contributions were made (subsection (h)). The name and address of each contributor will not be reported, but the Commission anticipates that the records of telephone numbers from which contributions were received will enable the candidate or filing entity to observe the \$20.00 ceiling, and to refuse any contribution, or aggregate contributions, in excess of that ceiling.

Social Impact

The proposed rule permits candidates and other filing entities to utilize "900 line telephone service" technology for fundraising purposes. The Commission believes that technological developments that promote con-

tributor participation in elections should be encouraged. Since the New Jersey Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., as originally enacted in 1973 contained provisions for "public solicitations" for the apparent purpose of encouraging solicitation of smaller contributions, this proposal furthers that legislative intent.

Economic Impact

The Commission does not anticipate any significant economic impact on candidates or other filing entities. The proposed rule relaxes the more onerous recordkeeping and reporting requirements that exist for contributions received through fundraising methods that do not qualify as "public solicitations." For example, N.J.S.A. 19:44A-16 requires that a candidate make a record of each contribution received regardless of amount, which record must include the name and address of the contributor, the date of receipt, and the amount.

Regulatory Flexibility Statement

The proposed new rule does not impose any recordkeeping, reporting, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rule affects candidates and other filing entities.

Full text of the proposed new rule follows:

19:25-11.12 Contributions by 900 line telephone service

(a) A 900 line telephone service means any telecommunication service established or controlled by a candidate, political committee, continuing political committee, or individual for the purpose of receiving contributions, and for which the provider of the telecommunication service is authorized to act as the billing agent for the candidate, political committee, continuing political committee, or individual.

(b) A campaign treasurer of a candidate or political committee, or an individual, shall not receive from any contributor through the use of the candidate's, political committee's or individual's 900 line telephone service a contribution, or aggregate contributions, in excess of \$20.00 per election.

(c) An organizational treasurer of a continuing political committee shall not receive from a contributor through the use of its 900 line telephone service a contribution, or aggregate contributions, in excess of \$20.00 per calendar year.

(d) A contribution received through the use of a 900 line telephone service shall be subject to reporting by the recipient candidate, political committee, continuing political committee, or individual on the date that the proceeds of the 900 line telephone service contributions are received from the telecommunication service provider.

(e) The reportable amount of any contribution solicited by means of a 900 line telephone service is the total amount paid to the telecommunication service provider by the contributor.

(f) Any cost associated with the operation of a 900 line telephone service or any portion of a contribution withheld or retained by the telecommunication service provider of the 900 line telephone service is reportable as an operating expense of the reporting entity.

(g) Prior to receiving any contributions by use of a 900 line telephone service the candidate, political committee, continuing political committee, or individual shall file the following with the Commission:

1. A copy of a written, executed contract for 900 line telephone service from the telecommunication service provider; and

2. A signed authorization permitting the Commission to obtain from the telecommunication service provider copies of all records or documents pertinent to the establishment and operation of the 900 line telephone service.

(h) A campaign treasurer of a candidate or political committee, an individual, or an organizational treasurer of a continuing political committee shall obtain records from the telecommunication service provider that include the telephone numbers from which contributions were made, and those records shall be maintained for a period of not less than four years after receipt of such contributions.

HUMAN SERVICES

(a)

CONTRACT POLICY AND MANAGEMENT UNIT

Contract Administration Request for Proposal

Proposed New Rules: N.J.A.C. 10:3-3

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

Authority: N.J.S.A. 30:1-12.

Proposal Number: PRN 1991-150.

Submit comments by May 1, 1991 to:

Henrietta Small, Manager
Contract Policy and Management Unit
Department of Human Services
CN 700
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Human Services does business with provider agencies in many ways. One of those ways is to publish a Request for Proposal (RFP) when the Department feels it is necessary to acquire information about provider agencies who may be able to provide specific services to the Department's clients. The proposed new rules set forth steps to be utilized both by departmental components (defined as the division, commission, bureau, office or other unit within the Department responsible for certain social service or training contracts; proposed N.J.A.C. 10:3-3.2) within the Department of Human Services and by County Human Services Advisory Councils (HSAC) that choose to issue an RFP and by all entities that respond to RFPs for contracts for the provision of third-party social services or training. Currently, when RFPs are issued each departmental component requests various information in many different ways—there is no standardized process. The purpose of the proposed new rules is to establish standardized Department-wide guidelines to be followed by the departmental components and the HSACs when an RFP is utilized. The proposed new rules will ensure equity in the decision-making process, based on the presentation of the same type of information by each applicant. Consequently, there should be less confusion and paperwork for those applicants which may contract with several different departmental components.

As indicated, the purpose of the proposed new rules is to standardize Department-wide guidelines for the RFP process. The standardized RFP guidelines codified in the proposed new rules include the requirement that the departmental component or HSAC shall issue a public announcement of the availability of funds for the purchase of services in accordance with N.J.S.A. 52:14-34.4 through 34.6. The proposed new rules include specific time frames and required content information to be included in the RFP package, as well as procedures regarding sole source services in cases when there are no responses or only one response to the RFP. Included in the subchapter are rules setting forth internal controls to be utilized by the departmental component or the HSAC in the RFP process. The proposed new rules also require the submission of specific information in the funding proposal program summary and evaluation data and specify particular data that must be included in the RFP package, including a need justification, service goals and objectives, indication of whether a subcontract is necessary, program approach, information on accessibility of services, eligibility requirements and referral processes, termination procedures, information on level of services, service coordination, community participation and all required documents (see proposed N.J.A.C. 10:3-3.6 for complete requirements).

The proposed new rules also standardize the notification of decision in the RFP process, document retention procedures and exceptions to procedures. As proposed, N.J.A.C. 10:3-3.12 indicates that contract negotiations shall proceed at the time an award is made to the applicant.

It should be noted that the proposed new rules include a reference to the Department's "Contract Reimbursement Manual" and "Contract Policy and Information Manual." The Department is currently in the process of codifying and proposing as new rules the regulatory materials contained in each of these two manuals.

Social Impact

The proposed new rules may have potential social impact on two segments of the public: first, the community and the provider agencies with which the Department contracts; and secondly, the Department clients who benefit from such contracts.

With regard to the community and the Department's contracting provider agencies, the social impact of the proposed rules, while minimal, can be considered favorable. Guidelines for the presentation of proposed services will provide equity and clarity for the decision making process. Currently, provider agencies receive RFPs from seven of the Department's departmental components. In addition, the 21 County Human Services Advisory Councils (HSACs), which review and serve as the primary vehicle for local public input into human service activities, issue their own individual RFPs. Therefore, consolidated standardized proposal documents will incorporate terms and conditions applicable to all departmental components or HSACs and will provide consistency for those provider agencies which contract with more than one departmental component or HSAC.

With regard to Department clients, the social impact of the adoption of the proposed rules is negligible. Clients have no direct involvement in the RFP process. The proposed rules are not anticipated to alter the continuing development of community-based programs for the developmentally disabled, mentally ill, or children in need of supervision.

The Department will benefit from the proposed new rules because the standardization across departmental components and HSACs will facilitate the RFP process and its administration.

Economic Impact

It is not anticipated that the proposed new rules will have any significant economic impact on the Department, its components or the potential service providers. The proposed new rules standardize the RFP process among these agencies and entities. There are administrative costs associated with the potential providers that complete the RFP and with the Department and the HSACs who process and review the RFPs; however, the rules require these activities in order to initiate and respond to the RFP process. The proposed new rules will have no economic impact on Department clients or any other members of the public at large. As stated in the Summary, the economic impact of the proposed new rules on the Department and community agencies, while difficult to quantify, is expected to be positive. Consolidated and standardized requirements for the presentation of the service proposal provides guidelines to increase equity in the review and award of social service contracts. The award process will be treated consistently among departmental components and HSACs.

Regulatory Flexibility Analysis

Approximately 1,500 provider agencies contract with the Department of Human Services. The proposed new rules affect small businesses in that many organizations that contract with the Department may be categorized as small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose compliance requirements because the RFP process requires the responding applicants to submit a program and budget proposal for the required services, which are then evaluated for program applicability to client needs. This procedure will not change; however, the standardization of the process will provide consistency in the requests for information from all applicants, large or small. It is not anticipated that applicants will need to hire outside professional services to comply with the requirements of the proposed new rules; however, they may choose to do so. The Department does not believe that any differentiation based on business size is appropriate. All applicants will be evaluated based on the same RFP and according to the required services and capabilities to provide such required services.

Full text of the proposed new rules follows:

SUBCHAPTER 3. REQUEST FOR PROPOSAL

10:3-3.1 Purpose and scope

This subchapter applies to all departmental components and the County Human Services Advisory Councils (HSACs) when departmental components choose to issue an RFP, and to all groups or entities responding to RFPs for contracts for the provision of third-party social services or training. The RFP process, however, shall not apply to renewal or expansion of Department purchase of service contracts for programs in effect as of the date of rule adop-

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tion. In addition, the RFP process shall not apply to renewal of contracts for which an RFP was utilized in selection of the current grant recipients.

10:3-3.2 Definitions

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

"Applicant" means the person, agency or entity responding to an RFP.

"County Human Service Advisory Councils (HSACs)" means councils appointed by the government of each county to review county-level human service activities and to serve as the primary vehicle for local public input into New Jersey Department of Human Services' decision making. The activities of the County Human Services Advisory Councils include, but are not limited to, review and comment on human service proposals; preparation of allocation plans; review of existing purchase of service contracts; and coordination and consolidation of the local human services delivery systems.

"Days" means calendar days.

"Department" means the New Jersey Department of Human Services. As used throughout the subchapter, it also means, where appropriate from the context, the division, commission, bureau, office, unit or other designated component of the Department of Human Services responsible for the administration of particular contract programs.

"Departmental component" means the division, commission, bureau, office or other unit within the Department responsible for the negotiation, administration, review, approval, and monitoring of certain social service or training contracts.

10:3-3.3 Request for proposal

(a) The departmental component or the HSAC shall issue a public announcement of the availability of funds for the purchase of services in accordance with N.J.S.A. 52:14-34.4, 34.5 and 34.6. The announcement shall be made in a manner to permit reasonable competition among eligible provider agencies. The departmental component shall publish the announcement in the New Jersey Register. In addition, the announcement may be mailed to identified prospective provider agencies, advertised in at least three newspapers of general circulation, and/or distributed at bidders' conferences by the departmental component or HSAC.

(b) The HSACs, at minimum, shall use the standards set forth in this subchapter when they are delegated the responsibility to solicit proposals on behalf of the Department. In all other instances, the departmental component shall notify the HSACs of the RFP, if appropriate.

(c) The proposal process shall be completed within 105 days of publication, inclusive of all appeals processes. See N.J.A.C. 10:3-3.13 for exceptions.

(d) The departmental component or the HSAC shall forward a proposal package to those prospective applicants responding to the public announcement. In addition, when the HSACs have been delegated the responsibility to solicit proposals on behalf of the Department, all appropriate Department procedures, as set forth in this subchapter, and county procedures must be followed. The proposal package shall contain, at minimum, the following information and requirements:

1. The amount of funds available, the source of funds, the purpose, scope, and goals of the programs and services solicited, and any specific conditions, requirements, and/or constraints such as spending caps or match requirements;

2. A list of requirements which must be fulfilled for the proposal to be evaluated;

3. The type of provider agencies eligible to submit a proposal for consideration;

4. A request for a list of the board of directors and officers of the applicant agency and for a statement that the application to provide services is devoid of any conflict of interest;

5. The address to which the completed proposal must be sent, the submission deadline (time and date) after which no applications will be accepted, time frames for review of the proposal and awarding of contracts, and the target date for implementation;

6. The name and address of a contact person who can provide technical assistance;

7. Funding proposal evaluation criteria (see N.J.A.C. 10:3-3.8);

8. A disclaimer stating the following: "The Department reserves the right to reject any and all proposals when circumstances indicate that it is in its best interest to do so." The Department's best interests in this context, include, but are not limited to: loss of funding, inability of the applicant to provide adequate services, indication of misrepresentation of information and/or non-compliance with State or Federal laws and regulations, any existing Department contracts, and procedures set forth in this subchapter;

9. The appropriate information, forms and a list of required supporting documents as set forth in N.J.A.C. 10:3-3.6;

10. Notification of Executive Order No. 189 (1988), regarding conflict of interest;

11. A list of depository libraries where the Contract Reimbursement Manual and Contract Policy and Information Manual may be reviewed prior to proposal;

12. The terms and conditions which must be met to comply with specific funding requirements and Departmental contracting rules; and

13. A statement explaining the appeals process and that appeals to the departmental component must be completed within the time frame specified in the RFP or within 15 days after receipt of the HSAC recommendation, and that appeals to the HSAC must be completed within the 90 day HSAC process time period and prior to the recommendations being sent to the departmental component.

10:3-3.4 Sole source services

Where there is none or only one response to the RFP, after specifications of the RFP have been cited and all criteria of this subchapter have been met, documentation that every effort was made to obtain multiple responses shall be kept in the RFP file. Documentation shall also be retained of every contact made by the departmental component or HSAC to find a provider agency to fulfill the required services.

10:3-3.5 Internal controls for proposals

(a) The departmental component or HSAC shall record all correspondence to and from the departmental component in a log retained in the individual program RFP file.

(b) Correspondence shall be recorded in the log by a staff person different from the staff personnel involved in the review and selection process.

(c) The log shall indicate, at a minimum, the following information:

1. The name of the program;

2. The submission deadline date;

3. The name of the applicant, the date the applicant requested the proposal package, and how requested (telephone, letter, etc.);

4. The date the proposal package is sent to the applicant;

5. The date the completed proposal is received from the applicant;

6. The name of the Department or HSAC staff person receiving the proposal for review and selection; and

7. The date the decision letter notifying the applicant of acceptance or rejection is sent.

(d) All proposal packages and decision letters are to be sent to applicants via first class mail to ensure timely receipt.

(e) Proposal packages from applicants are to be date and time stamped upon receipt.

(f) All decision letters concerning acceptance and rejection shall have the same date and shall be mailed on that day.

(g) When the HSACs are handling the RFP process, the final selection(s) shall be forwarded to the departmental component responsible for signing the contract for final approval and retention. All other documentation regarding the selection process shall be made available at the HSAC office for review by the departmental component.

(h) The departmental component shall communicate to the HSAC the outcome of any departmental component appeal on an HSAC RFP and forward a copy of the final award letter.

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10:3-3.6 Funding proposal program summary and evaluation data; list of required information

(a) The funding proposal requirements shall apply to all proposals submitted to a departmental component or HSAC. Each proposal submitted to a departmental component or HSAC shall contain the following:

1. The funding proposal cover sheet, "Appendix A," which is incorporated herein by reference;

2. The applicant's mission and goals, being a brief description of the applicant's history, purpose, goals, and objectives;

3. A need justification, being a description of the basis for concluding that each of the proposed services is needed in the community and the factors that make the applicant the most capable to provide the service(s), including the following:

i. The nature of the problem;

ii. Existing services;

iii. Statistics;

iv. Relevant discussions of studies within the community;

v. The applicant's capability to provide the same or similar services as those existing in the community and/or the applicant's capability to provide a new type of service not currently available in the community;

vi. The target population and characteristics; and

vii. The geographic areas to be serviced;

4. Service goals and objectives including specification of the service goals and objectives, the impact on the target populations to be served and how the services will affect the cause of the problem;

5. An indication of those services that will require a subcontract for provision of the services requested, including a list the subcontracts, if known;

6. A program approach, including the following:

i. Based on the parameters set forth in the RFP, a description of how the services will be implemented and the time frames involved. The narrative shall address client population and geographic areas served;

ii. An overview of the total service package. For each component of the program package, the following information shall be provided:

(1) A definition of each service to be provided, including the purpose and goal of each;

(2) A description of the service activities or methods that staff will employ to achieve the service objective;

(3) An indication of the number, qualifications, and skills of the staff that will perform the above service activities, as well as the use of any volunteers. A table of organization for administration and personnel and job descriptions for each position shall be included;

(4) A description of the management and supervision methods that will be utilized in the operation and the monitoring of the effective performance of the service activities;

(5) The methods to be used to measure and evaluate the quality of service;

(6) A description of fees for service (if any), sliding fee schedules and waivers of fees; and

(7) A description of client data to be recorded, the use of this data by the applicant, the means of maintaining confidentiality of client records and data, and the retention schedule of client records and schedule for destruction;

7. Information on accessibility of services, including the following:

i. The hours and days that each service will be available to clients, including how emergencies are handled; for example, closings, client crisis, after-hours contacts;

ii. A list and description of the location(s) where each service will be provided to clients (including in-home provision, if that is an option);

iii. A description of transportation options for clients in obtaining each service; and

iv. A description of handicapped accessibility accommodations, if applicable;

8. Eligibility requirements and referral processes, including:

i. A description of the priorities for accepting clients into the program and the procedures to be followed to ensure that all clients meet the eligibility requirements for admission;

ii. An explanation of intake procedures; and

iii. An explanation of referral mechanisms and processes (formal and informal) and community outreach procedures;

9. Termination procedures, including a description of termination procedures (client-and program-initiated), the appeals process, and follow-up services, as appropriate. A list of the various reasons for termination shall be included;

10. Information on level of service including the following:

i. An indication of the level of service anticipated throughout the contract period; for example, number of clients to be served, number of meals served, round trips for transportation, hours; and

ii. A definition of each unit of service;

11. Information on service coordination, including the following:

i. A description of the relevant services and ancillary agencies that will be frequently utilized in combination with the service being proposed for funding, including any already existing relationships and agencies which will be referral sources for these services; and

ii. A description of how formal coordination and referral agreements with other community agencies will be accomplished, and where appropriate, specification of these agencies;

12. Information on community participation, including a description of how community members and clients will participate in the functioning of the applicant's organization including the delivery of services, planning for service provisions, and the evaluation of services;

13. A description of activities and timetable for implementation of services, including a description of the timetable for the implementation of activities and schedule of deliverables;

14. Information on current programs managed by the applicant and the funding sources, identification of current programs managed and the funding sources utilized;

15. A copy of the applicant's organizational chart;

16. A copy of the most recent organization-wide audit report;

17. A copy of the applicant's code of ethics and/or conflict of interest policy;

18. A list of the board of directors, officers and their terms of office;

19. Documentation of the applicant's charitable registration status;

20. An original and/or copy of letters of support from the community;

21. A completed budget proposal, "Appendix B," which is incorporated herein by reference, with a separate column for each service to be provided and with the same program and service names used consistently throughout the proposal;

22. A list of the name(s) and address(es) of those entities providing support and/or money to help fund the program for which the proposal is being made; and

23. A statement of assurance that all Federal and State laws and regulations are adhered to.

10:3-3.7 Composition of review panel

(a) The unit responsible for RFP coordination shall convene a review panel of at least three persons to assess, rate, and rank proposals to recommend an applicant for funding. The responsible unit shall present an objective process to the panel for the purpose of rating the proposals. The panel may consist of an allocations review panel under the auspices of the HSAC or the following:

1. A chairperson appropriate to the RFP-originating office;

2. A departmental component unit contract supervisor or designee;

3. A contract administrator;

4. A county social service specialist or office program specialist;

5. A department representative from the appropriate county;

6. A staff person with recognized fiscal expertise;

7. An individual with recognized program/service expertise;

8. An individual from appropriate advisory board or council, for example, the HSAC or community mental health board;

9. A regional office representative;

10. Representatives from a service coalition or community group, if applicable; and

11. A client or prospective client.

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(b) Composition of the panel members may vary depending upon the unit responsible for coordinating the RFPs and the nature of the funds to be awarded and services solicited. The rating system to be used in evaluating criteria (numeric, written assessment, etc.) will generally be determined by the responsible unit or it may be determined by the panel. Recommendations of the panel are regarded as confidential until final approvals and awards are announced.

(c) A panel member must disqualify himself or herself from the panel when he or she has any interest, financial or otherwise, direct or indirect, in the results of the panel's evaluations (see Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq.).

10:3-3.8 Evaluation of the proposal

(a) All meetings of the review panel shall have written minutes.

(b) The evaluation of the applicants' proposals shall be in writing with an explanation of the rating system used for the evaluation process.

(c) Proposals shall be evaluated by a review panel using, at a minimum, the following general criteria (see N.J.A.C. 10:3-3.9):

1. Satisfactory documentation of need for services;
2. Compatibility of applicant's goals and objectives with goals of the program and services solicited;
3. Clarity and attainability of the objectives and the implementation plan;
4. Logic and consistency of the proposal;
5. Clarity of the planned integration of the services with the gener-ic agencies in the community;
6. Reasonableness of the proposed budget as related to the anticipated results;
7. Availability and accuracy of supporting documentation; and
8. Local endorsements, for example, county mental health boards.

(d) The specific evaluation criteria (see N.J.A.C. 10:3-3.6) to be used when assessing proposals shall include:

1. Completeness of the application and clarity of statements concerning:
 - i. The applicant's mission and goals;
 - ii. Need justification;
 - iii. Service goals and objectives;
 - iv. The program approach, including:
 - (1) Service definitions;
 - (2) Activities/methods to achieve objectives;
 - (3) Staff qualifications and job descriptions;
 - (4) Monitoring plan; and
 - (5) Evaluation of quality of services.
 - v. Accessibility of services;
 - vi. Eligibility requirements and referral processes;
 - vii. The termination procedure;
 - viii. The level of service;
 - ix. Service coordination;
 - x. The community participation description;
 - xi. The timeable to implement services;
 - xii. Identification of current programs managed and the funding sources;
 - xiii. Required documents;
 - xiv. The budget proposal; and
 - xv. Identification of other sources of support and match, as appropriate;
2. Reasonableness of proposed budget in consideration of anticipated results;
3. Compatibility of the applicant's goals and objectives with goals of the program;
4. Availability and accuracy of supporting documentation;
5. Compliance with all terms and conditions of previous contracts with the Department and the standard language document;
6. A record of the ability to manage the fiscal aspects of previous contracts;
7. The extent to which new and innovative strategies are proposed to assist the target population;
8. The adequacy and specificity of the outcome statements;
9. Evidence of ability (including satisfactory past performance and evaluation) to provide the proposed services to the target population; and

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10. Evidence of the existence of adequate resources, facilities, and equipment to operate the proposed program.

10:3-3.9 Evaluation of applicant

(a) The applicant shall be evaluated to determine the following (an on-site evaluation may be conducted by the departmental component or HSAC if deemed necessary). HSACs shall evaluate the applicant on only those factors with which they are familiar or about which they have accurate information. The Department is responsible for evaluation of all the factors.

1. Ability to comply with all terms and conditions of the standard language document and its associated annexes, the Department's Contract Reimbursement Manual and Contract Policy and Information Manual;
2. Prior history in the delivery of the same or similar services;
3. Qualifications of staff;
4. Adequacy of facilities;
5. Ability to manage the fiscal aspects of the contract (a pre-award survey may be necessary prior to the signing of the contract); and
6. Accountability of the program and management initiatives to ensure accountability of the staff, for example, supervision and training of staff, planned levels of service, and contingency plans to ensure attainment of objectives.

10:3-3.10 Notification of decision

(a) Upon determining which proposals are most responsive and advantageous to the needs of the clients to be served, and costs and other factors are considered, the departmental component shall notify all applicants in writing of its decision within the time frames specified in the request for proposal, not to exceed 90 days. The appeals process must be completed within 15 days thereafter.

(b) An appeal based on the determination may be filed according to the procedures established by the departmental component or HSAC which shall be referenced in the notice of decision to the applicant.

(c) Acceptance letters shall indicate that:

1. The award is contingent on contract negotiation and that if, anytime before or during the contract negotiations, it is found that the agency awarded the contract is incapable of providing the necessary services or has misrepresented any material fact or its ability to handle the funding or provide the solicited services, the award may be rescinded. The rescission shall be made in writing, specifying why the award has been withdrawn.
2. The contract is not binding until funding has been verified and the standard language document and the contract confirmation letter are signed by both parties.

10:3-3.11 Document retention

All documentation used to evaluate the responding applicant proposals, as well as any information collected to evaluate the applicant itself, shall be retained by the departmental component or HSAC for a minimum of 50 days after the date of the notification of decision letter. This includes the RFP, the applicant proposals, all evaluation sheets, and any other documentation which details why the agency was selected or not selected. If the final decision is not appealed within the specified time frames, the documentation may be destroyed after 50 days. The awarded proposal shall be retained by the departmental component in the contract file.

10:3-3.12 Contract negotiations

At the time an award is made to the applicant, negotiations shall proceed with the process of preparing and submitting a formal contract proposal package to the Department. The initial proposal as modified and agreed to by both parties may replace the initial Annex A program description (see Contract Reimbursement Manual and Contract Policy and Information Manual) for the contract.

10:3-3.13 Exceptions to procedures

(a) When the announcement of the availability of funds limits the Department to less than 90 days for allocation, obligation, and/or expenditure of funds, or requires an extension, the time frames for the RFP process may be adjusted by the Department accordingly.

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(b) When there is an emergent danger and/or a risk to the health and welfare of clients as a result of strict adherence to N.J.A.C.

10:3-3, an exemption from the full RFP process may be granted and signed by the person in charge of the departmental component.

Date received

Dept/Component

Appendix A

**STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES**

**Funding Proposal
Cover Sheet**

Proposal Summary Information

Incorporated Name of Applicant: _____

Type: Public _____ Profit _____ Non-Profit _____, or Hospital Based _____

Federal ID Number: _____ Charities Reg. Number: _____

Address of Applicant: _____

Address of Service(s): _____
(Attach list if necessary.) _____

Contact person: _____ Phone No.: _____

Total dollar amount requested: _____ Fiscal Year End: _____

Total Match required: _____ Match Secured: Yes _____ No _____

Funding period: From _____ to _____

Services: _____
(For which funding is requested)

Total number of unduplicated clients to be served: _____

Brief description of services by program name and level of service to be provided*:

Authorization:

Chief Executive Officer (Print) _____

Signature _____ Date _____

*NOTE: If funding request is for more than one service, complete a separate description for each service. Identify the number of units to be provided for each service as well as the unit description (hours, days, etc.). If the Contract will be based on a rate, please describe how the rate was established.

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Appendix B

State of New Jersey
Department of Human Services

Date _____ Request for Proposal (RFP): Budget Information Summary Page ___ of ___

RFP Project Name _____ Agency Federal ID # _____

Agency Name _____ Charities Registration # _____

Address _____ Agency: _____ Non-Profit _____ Profit _____

_____ Public _____ Hosp. Based _____

Telephone Number _____ Budget Period _____ to _____

Chief Exec. Officer _____ Agency Fiscal Year End _____

Contract Information Summary
(List all Department of Human Services contracts)

| Contracting Division | Contract Number | Program Name | Type of Service | Current Reimbursable Ceiling |
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State of New Jersey
Department of Human Services

Date _____

Request for Proposal (RFP): Budget Information Summary

Page ___ of ___

RFP Project Name _____ Agency Federal ID # _____

Agency Name _____

Funding Request—Program Name(s) _____

Service(s) _____

RFP Budget Expense Summary

| Budget Categories | Total Costs | Indicate Programs to be Funded | | | | Unallowable Costs | Gen. & Adm. Costs |
|--|-------------|--------------------------------|-----|-----|--|-------------------|-------------------|
| | | | | | | | |
| A. Personnel (including fringe benefits) | | | | | | | |
| B. Consultants & Professional Fees | | | | | | | |
| C. Materials and Supplies | | | | | | | |
| D. Facility Costs | | | | | | | |
| E. Specific Assistant to Clients | | | | | | | |
| F. Other | | | | | | | |
| G. Gen. & Adm. Cost Allocation | >>>>> | | | | | | () |
| H. Total Operating Costs | | | | | | | |
| I. Equipment | | | | | | | |
| J. Total Cost | | | | | | | |
| K. Revenue (deduct) | () | () | () | () | | | |
| L. Funding Request | \$ | \$ | \$ | \$ | | | |
| Total Units of Service | | | | | | | |
| Unit Description | | | | | | | |

The budget request shall indicate the Agency's total proposed budget for delivery of the service(s) reduced by the other sources of funding (line K). Indicate the sources of funding and the dollar amounts for each:

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| Total Other Sources of Funding | \$ | \$ | \$ | \$ |

State of New Jersey
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Date _____

Request for Proposal (RFP): Budget Information Summary

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RFP Project Name _____ Agency Federal ID # _____

Agency Name _____

RFP—Personnel Detail

| Position Title/ Name of Employee | Total Cost | Hrs/ Week | % of Time | Indicate Programs to be Funded | | | Unallowable Costs | Gen. & Adm. Costs |
|-------------------------------------|------------|--------------|--------------|--------------------------------|--|--|-------------------|-------------------|
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RFP Project Name _____ Agency Federal ID # _____

Agency Name _____

RFP—Budget Category Detail

| Budget Category | Basis of Allocation | Total Cost | Indicate Programs to be Funded | | | Unallowable Costs | Gen. & Adm. Costs |
|-----------------|---------------------|------------|--------------------------------|--|--|-------------------|-------------------|
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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medically Needy Manual

Proposed Readoption with Amendments: N.J.A.C. 10:70

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
 Authority: N.J.S.A. 30:4D-3i(8), 30:4D-6g, 30:4D-7, 7a, b and c.
 Agency Control Number: 91-P-1.
 Proposal Number: PRN 1991-172.

Submit comments by May 1, 1991, to:
 Henry W. Hardy, Esq.
 Administrative Practice Officer
 Division of Medical Assistance and Health Services
 CN-712
 Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Medically Needy Manual (N.J.A.C. 10:70) expires on June 16, 1991. The Division of Medical Assistance and Health Services has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The Medically Needy Program extends limited Medicaid program benefits to certain groups of medically needy persons whose income and/or resources exceeds the standards for the Medicaid program but are within the standards for the Medically Needy Program, or whose income exceeds the standards for the Medically Needy Program but is insufficient to meet their medical expenses as determined in this chapter.

There are three coverage groups in the Medically Needy Program. These coverage groups are: pregnant women; needy children under the age of 21; and the aged, blind or disabled. For purposes of determining eligibility, the pregnant women and dependent children are placed in the AFDC (Aid to Families with Dependent Children) related category; the

aged, blind or disabled are placed in the SSI (Supplemental Security Income) related category.

All restrictions and limitations on services applicable to the Medicaid program apply to services for the Medically Needy. The services covered under the Medically Needy Program (by eligibility group) are described in N.J.A.C. 10:49-1.4(b).

It should be noted that the services covered by the Medically Needy Program are not the same as those provided under the Categorical Assistance Programs.

Retroactive eligibility for the Medically Needy Program is available beginning with the third month prior to the month of application, if members of an eligibility group have incurred expenses for covered services within that period which have not yet been paid and the members would have been eligible for the Medically Needy coverage in the month in which the services were received. Members of the eligibility group need not be eligible for the program at the time of application in order to be eligible for retroactive eligibility. Application for retroactive eligibility may be made on behalf of a deceased person so long as the person was alive during a portion of the retroactive eligibility period and he or she incurred medical expenses for covered services.

Historically, the Medically Needy Program in New Jersey commenced on July 1, 1986. The enabling legislation was P.L. 1985, c.371, as amended by P.L. 1985, c.510. The legislation is now codified as N.J.S.A. 30:4D-3i(8) and N.J.S.A. 30:4D-6g. The rules implementing these statutory provisions were adopted with an operative date of July 1, 1986 (see R.1986 d.237 at 18 N.J.R. 1294(b)). There have been no amendments to these rules except as contained in this proposal. A subchapter summary of the rules contained in Chapter 70 follows. Subchapter 1, Introduction, includes the purpose, scope and administrative organization of the Medically Needy program. It explains procedures for confidentiality of information and nondiscrimination regarding program participation. Subchapter 2 describes case processing, including application, interview, collateral verification, case transfer, redetermination of eligibility, medical factor redetermination and post-application client responsibilities. The rules that comprise subchapter 3, Nonfinancial Eligibility Factors, delineate the nonfinancial factors required to establish program eligibility. Following a section on general provisions are rules regarding citizenship, residency, eligibility group criteria, and budget unit. The subchapter includes rules on third party liability, persons sanctioned under AFDC rules and application for other benefits, such as pensions, annuities and retirement and disability benefits. Subchapter 4 sets out income eligibility

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factors and countable income standards, and subchapter 5 concerns resource eligibility. Subchapter 6, Medical Spend-down, defines the spend-down process and factors affecting it, specifically allowable incurred medical expenses and application of medical expenses toward spend-down. Subchapter 7, Other Administrative Requirements, includes rules regarding notice of county welfare agency decisions affecting applicants and/or recipients, fair hearings and the contents of case records.

The Division of Medical Assistance and Health Services is proposing amendments to Chapter 70 as part of its readoption of the chapter. The amendments are necessary because of changes in administration or policy and are explained as follows.

With respect to disability determinations for persons in SSI-related eligibility categories, the Disability Review Section within the Division of Medical Assistance and Health Services makes this determination. This function had previously been the responsibility of the Division of Economic Assistance (DEA), formerly the Division of Public Welfare (DPW). The shift in administrative functions resulted in amendments to N.J.A.C. 10:70-2.6 and 3.3.

There is a modification to the six-month eligibility period for a pregnant woman. If a pregnant woman delivers her child near the end of the six-month eligibility period, her eligibility may be continued through the 60-day post-partum period. During the "extended" period of eligibility, there will not be another evaluation as to the pregnant woman's income and/or resources. This 60-day extension for post-partum coverage is consistent with the provisions of 1920(a) of the Social Security Act, codified as 42 U.S.C. 1396a (reference is made to N.J.A.C. 10:70-4.2 below).

There is a change in the provisions for continued Medicaid eligibility for newborns during the first year of life. Previously, Medicaid eligibility for newborns could continue through the first year of life without application, provided the mother continued to be eligible. In programs such as the Medically Needy program, where pregnancy was a factor in the mother's continued eligibility, the newborn became ineligible when the mother's eligibility ceased at the conclusion of the pregnancy and the post-partum eligibility period. Continued eligibility for the newborn is now mandatory for up to one year without application if the mother would have continued to be eligible if she were still pregnant. Therefore, the newborn's eligibility no longer depends on the mother's continued active eligibility, but on the assumption that she would satisfy all other eligibility criteria if she were still eligible as a pregnant woman. This change is a result of an amendment (under OBRA 1990) to 1902(e) of the Social Security Act codified as 42 U.S.C. 1396a.

There is also a modification to the method of computing the budget unit. The existing policy considered the budget unit to be two, that is, the pregnant woman and fetus. However, under the proposed amendment, the budget unit shall include the pregnant woman and the medically verified number of fetuses. Therefore, if the pregnant woman is carrying twins, the budget unit shall be three. If the pregnant woman is married and living with her husband, then the budget unit consists of the pregnant woman, the number of fetuses, and one additional person, that is, the husband.

The proposed amendments also contain a modification of the spend-down requirements. Under the current policy, outstanding bills for medical services cannot be included in the spend-down if the bill(s) is the responsibility of another third party payor, such as a private health insurance carrier. The proposed amendment would allow an exception for a medical expense paid by a state, territory, or subdivision thereof, exclusive of Medicaid, if the program is financed by a state or territory. For example, a person whose medical service was paid by General Assistance could have this bill included in the spend-down computation. This policy is based upon instructions provided by the federal Department of Health and Human Services, Health Care Financing Administration (HCFA) in the state Medicaid Manual, Part 3-Eligibility, Transmittal 48, dated November 1990.

In addition to the substantive changes noted above, there were technical recodification changes necessary. The Medicaid Only Manual, N.J.A.C. 10:71, was transferred to the Division of Medical Assistance and Health Services from DPW/DEA. Consequently, the references to N.J.A.C. 10:94, which is where DPW/DEA had placed the Medicaid Only Manual, were no longer appropriate. These proposed amendments have no impact on the substantive portion of N.J.A.C. 10:71.

Social Impact

The rules proposed for readoption impact upon New Jersey residents whose income and/or resources are in excess of the categorical assistance standards but below the limits established for Medically Needy or whose

medical bills allow them to spend-down to Medically Needy limits. It is necessary to continue this program, and these rules governing eligibility, to insure that recipients who qualify receive those Medicaid services authorized under this program.

There were approximately 2,500 persons eligible for Medically Needy in 1990. The vast majority of these eligibles were children.

With respect to the proposed amendments, there should be virtually no impact on the SSI related groups because recipients who have to establish disability are still being evaluated as to their disability. The process utilized by the Division of Medical Assistance and Health Services is basically the same as the one formerly used by DPW/DEA.

With respect to the changes involving pregnant women, that is, the post-partum period and the number of fetuses, the proposed amendments should be beneficial and more realistic in terms of the woman's medical needs. The changes related to continued eligibility for newborns will be beneficial to newborn infants at a critical time in terms of their health care needs, by providing for continued Medicaid eligibility whether or not the mother takes immediate steps to apply on the child's behalf.

The ability to include certain medical services paid by a state or territory in the spend-down calculation should facilitate eligibility for some persons. The exclusion for other third party payors, including Medicaid, remains in effect.

Applicants/recipients who request hearings will have their case certified and heard by the Office of Administrative Law (see N.J.A.C. 10:70-7.2).

Economic Impact

The economic impact associated with the rules proposed for readoption is negligible. There are no new coverage groups, or services, being added to the Medically Needy Program. The amendments pertaining to pregnant women and newborns would basically incorporate recipients who would ordinarily qualify under the existing rules. The modification in the spend-down requirements does not appear to alter the spend-down exclusion for many persons who are, or might be, covered by private insurance companies and/or Medicaid.

The expenditures for the Medically Needy Program in State Fiscal Year 1990 were approximately \$2,419,976.00 (Federal-State share combined).

There is no cost to the Medicaid patient for services provided by the Medically Needy Program. However, in order to be declared eligible for the Medically Needy Program some individuals will have to meet the "spend-down" requirements contained in these rules.

Regulatory Flexibility Statement

There is no regulatory flexibility analysis associated with this proposed readoption. The recipients governed by these rules are individual applicants for medical assistance and are not small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Eligibility determinations are made by governmental agencies such as the county welfare agencies and/or boards of social services. Disability determinations, when necessary, are made by the Division of Medical Assistance and Health Services.

There are no provider groups governed by these eligibility rules.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:70.

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

10:70-2.1 Application

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

(c) As part of the application process, the program applicant has the responsibility to:

1. (No change.)

2. Assist the county welfare agency in securing evidence that verifies [or collaborates] his or her statements;

3.-5. (No change.)

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

10:70-2.6 Redetermination of medical factors

(a) Except for persons receiving Social Security benefits as a result of disability or blindness, the factors of disability and blindness will be redetermined at intervals established by the [Division of Public Welfare, Bureau of Medical Affairs] **Division of Medical Assistance and Health Services, Disability Review Section.**

(b) (No change.)

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10:70-3.3 Residency

[(a)] In order to be eligible for the Medically Needy Program, an individual must be a resident of the State of New Jersey. State residence shall be determined in accordance with the [regulations] rules at N.J.A.C. [10:94-3.5, 3.7, and 3.8] **10:71-3.5, 3.7 and 3.8.**

10:70-3.4 Eligibility group criteria

(a) (No change.)

(b) AFDC-related: The following eligibility groups are within the AFDC-related eligibility category:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy, through the end of the month during which the 60th day from delivery occurs.

i. A child born to a woman eligible as a pregnant woman under the provisions of this chapter shall remain eligible for a period of not less than 60 days from his or her birth[()], and up to one year so long as the mother remains eligible for Medicaid[()], **or would remain eligible if pregnant**, whether or not application has been made, if the child lives with his or her mother. [Eligibility of the newborn will be determined without regard to income for the 60-day period following the child's birth.]

2. (No change.)

(c) SSI-related: The following eligibility groups are within the SSI-related eligibility category:

1.-2. (No change.)

i. (No change.)

ii. Except for persons described in (c)2i above, the determination of statutory blindness is **the** responsibility of the [Division of Public Welfare, Bureau of Medical Affairs, Medical Review Team] **Division of Medical Assistance and Health Services, Disability Review Section.**

3. Disabled: Needy persons who are disabled. Disability is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The severity of impairment must be such that the individual is unable to do his or her previous work or any other substantial gainful activity which exists in the national economy. In the determination of a person's ability to do any other work, residual functional capacity, age, education, and work experience are considered.

i.-ii. (No change.)

iii. Except for persons describd in (c)3ii[.] above, the determination of disability is the responsibility of the [Division of Public Welfare, Bureau of Medical Affairs, Medical Review Team] **Division of Medical Assistance and Health Services, Disability Review Section.**

(d) (No change.)

10:70-3.5 Budget unit

(a) (No change.)

(b) For AFDC-related persons (pregnant women and children under the age of 21), the budget unit shall be constituted as follows:

1. A pregnant woman shall comprise a budget unit of two **(except in medically verified cases of multiple pregnancy, where the budget unit shall consist of the pregnant woman and the confirmed number of fetuses)**. If the pregnant woman is married and living with her husband, the budget unit shall consist of [three persons] **one additional person**. The woman's natural or adoptive children under the age of 21, living in the same household, shall be included in the budget unit. If the pregnant woman is under the age of 21 and resides in the same household as her natural or adoptive parents, the parents shall be included in the budget unit.

2.-3. (No change.)

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

10:70-4.2 Eligibility periods

(a) (No change.)

(b) The prospective eligibility period is the six calendar months beginning with the month of application. Once established, the prospective eligibility period will not be changed unless the case becomes ineligible for the Medically Needy program during the eligibility

period. Upon reapplication for the program, a new prospective eligibility period will be established.

1. [Eligibility] **Except for certain pregnant women, eligibility does not extend beyond the end of the eligibility period. A pregnant woman, who delivers her child near the end of the six-month eligibility period, may be eligible for a period exceeding six months if her post-partum extended eligibility exceeds the last day of the prospective eligibility period (see N.J.A.C. 10:70-3.4(b)1). In all other cases, [Continuation] continuation of program benefits is contingent upon a redetermination of all factors of eligibility (see N.J.A.C. 10:70-2.5). Any period of eligibility for a pregnant woman which exceeds the prospective eligibility period under the provisions of N.J.A.C. 10:70-3.4(b)1 shall be without regard to income or resources for such additional period of time.**

10:70-4.6 Countable income: SSI-related cases

(a) Except as specified below, countable income for SSI-related cases shall be determined in accordance with [regulations] rules applicable to income in Medicaid Only—Aged, Blind, and Disabled (see [N.J.A.C. 10:94-5] N.J.A.C. **10:71-5**).

1. The disregard of cost-of-living increases in Social Security benefits provided for in N.J.A.C. [10:94-5.3(a)7x. and xi.] **10:71-5.3(a)7x and xi** do not apply in the Medically Needy program.

2. The deeming of the income of an alien's sponsor as provided for at N.J.A.C. [10:94-5.7] **10:71-5.7** does not apply.

(b) (No change.)

(c) In circumstances as follow, an SSI-related case will have the value of in-kind support and maintenance counted as unearned income.

1. Any SSI-related adult, who would in accordance with rules at N.J.A.C. [10:94-5.6(c)] **10:71-5.6(c)** be determined to be "living in the household of another", shall be considered to have unearned income in the amount specified at N.J.A.C. [10:94-5.4(a)12] **10:71-5.4(a)12** less \$20.00. The amount of income so assigned is not rebuttable.

2. Any SSI-related person or other than those addressed in (c)1[.] above, to whom food, clothing, or shelter is given or paid for by someone other than by a spouse, a parent, or a minor child residing in the same household, shall be presumed to receive in-kind support and maintenance. The presumed value of the support and maintenance will be the values specified at N.J.A.C. [10:94-5.4(a)12] **10:71-5.4(a)12**. The presumed value so assigned may be rebutted in accordance with the provisions of that subsection.

(d) Deeming of income: In accordance with the rules at N.J.A.C. [10:94-5.5] **10:71-5.5**, the income of an ineligible spouse shall be deemed to the eligible spouse when they are residing in the same household. Income of the parent(s) of an SSI-related child under the age of 18 residing in the same household shall be deemed available to the child in the determination of eligibility for Medically Needy benefits. Income shall not be deemed from any person whose income is counted in determining income eligibility for an AFDC-related case which is eligible for the Medically Needy program.

1.-2. (No change.)

10:70-5.3 SSI-related cases

(a) For SSI-related cases, the resource provisions of the Medicaid Only (Aged, Blind, and Disabled) program shall apply in [the] determining [of] countable resources for the Medically Needy program.

1. Medicaid Only provisions requiring the deeming of the resources of an alien's sponsor (N.J.A.C. [10:94-4.6(f)] **10:71-4.6(f)**, do not apply in the Medically Needy program.

(b) The provisions relating to deeming of resources found at N.J.A.C. [10:94-4.6] **10:71-4.6** apply in SSI-related cases. In the deeming of resources from one parent to a child, the countable parental resource in excess of the Medicaid Only resource limit for an individual shall be deemed to the child. When the resources of two parents must be deemed to a child, countable parental resources in excess of the Medicaid Only resource limit for a couple shall be deemed to the child.

10:70-5.4 Transfer of resources

(a) (No change.)

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(b) For SSI-related cases, the Medicaid Only program policy regarding the transfer of resources (N.J.A.C. [10:94-4.7] 10:71-4.7) shall apply to all members of the budget unit.

10:70-6.2 Allowable incurred medical expenses

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

(d) To the extent that payment of any bill for medical service is the responsibility of a third party (for example, a health insurer), the expense shall not be applied against spend-down liability. **An exception would be made for any medical expense paid by a State or territory, or a subdivision of a State or territory (except for a Medicaid program), if the program is financed by a State or territory.**

(e) (No change.)

10:70-7.3 Case records

(a) (No change.)

(b) The case record shall include:

1. (No change.)

2. All medical reports and a record of action of the [Medical Review Team] **Disability Review Section** as appropriate.

3-4. (No change.)

(c)-(e) (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE Notice of Public Hearing and Extension of Comment Period

Aid to Families with Dependent Children

Proposed New Rule: N.J.A.C. 10:82-1.1A

General Assistance Manual

Standard of Need

Proposed Amendment: N.J.A.C. 10:85-4.1

Take notice that the Department of Human Services, at the request of the Department of the Public Advocate, will conduct public hearings concerning the proposed new rule at N.J.A.C. 10:82-1.1A and the proposed amendment to 10:85-4.1 which were published in the New Jersey Register on February 4, 1991 at 23 N.J.R. 285(a) and 286(a), respectively. The purpose of those rulemakings is to propose the establishment of standards of need in the AFDC and GA programs. They were prepared in support of the decision by the New Jersey Supreme Court that the Commissioner of the Department of Human Services has a statutory obligation to establish standards of need based upon the actual cost of basic necessities. The standard of need will serve as a benchmark against which the Legislature can decide on appropriations for funding payment levels in the AFDC and GA programs.

Public hearings concerning the proposed rulemakings at N.J.A.C. 10:85-4.1, and 10:82-1.1A will be held Friday, April 19, 1991, at the following locations and times:

Trenton City Council Chambers

City Hall

319 East State Street

Trenton, New Jersey

10:00 A.M.-4:00 P.M.

East Orange City Council Chambers

44 City Hall Plaza

East Orange, New Jersey

10:00 A.M.-4:00 P.M.

Camden City Council Chambers

Sixth and Market Street

Camden, New Jersey

10:00 A.M.-4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey by telephone at (609) 588-2291 no later than noon April 17, 1991, and provide their name(s), organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony. **Interested parties** may submit written testimony at the hearing or by mail until May 6, 1991.

Those comments should be addressed to:

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

(b)

DIVISION OF ECONOMIC ASSISTANCE

Aid to Families with Dependent Children Program Emergency Assistance

Proposed Amendments: N.J.A.C. 10:82-5.10

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

Authority: N.J.S.A. 44:10-3.

Proposal Number: PRN 1991-147.

Submit comments by May 1, 1991, to:

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

The agency proposal follows:

Summary

The goal of the Aid to Families with Dependent Children (AFDC) emergency assistance (EA) shelter program is to prevent homelessness, if possible, or provide shelter and to coordinate support services, with family participation, at all levels of government and with other appropriate sectors of the human services community. In an effort to preserve the family structure and stable environment, the EA program is a multi-stage process designed to minimize the incidence of homelessness.

The current rule at N.J.A.C. 10:82-5.10 provides emergency assistance for a temporary period not to exceed a total of five months. The proposed amendment sets forth regulatory provisions to cover five major areas: prevention of homelessness, the granting of emergency shelter assistance, temporary rental assistance, individualized extension of EA beyond five months and intercounty transfers of families in need of EA benefits. The proposed amendment to N.J.A.C. 10:82-5.10(f)1iii modifies the EA program to include entitlement to post five-month EA benefits (temporary rental assistance and EA extensions) for those EA families whose initial five-month EA period expires and who continue to require and be eligible for EA benefits. Temporary rental assistance may be authorized at the outset as well as at any other time during the period of EA entitlement. Shared county welfare agency (CWA) and family responsibilities are established at the outset to address the EA family's short and long term emergency needs. Included in the CWA's responsibilities is development of an individualized service plan to address those circumstances which contributed towards the family's homeless situation in order to effect a permanent resolution of the emergency situation.

The proposed amendment at N.J.A.C. 10:82-5.10(a) eliminates a "30 calendar day" stipulation for EA eligibility. The current provision stipulates that eligibility for EA shall be contingent on the fact that the emergency occurred within the 30 calendar days immediately prior to the application for AFDC benefits. The proposed amendment revises the rule in order that EA may be authorized during the 30 day period immediately following the date of application for EA. This is to ensure that families who have experienced an emergency and have taken interim measures, without the aid of public assistance, will not be denied EA benefits because they did not apply within 30 days of the emergency.

Text at N.J.A.C. 10:82-5.10(b) is being deleted and replaced with new text. The deletion is to exclude text dealing with certain in-house fiscal procedures, including those governing the availability of Federal and/or State funding based on the frequency of EA payments.

The proposed amendments at N.J.A.C. 10:82-5.10(c) are aimed at ensuring that CWAs be alert to potential causes of homelessness in an effort to minimize the incidence of such occurrences.

The existing language at N.J.A.C. 10:82-5.10(d)1 through vii has been integrated and recodified in other parts of the rule with obsolete language removed.

The list of documents needed to prove a pending eviction has been expanded at N.J.A.C. 10:82-5.10(d)2 to include a letter from the landlord. Lack of realistic capacity to plan for substitute housing has been ex-

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panded at N.J.A.C. 10:82-5.10(d)2iii(3) to include those situations where the family can demonstrate functional incapacity that would prevent them from planning for or securing substitute housing. Additionally, where the client is unable to demonstrate that available funds were exhausted in payment of ordinary and necessary household expenses, he or she may sign a document attesting to that fact. Homelessness which is the result of imminent or actual domestic violence has been inserted at N.J.A.C. 10:82-5.10(d)3 and the existing N.J.A.C. 10:82-5.10(e) is being deleted. Due to the emergent nature of EA, the proposed amendment at N.J.A.C. 10:82-5.10(d)5 ensures that the EA family is duly notified of any EA denial or termination action.

The proposed amendment at N.J.A.C. 10:82-5.10(e) delineates CWA and family responsibilities aimed at initially resolving the emergency situation and working toward securing and ultimately maintaining a permanent housing arrangement without EA. Family responsibilities include the signing of Form PA-70, "Notice of Conditions of Eligibility for the Receipt of EA," and the search for permanent housing as deemed appropriate by the CWA. CWA responsibilities include resolution of the immediate emergent situation, development of an individualized service plan based on the family's physical, mental and functional abilities, provisions for transportation, appropriate referrals to other available benefit entitlements or services, and referrals to training or rehabilitation programs.

The proposed amendment at N.J.A.C. 10:82-5.10(f) adds text which specifies that EA benefits for housing may be provided at the most reasonable rate, taking family circumstances into consideration, for a period of three months with extensions for up to two additional months. The proposed amendment at N.J.A.C. 10:82-5.10(f)1 concerning placement of a family in a hotel/motel/shelter mandates that such placement may only be used if no other alternative, as specified in N.J.A.C. 10:82-5.10(f)2 through 6 is available. The CWA shall be responsible for payment of all costs related to placement of a family in a hotel/motel/shelter. The proposed amendment at N.J.A.C. 10:82-5.10(f)1iii provides for individualized EA extensions beyond five months for specified reasons.

The payment of back rent/mortgage/utilities has been recodified from N.J.A.C. 10:82-5.10(c)2i to N.J.A.C. 10:82-5.10(f)2 and expanded to specify the availability of payment of up to three months of back rent or mortgage payments and six months of retroactive utility payments. The rule also now provides for the payment, under extraordinary circumstances and with DEA approval, of more than three months back rent or mortgage payments and/or more than six months of retroactive utility payments.

The proposed amendment at N.J.A.C. 10:82-5.10(f)5 adds text which establishes temporary rental assistance of up to \$250.00 per month that may be authorized initially to resolve an emergency situation as well as at any other time during the receipt of EA. Temporary rental assistance supplements an EA family's regular monthly AFDC grant and/or income to meet the monthly payment for their current housing arrangement, inclusive of basic utilities. The proposed amendment provides that the EA family who is receiving temporary rental assistance shall retain 35 percent of the family's AFDC grant and/or monthly income including any Supplemental Security Income benefits or other income received by a family member residing in the household. Retention of an amount in excess of 35 percent may be authorized when it is determined that the family has special needs. Rental assistance in excess of \$250.00 per month may also be provided, but only with prior approval from DEA. In addition, the proposed amendments at N.J.A.C. 10:82-5.10(f)5iii(5) provide for the continuation of temporary rental assistance for EA families who lose ongoing AFDC eligibility due to the receipt of or an increase in earned income in order to facilitate the family's transition to housing which is affordable without the provision of EA benefits. Text is added at N.J.A.C. 10:82-5.10(f)6 which provides CWAs the opportunity to initiate and operate special EA programs, through the submission of plans to DEA for approval, in order to serve specific population target groups.

The proposed amendment at N.J.A.C. 10:82-5.10(g) adds text which requires that, with advance client notification, if a second or subsequent application for EA shelter benefits is approved within a 12 consecutive month period, except for unique situations, the CWA must assign a protective payee before payment is issued or AFDC and EA benefits must be issued in the form of a restrictive or vendor payment.

The text at N.J.A.C. 10:82-5.10(h) and (h)1 is revised to indicate that emergency food allowances are increased by \$3.00. The proposed amendment stipulates that the emergency food allowance is to be authorized only until such time as other funds become available.

The proposed amendment at N.J.A.C. 10:82-5.10(n) adds text which establishes criteria for the determination of CWA financial and case management responsibility for EA families who are placed or move from one county to another. The proposed amendment also serves to preserve those families' right to uninterrupted EA benefits during interagency disputes.

Minor technical changes as well as recodification and integration of certain text for clarity are included in the proposed amendment.

Social Impact

The proposed amendment designed to meet the critical needs of homeless, low income families served through the AFDC/EA program are expected to have a positive social impact. Elimination of a 30 calendar day stipulation for EA eligibility will ensure that families who are otherwise eligible for AFDC will not be denied EA because they did not apply for EA within a specific time period. As stated, the goal of AFDC/EA is not just to provide shelter to homeless families, but, if at all possible, to prevent actual homelessness as well as to effect the coordination of all available support services. The eligibility for EA entitlement is expanded beyond the initial three-month period plus up to two calendar months' extensions by allowing for individualized extensions on a month-by-month basis. Such individualized extensions will ensure that EA benefits are continued beyond five months for those families who are otherwise eligible for and continue to need EA benefits. Positive social impact will also be realized by acknowledging that functional incapacity may legitimately prevent a family from securing substitute housing.

Shared CWA and EA family responsibilities are established to address the family's immediate EA needs, conditions of eligibility (search for permanent housing) for the continued receipt of EA, and development of an individualized service plan by the CWA aimed at enabling the family to ultimately maintain permanent housing without EA. Compliance with the permanent housing search requirements will ensure AFDC eligible families will continue to be eligible for EA benefits for a minimum of five months with individualized extensions beyond that time period.

Eligible families will certainly be positively impacted by the proposed amendments which provide for the payment, under extraordinary circumstances, of more than three calendar months of retroactive rental or mortgage payments and/or six calendar months of retroactive utility payments. The amendments which establish temporary rental assistance that may be authorized, as appropriate, at the outset or at any time during the receipt of EA to enable the EA family to retain or secure permanent housing, will facilitate the continuity of the family unit. Similarly, the amendment concerning temporary rental assistance that may be continued for an EA family who loses ongoing AFDC eligibility due to income, to facilitate that family's transition to affordable housing, will provide a positive impact for those families making the transition from public assistance to economic self-sufficiency.

The proposed amendment which authorizes counties to operate approved special initiative EA programs will have a positive social impact by allowing counties to serve specific target groups. Likewise, the proposed amendment concerning assignment of a protective payee or the issuance of AFDC and EA benefits in the form of restrictive or vendor payments will serve to ensure the availability and maintenance of shelter for families in an EA situation.

The proposed amendments that stipulate that emergency food allowances are to be authorized until other funds become available serves to ensure that all EA families will be treated equitably. The proposed amendments concerning the intercounty transfer of EA cases will serve to minimize interagency disputes concerning case management responsibilities and will ensure a family's receipt of EA benefits when a family moves or is placed out of the county.

Economic Impact

Current provisions in the AFDC program provide for up to five months of EA shelter payments. Due to lack of adequate emergency shelters, such assistance is often provided in hotels and motels at varying rates but averaging close to \$1,000 per month. The proposed amendment, while continuing to provide for this kind of assistance, also includes the ability to provide temporary rental assistance from the onset of the emergency. This will allow families to stay in or acquire more permanent living arrangements at a much lower cost than hotel or motel placement. The proposed changes are not expected to result in a significant increase in expenditure.

The proposed amendments also allow for extensions for up to two additional months as well as incremental one-month extensions of emergency assistance beyond the first five months. Since CWAs will be re-

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quired by this rule to begin planning for the resolution of the emergency situation from the onset of the emergency, the number of families reaching the end of the five months without other alternatives and, therefore, requiring extensions, should be minimal and thus not result in a significant increase in expenditures. Likewise, provision of the limited continuation of temporary rental assistance for EA families who lose ongoing eligibility due to the receipt of or an increase in earned income, to facilitate the transition to permanent housing which is affordable without EA, should be minimal.

Other procedures included in the proposed changes such as the requirement for a "Notice of Conditions of Eligibility for the Receipt of EA" and an individualized service plan (which includes the coordination of other services within the community) merely codify activities already expected of CWAs and should not result in increased expenditures.

The overall effect of the rule amendment is expected to be a reprogramming of funds currently being spent on servicing homeless AFDC families in ways that result in a more humane and cost-effective response to this problem.

In State Fiscal Year 1990, total Federal, State and county AFDC/EA program expenditures amounted to \$59.2 million with 14,636 persons served on an average monthly basis. For State Fiscal Year 1991, total expenditures are estimated to amount to \$57.8 million with a monthly average of 18,900 persons served.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rule governs a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program 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]):

10:82-5.10 Emergency assistance

(a) "Emergency Assistance" (EA) is hereby established as any initial, extra or additional payment(s), authorized in accordance with [(b), (c) and] (d) **through** (n) below during the period of 30 consecutive days immediately following the **date the application for EA is made/approved as a result of the occurrence of an emergency** as defined in [(c)] (d) below. Emergency assistance can be issued to AFDC families in receipt of **presumptive eligibility benefits** or continuing assistance or to non-AFDC families satisfying AFDC eligibility with the exception of those requirements at (a)1 below. The PA-IJ form shall be used to determine eligibility for emergency assistance. Once immediate need is apparent, and the family is otherwise eligible, emergency assistance shall be authorized and/or provided as appropriate.

1. In addition, these regulations apply to an emergency (as described in [(c)] (d) below) [which occurred within the 30 calendar days immediately prior to application for Emergency Assistance.] if the applicant meets all requirements for the AFDC program except for the deprivation, enumeration and evaluation of legally responsible relatives requirements (as defined in N.J.A.C. 10:81-2.7, 10:81-11.3 and 10:81-3.5(b)4i).

i.-ii. (No change.)

[3. Applicants for emergency assistance shall be issued Form PA-70, Emergency Assistance Notice, at time of application for EA. That notice shall specify that the EA payments are granted for a specific period and the EA allowance will automatically terminate two months subsequent to the month for which the EA payment is first authorized. In addition the applicant shall be requested to sign the written notice (Form PA-70) signifying that he or she has been made aware of the requirements set forth in (d)1v and vi.]

[(b) The following conditions must be observed with respect to all expenditures by the county welfare agency for which Federal and/or State matching is claimed under the classification of emergency assistance:

1. There shall be no federal matching with respect to payments authorized under (a) below more frequently than during one consecutive period of 30 days within any 12 consecutive months. State matching only will be available at other times.

2. Payments of emergency assistance in AFDC shall be made as vendor payments whenever feasible, or as direct payments to the eligible unit, or as a combination of both. All payments of emergency assistance, when authorized in full compliance with the conditions in this section, shall be disbursed from the assistance account and reported on Form PA-204D.

3. Any emergency assistance authorized under this section, if not a whole dollar amount, shall be rounded down to the next lower whole dollar with the exception of vendor payments which shall be issued in the full amount authorized.]

(b) **The goal of the EA shelter program is to prevent homelessness or provide shelter and to coordinate support services, with family participation, at all levels of government and with other appropriate sectors of the human services delivery community. In an effort to preserve the family structure and stable environment, the EA program is a multi-stage process designed to minimize the incidence of homelessness. This process begins, if possible, with the prevention of actual homelessness through agency intercession, the provision of temporary shelter arrangements for up to three calendar months, with extensions for temporary housing for up to two additional calendar months, to individualized extensions on a month by month basis for temporary housing when the need for each such extension is documented in the case record in accordance with the provisions at (f)1iii below. The EA shelter program is thus designed to provide, with reasonable certainty, for the initial and/or continuing emergency shelter needs of otherwise eligible AFDC families. It is acknowledged that there is a shared responsibility between the family and the CWA with other governmental/non-governmental entities at the municipal, county, and State levels.**

1. CWAs shall ensure that all available resources and services offered throughout the community are effectively utilized to meet specific needs of EA families.

(c) **In an effort to minimize the incidence of homelessness among New Jersey's AFDC recipient population, the CWAs shall be alert to the following circumstances which may reasonably be assumed to, if not addressed, result in imminent or actual homelessness of the family. Upon identification of any of the indicators identified in (c)1 through 5 below, the agency representative should review the case record to determine if the family should be referred to appropriate social services personnel within the agency to help the family plan to ensure the availability of uninterrupted housing.**

1. When shelter costs equal or exceed total recorded income to the AFDC family and the client is unable to document other sources of income, for example, loans from relatives, that enable the family to meet monthly housing/living expenses;

2. When the CWA receives information to the effect that the family's utility bills are in arrearages or utilities have been shut off;

3. When the family's income is reduced as a result of reduction in the amount of AFDC benefits or other available income, for example, loss of the \$50.00 disregarded child support payment, a child in the family loses AFDC eligibility due to age, or a member of the family dies;

4. When the family's rent which had previously been affordable is increased to an amount which makes the family's current housing costs appear to exceed its available income; or

5. When the CWA receives information that the family is involved in a tenant/landlord dispute.

i. **When a tenant/landlord dispute exists, the CWA shall intercede on behalf of the family in order to preclude the loss of existing permanent shelter, including referral to appropriate legal/service agencies. [(c)](d) Emergency assistance is available in the following circumstances:**

1. When there has been substantial loss of shelter, food, clothing, or household furnishings by fire, flood or other similar disaster and the eligible family is in a state of homelessness and the county welfare agency determines that the providing of shelter and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in [(d) below] **this section.**

2. Where there is [official] documentation, **subject to CWA verification, of a pending eviction or foreclosure, such as a letter from the**

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landlord, a tenancy complaint filed by the [landland] **landlord**, an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior permanent shelter is no longer available, and the eligible family demonstrates a lack of realistic capacity to plan for substitute housing as defined in iii below, emergency assistance shall be authorized in accordance with (d)i and ii below.

i. Payment may be authorized for [three calendar months of] retroactive rental, mortgage [or] **and/or** utility payments if it will prevent actual eviction or foreclosure in accordance with (f)2 below.

ii. In situations of homelessness due to actual eviction or foreclosure or when prior permanent shelter is no longer available, payment shall be authorized for emergency shelter in accordance with [(d)1] (e), (f) **and** (g) below.

iii. Lack of realistic capacity to plan for substitute housing exists in the following circumstances:

(1) When the [eligible] family can demonstrate that there was insufficient time to secure substitute housing between receipt of notice of imminent loss of shelter and actual eviction, foreclosure or loss of prior permanent shelter; [or]

(2) When the [eligible] family can demonstrate or signs a document, prepared by the CWA, certifying that available funds and resources, including liquid resources at N.J.A.C. 10:82-3.1(d), were exhausted [in payment of ordinary and necessary household and living expenses, such as food, clothing and shelter, and that payment of such expenses resulted in homelessness.] on items deemed appropriate, necessary or reasonable for decent living. In addition to food, clothing and shelter, other appropriate items include, but are not limited to, expenditures for a family emergency or excessive costs for unreimbursed medical expenses; or

(3) When the family demonstrates functional incapacity, for example, evidence of alcohol or drug abuse, which would prevent them from planning for or securing substitute housing.

(A) In situations where the family demonstrates functional incapacity, a protective payee shall be assigned or AFDC and EA benefits issued in the form of restricted or vendor payments in accordance with the criteria set forth at N.J.A.C. 10:81-4.9.

3. In situations where an applicant or recipient indicates that he or she and his or her children have left their customary residence and the family is in a state of homelessness due to imminent or demonstrated domestic violence which imperils the health and safety of one or more members of the eligible family.

i. Temporary living arrangements during the period between the occurrence of the incidence of domestic violence and the application for EA do not negate the existence of a state of homelessness.

[3.]4. In instances where Division of Youth and Family Services, in consultation with the CWA, certifies that placement of the children in foster care is imminent due **only** to the fact that the family is being subjected to a serious health or life threatening situation because of the lack of adequate shelter, [emergency assistance] EA shall be provided in accordance with [(d) below] the provisions of this section.

5. If at time of application for EA benefits, or at any time during the receipt of EA benefits, the CWA determines that a family is ineligible for EA, that determination must be documented in the case record, including the specific reason(s) for the denial/termination of benefits. Any adverse action concerning the provision of EA benefits is subject to the notice requirements specified at N.J.A.C. 10:81-7.

(e) There is a shared responsibility between the family and the CWA to minimize the incidence of homelessness, secure emergency housing, address the circumstances that contributed to a family's imminent or actual homelessness, and ultimately obtain affordable permanent housing. In order to resolve a situation of imminent or actual homelessness, the CWA shall advise the family of the conditions of eligibility for the ongoing receipt of EA as delineated in (e)1 below and, in conjunction with the family, develop a service plan to help the family secure and maintain affordable permanent housing as specified in (e)2 below.

1. While receiving EA for temporary housing, the family has a continuing responsibility to seek alternative affordable permanent housing. The family shall be issued Form PA-70, Notice of Conditions of Eligibility for the Receipt of Emergency Assistance, a written notice

which must be signed by both the CWA representative and the client, which signifies that the family has been made aware of the requirements set forth below.

i. The family shall make every effort within its ability to secure affordable permanent housing and to document such efforts in writing. The family shall:

(1) Begin the search for permanent housing no later than the date specified in Form PA-70;

(2) Make a reasonable number of contacts each week until permanent housing is secured. The number of weekly contacts to be made shall be determined by the CWA, in conjunction with the family, taking into consideration medical and/or social circumstances. For example, it shall be considered reasonable for a person who is not suffering from physical or mental incapacity to conduct up to 10 contacts per week. Where good cause for non-participation in housing searches exists, Form PA-70 shall reflect the applicable reasons(s).

(A) Contacts may be made by personal visit or any other method specified in Form PA-70;

(3) Provide written documentation of all contacts. Such documentation shall consist of the date of the contact, the telephone number (if applicable), the address (location) of the housing site, and the name of the person contacted (landlord or agent);

(4) Pursue and take advantage of Section 8 Housing Certificates, local public housing and/or other housing subsidy programs specified in Form PA-70;

(5) Utilize available community resources and services specified in Form PA-70 which could assist the family in securing permanent housing; and

(6) Notify the CWA immediately upon locating available housing which is both affordable and permanent.

ii. Refusal, without good cause, to cooperate with the provisions specified in or to sign the Notice of Conditions of Eligibility for the Receipt of Emergency Assistance, shall render the family ineligible for continuing EA benefits.

(1) Willingness on the part of the family to sign Form PA-70 and cooperate in the search to secure permanent housing shall establish eligibility for continuing EA benefits, if otherwise eligible.

2. The CWA shall have responsibility to assist the family to resolve the emergency situation and to assist the family to secure a suitable permanent housing arrangement. Upon CWA contact with the EA family, the CWA shall:

i. Assess the emergent situation and initiate appropriate action, for example, intercede in tenant/landlord disputes, arrange for payment of back rent, mortgage or utilities, arrange for the immediate provision of appropriate shelter in situations of actual homelessness, and so forth;

ii. Explain to the family, as well as provide a written copy of, EA rights and responsibilities;

iii. Discuss with the EA family the emergency shelter arrangement which the CWA determines, in accordance with (f) below, will meet the family's immediate emergency shelter needs and takes into consideration the family's individual circumstances;

iv. Explain that a written service plan shall be developed, within five working days of the EA authorization date, to provide an individualized plan aimed at addressing those circumstances which contributed to the family's homeless situation and limit its ability to secure and/or maintain permanent housing (for example, insufficient funds, substance abuse, mental illness).

(1) Arrange a meeting with the family to discuss the plan which shall be signed by both the client and the CWA representative. The CWA shall retain the original plan and provide a copy to the family.

(2) The individualized service plan may include, but is not limited to:

(A) Selection of a housing arrangement which takes into consideration the family's individual circumstances, such as mental and/or physical problems;

(B) Provision of services, as set forth at N.J.A.C. 10:82-5.10(1);

(C) Referral to affordable housing (if known) as well as referral to and/or application for other available benefit entitlements or services, for example, Social Security Administration, Department of Community Affairs, Community Mental Health Services, drug and/or alcohol rehabilitation program; or

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(D) If appropriate, and in accordance with REACH requirements, referral to a training or rehabilitation program, such as the Job Training Partnership Act (JTPA) or vocational rehabilitation, likely to result in employment or the securing of a job leading to the maintenance of affordable permanent housing; and

v. As a sound management tool, the CWA shall routinely reevaluate and/or revise Form PA-70 and the service plan as warranted by changes in the EA family's shelter needs and/or other pertinent circumstances.

[(d) Needs of the eligible family may be recognized in accordance with the regulations and limitations in the following paragraphs:]

[1.](f) [Emergency shelter:] The county welfare agency shall authorize payment of the actual cost of adequate emergency [shelter] housing arrangements at the most reasonable rate available, **taking into consideration family circumstances and services provided**, for [a specified temporary period (see N.J.A.C. 10:81-7.1(k)6vii concerning notice requirements) not to exceed two] **three** calendar months [following] **inclusive** of the month in which the state of homelessness first becomes known to the county welfare agency. **If at the end of the third month for which EA has been provided permanent housing has not been secured, EA extensions shall be authorized, if necessary, for up to two additional months.** Such emergency [shelter] housing, wherever possible, shall be in the municipality in which the eligible family currently resides. If, however, [shelter as delineated above] housing is not available **at the most reasonable rate, taking into consideration family circumstances and services provided**, within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept [shelter] housing [as delineated above] which is situated outside the municipality of customary residence. In situations where the county welfare agency determines that despite efforts of both the [client] family and the agency [(see 6 below)], permanent living arrangements are unavailable, an extension of emergency assistance [may] **shall** be authorized in accordance with the provisions of [(d)lvii] (f)liii below.

[i. Funds from the regular assistance grant or funds considered in developing the amount of that grant are not to be considered in computing the amount of payment for temporary emergency shelter, except as provided in iii below. When more permanent living arrangements are made, any funds actually available to the client from the grant or other income are to be counted in the determination of emergency assistance payments for shelter or utility deposits.

ii. Emergency temporary rehousing: Payment for emergency temporary rehousing may be authorized under the Home Energy Assistance Program in accordance with N.J.A.C. 10:89-3.4(e).

iii. Allowances for permanent living arrangement: When required to establish the family in a more permanent living arrangement, allowances may be authorized for expenses related to that arrangement including, but not limited to, security deposits for rent and utilities and advance rent.

iv. Moving expenses: Payment may be authorized for moving expenses incident to the emergency and when required to establish the family in a more permanent living arrangement.

v. Client responsibility: While receiving emergency assistance for temporary shelter, the eligible family has a continuing responsibility to seek alternative permanent shelter. The eligible family is also responsible for documenting its efforts in locating alternate permanent housing, beginning with the 11th calendar day from the date the state of homelessness first becomes known to the county welfare agency. Such documentation shall reflect a minimum average of 10 contacts per week, unless the CWA determines that a fewer number of contacts is deemed appropriate or the client demonstrates good cause, for example, illness or incapacity, for failing to fulfill the minimum average housing search requirement. Contacts may be made by telephone, personal visit, or a combination of both. Documentation must also include items (1) through (4) below:

- (1) Date of contact;
- (2) Telephone number (if applicable);
- (3) Address (location) of housing site; and
- (4) Name of person contacted (landlord or agent).

vi. Every effort shall be made to locate suitable housing in the community of prior permanent residence. If, however, the county welfare agency locates suitable permanent housing of sufficient size

to accommodate the entire household, outside the community of prior permanent residence, the eligible family must accept the permanent housing arrangement. Refusal to relocate without good cause will result in ineligibility for further emergency assistance. A county welfare agency determination of good cause may include, but is not limited to, the need for a member of the eligible family to travel more than one hour each way to and from his or her place of employment by reasonably available public or private transportation.

vii. Extension of emergency assistance benefits: If at the end of the third month for which EA has been provided permanent shelter has not been secured, EA may be extended by the CWA for a fourth and, if necessary, a fifth calendar month provided the applicant signs a new Form PA-70 for each such month. Assistance granted under this provision may not be subject to Federal financial participation and may be provided by the CWA under conditions including, but not limited to, the following:

(1) Illness or incapacity of the client or another member of the household which requires the client's presence in the home on a substantially continuous basis, and no other member of the household is available to seek permanent shelter;

(2) Permanent housing has been secured but will not be available until after expiration of the third month of EA benefits.

(3) Availability of documentation that the minimum average number of housing contacts per week required by the county welfare agency were made.]

1. Placement of the family in a hotel, motel, or shelter shall be at the most reasonable rate, for a temporary period. Such placement shall be used only when no other housing arrangement, as delineated in (f)2 through 6 below, is available.

i. The regular grant of assistance (including calculated earned income and exempt income) is not to be counted in the determination of the amount of emergency assistance payments authorized for emergency shelter arrangements, except as noted in (f)5 below.

ii. The CWA shall be responsible for payment of all costs related to the placement of the family in a hotel, motel, or shelter under EA.

iii. If at the end of the fifth month for which EA has been provided permanent housing has not been secured, individualized extensions beyond the five months for temporary housing may be provided, on a month by month basis, when the need for such extension(s) is documented in the case record, and is for any of the reasons stipulated in (f)liiii(1) through (3) below.

(1) Due to illness or incapacity of the parent or of another person which requires the parent's presence in the home on a substantially continuous basis, the individual(s) is unable to perform activities of daily living including participating in permanent housing searches and/or complying with any of the other provisions in Form PA-70;

(2) Alternate permanent housing is anticipated to be available or a change in circumstance, for example other sources of income, is expected within two months subsequent to the extension month which will eliminate the need for such shelter extensions; or

(3) The EA recipient family has satisfactorily fulfilled its permanent housing search responsibilities or is determined unable to make such permanent housing searches and continues to require additional EA shelter assistance.

2. Payment may be authorized for up to any three calendar months of retroactive rental or mortgage payments and/or six calendar months of retroactive utility payments if it will prevent actual eviction or foreclosure.

i. Payments for more than three calendar months of retroactive rental or mortgage payments and/or six months of retroactive utility payments may be made only under extraordinary circumstances subject to authorization by DEA.

3. When required to establish the family in a more permanent living arrangement, allowances may be authorized for expenses related to that arrangement including, but not limited to, security deposits for rent and utilities, and one month's advance rent.

4. Payment may be authorized for moving expenses, including furniture storage, incident to the emergency and when required to establish the family in a more permanent living arrangement.

5. Supplemental rental assistance may be authorized in order to resolve imminent or actual homelessness by enabling families to meet

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temporary shelter costs. Temporary rental assistance may be authorized by the CWA upon initial authorization of EA or at any time during the receipt of EA as follows:

i. In addition to back rent/utility payments, temporary rental assistance may also be issued in accordance with (f)5iii below, when the family is facing pending eviction from permanent housing which had previously been affordable, for reasons such as, but not limited to, loss of employment, temporary unemployment or underemployment, and it is anticipated that such permanent housing will become affordable or when it is determined that maintaining the family in its current housing arrangement is both the least costly alternative and serves to preserve the family structure and stable environment.

(1) Rental assistance may be provided for that period of time necessary to resolve potential homelessness, but shall not exceed 12 months when computed in combination with the number of months of back rent provided, if any.

(A) Example: If EA back rent payments are authorized to cover a period of three months, a maximum of nine months of rental assistance may be provided.

ii. Temporary rental assistance may be authorized, on a case by case basis based on a review of the family's circumstances, for a period of up to 12 calendar months for families who have experienced an actual state of homelessness and the family is able to locate a housing arrangement or can be accommodated in a housing arrangement in lieu of a temporary shelter arrangement. Temporary rental assistance is also available for a period of up to 12 calendar months to EA families temporarily residing in hotels, motels, or shelters and can be accommodated in a more permanent living arrangement.

iii. Issuance of temporary rental assistance is governed by the following:

(1) Temporary rental assistance shall be provided for those housing arrangements which can be considered of a "permanent nature" by the family and/or the community.

(2) The determination of the CWA to authorize and/or continue temporary rental assistance shall be contingent upon the family's cooperation to comply with the eligibility requirement to conduct or continue to conduct permanent housing searches to find an affordable housing arrangement as delineated in (e)1 above.

(3) The amount of the authorized temporary rental assistance shall take into account all shelter costs including basic utilities.

(4) CWAs shall authorize temporary rental assistance of up to \$250.00 per month to supplement an EA family's regular AFDC grant and/or earned income. CWAs shall ensure, however, that the recipient retains 35 percent of the family's monthly income including any SSI benefits or other income received by a family member residing in the household. Amounts in excess of 35 percent may be retained by the family when it is determined that the family has special needs which must be documented in the case record. The portion of the family's regular grant identified as its share of rental costs issued in accordance with N.J.A.C. 10:81-4.5(c) as well as any other available income shall represent the family's contribution towards the monthly shelter costs.

(5) Temporary rental assistance may be continued for EA families who lose ongoing AFDC eligibility due to the receipt of or an increase in earned income only. Such cases shall be evaluated on an individual basis to determine whether or not temporary rental assistance will be continued and at what level. In making such determinations of eligibility, the CWA shall take into consideration the family's total income, resources, expenses and ability to be ultimately self-sufficient. Such rental assistance may be continued only for that period of time necessary to facilitate the family's transition to housing which is affordable without the provision of EA benefits. In no event shall such transitional rental assistance exceed a total of 12 months when computed in combination with the number of months of back rent and EA rental assistance provided prior to AFDC financial ineligibility. For example, if the EA family has received three months of back rent and six months of EA rental assistance, a maximum of three calendar months of transitional rental assistance may be provided, if it is determined necessary to enable the family to maintain permanent housing without further assistance from the CWA.

(A) AFDC cases closed due to AFDC program ineligibility, for example, no eligible child in the home, and so forth, shall not be eligible for continued temporary rental assistance.

(6) Requests for temporary rental assistance in amounts in excess of \$250.00 must be approved by DEA prior to issuance.

6. Counties may be authorized to operate approved EA programs in order to serve specific population target groups such as those families who are dysfunctional as a result of suffering from substance abuse, and/or other debilitating conditions. Such special initiatives will be implemented through the submission and approval of plans designed to address locally suited alternatives to homelessness. Plans shall have prior written approval from DEA before funding can be authorized and shall:

i. Include the goal of reducing the use of motels/hotels for emergency placements as well as facilitate a more humane response to EA families in need of support services beyond simply shelter requirements;

ii. Describe the target group, the number of individuals to be served by the program components, type of services to be provided, cost estimates, cost effectiveness and procedures for monitoring/evaluation of the local initiatives; and

iii. Include a coordinated involvement of non-profit organizations as well as signify local collaborative efforts undertaken through the Human Services Advisory Council (HSAC) and Comprehensive Emergency Assistance System (CEAS).

(g) When an application for EA shelter benefits has been filed, the need for appointment of a protective payee or issuance of AFDC and EA benefits in the form of a restricted or vendor payment (using the criteria established for protective payee status) shall be evaluated in accordance with the criteria set forth at N.J.A.C. 10:81-4.9. At time of application, the family shall be advised that, if a second or subsequent application for EA shelter benefits is approved within a 12 consecutive month period, the CWA shall assign a protective payee before payment is issued or AFDC and EA benefits shall be issued in the form of a restricted or vendor payment. The CWA shall appoint a protective payee or issue AFDC and EA benefits in the form of restricted or vendor payment for a second or subsequent shelter emergency within a 12 month period unless extenuating circumstances, documented in the case record, warrant issuance of unrestricted payment(s) to the family.

[2.](h) Emergency food allowance: When food is not available from any other source, an amount of [\$1.50] **\$4.50** per day per person shall be **authorized and** allowed [for a specified number of days only, and in no event beyond] until such time as other funds become available (for example, next regular assistance payment, support payment, receipt of earnings, **receipt of food stamps**).

[i.](1) When it is necessary to provide temporary living arrangements for a family by utilizing emergency shelter in a hotel, motel, or other facility in which cooking facilities are not available or are determined by the county welfare agency to be inadequate, payments for restaurant meals, not to exceed [\$4.50] **\$7.50** per person per day, [may] shall be **authorized and allowed until such time as other funds become available (for example, next regular assistance payment, support payment, receipt of earnings, receipt of food stamps)**.

[3.](i) Emergency clothing allowance: Funds from the regular assistance grant or funds considered in developing the amount of that grant are not to be considered in computing the amount of payment for replacement of clothing lost or destroyed in the incident or occurrence giving rise to the emergency. When necessary, payments to enable members of the eligible unit to purchase minimum essential clothing for physical health and safety may be granted, not to exceed the amounts stated below:

Recodify existing i.-iv. as 1.-4. (No change in text.)

Recodify 4. through 6. as (j) **through (l)** (No change in text.)

[(e) Provisions concerning victims of domestic violence are:

1. In situations where an applicant or recipient indicates that he or she and his or her children have left their customary residence because of domestic violence, payment of emergency assistance may be authorized under the following conditions:

i. The family is in a state of homelessness due to imminent or demonstrated violence which imperils the health and safety of one or more members of the eligible unit.

ii. For new applicants, this state of homelessness occurred within the 30 calendar days immediately prior to the request for emergency assistance. Temporary arrangements during that period do not negate the existence of a state of homelessness.

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2. Payments of emergency assistance as identified in this subsection may be authorized during the 30 day period immediately following occurrence of the emergency and must comply with the conditions in subsection (b) of this section.

3. Allowances:

i. Temporary shelter: Cost of temporary shelter arrangements may be authorized in an amount not to exceed the most reasonable cost of similar arrangements in a motel or hotel and shall be for a period not to exceed two calendar months, unless the provision of (d)Ivii above apply, following the month in which the state of homelessness first becomes known to the county welfare agency, subject to the provisions of (d)Iiii above.

ii. Food: An allowance for food may be provided in accordance with (d)2 above.

iii. Clothing: When necessary, an allowance for clothing may be provided in accordance with (d)3 above.

iv. Additional needs: When required to establish the family in a new permanent living arrangement, allowances may be authorized for security deposits for rent and utilities, and for home furnishings (see (d)I and 4 above).

4. The regular grant of assistance (including calculated earned income and exempt income) is not to be counted in the determination of eligibility for or the amount of emergency assistance payments authorized for "temporary" emergency arrangements in a shelter or other accommodation.

i. When plans for more permanent living arrangements are made, any funds actually available to the client are to be counted in the determination of emergency assistance payments for shelter and utility deposits.]

[(f)](m) Return of child from foster care provisions are as follows:

1. The CWA may authorize emergency assistance to a family on behalf of a child for the purpose of facilitating the return of a child from foster care placement when the appropriate District Office Manager (DOM) of the Division of Youth and Family Services (DYFS) has approved a specific plan for the return of a child from a foster care placement and all of the following conditions exist:

I-iv. (No change.)

v. Upon return of the child, AFDC eligibility will exist[;].

[vi Emergency assistance for the return of a child from placement shall be granted only when such assistance meets the requirements for Federal matching in accordance with (b) above.]

2. Payments of emergency assistance as identified in this section [may] shall be authorized during the 30 day period immediately prior to the expected return date. If the child has not been returned by the date indicated, or within 10 working days thereafter, such grants as have not been expended shall be returned to the CWA.

3. Allowances:

i. Shelter: Allowances may be made for the cost of change in permanent shelter arrangement including moving costs, security and utility deposits and/or advance rent, when necessary or cost of improvement of existing shelter based on the most reasonable cost available.

(1)-(2) (No change.)

(3) Where an allowance is needed for security and utility deposits, and/or advance rent the CWA shall establish such deposits on behalf of the eligible unit.

(4) (No change.)

ii. Food: An allowance for food may be provided in accordance with [(d)2] (h) above.

iii. Clothing: An allowance for clothing for the child to be returned from foster care placement may be provided in accordance with [(d)3] (i) above.

iv. Home furnishings: An allowance for the child for house furnishings necessary to facilitate the return of the child from foster care placement may be made in accordance with [(d)4](j) above.

4.-6. (No change.)

(n) Whenever a family requiring the provision of EA benefits moves from one county to another, the following provisions shall apply:

1. Where the county of origin (county where the emergency occurred) places the family in out-of-county emergency housing, that county shall retain financial responsibility for shelter payments, regular assistance

payments and issuance of food stamp benefits, as well as other functions of case management until the homelessness is resolved and permanent housing obtained. Such out-of-county placements may occur as a result of emergency housing shortages or prohibitive in-county temporary housing rental costs.

2. When an EA recipient family residing in one county voluntarily takes up residence in another county, without CWA intercession, the new county of residence shall assume responsibility for EA payments, as well as all other case management functions, pursuant to case transfer provisions at N.J.A.C. 10:81-3.27. (Note: If the family has been receiving food stamp benefits, the food stamp case shall be closed in the county of origin and the family advised that they must apply for food stamp benefits in their new county of residence.)

3. When an AFDC recipient family voluntarily moves from one county to another county, with or without CWA intercession, into what is intended to be a permanent housing arrangement and a subsequent change in circumstances results in the need for EA, the new county of residence shall assume responsibility for EA payments, as well as all other case management functions, pursuant to case transfer provisions at N.J.A.C. 10:81-3.27.

4. The family's right to uninterrupted assistance shall not be jeopardized because of interagency disputes concerning case management responsibilities.

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(a)

**DIVISION OF MOTOR VEHICLES
Executive and Administrative Service
Insurance Verification**

**Proposed Repeal: N.J.A.C. 13:18-6.1
Proposed New Rules: N.J.A.C. 13:18-6**

Authorized By: Stratton C. Lee, Jr., Acting Director, Division of Motor Vehicles, after consultation with Samuel F.

Fortunato, Commissioner, Department of Insurance.

Authority: PL. 1990, c.8, §50, N.J.S.A. 39:3-4e, 39:5-30 and 47:1A-1 et seq.

Proposal Number: PRN 1991-173.

Submit written comments by May 1, 1991 to:
Stratton C. Lee, Jr., Acting Director
Division of Motor Vehicles
25 South Montgomery Street, 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The rule proposed for repeal (N.J.A.C. 13:18-6.1, Notification of insurance coverage termination) required insurers to report a motor vehicle liability insurance policy cancellation or termination to the Division of Motor Vehicles within 30 days following the effective date of cancellation. The Division then utilized such information to attempt to identify the owners of uninsured motor vehicles by issuing notices of proposed suspension directing that motorists produce proof of insurance for the vehicle in question or proof that they no longer owned the vehicle. This insurance verification program (also known as the "FS-4" program) had two deficiencies. Given that the "FS-4" program only received cancellation information, many motorists who cancelled their insurance were inconvenienced by having to provide proof of insurance to the Division of Motor Vehicles in person or by mail even though they may have gotten new insurance on a timely basis. The second deficiency was that the program did not identify those motorists who never had insurance in the first place.

The proposed new rules are intended to implement section 50 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (hereinafter referred to as the FAIR Act) by creating an administrative insurance verification program designed to enhance public compliance with this State's compulsory motor vehicle liability insurance laws. To this end, the proposed new rules require insurers to provide to the Director information relating to the cancellation and issuance of personal private passenger automobile insurance policies on a monthly basis beginning on

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July 15, 1991. The information provided will be policy cancellation and issuance activity occurring on and after February 1, 1991. The proposed new rules also require insurers to provide to the Director on a semi-annual basis information concerning all current personal private passenger automobile policies issued by them. Furthermore, the new rules direct insurers to develop or modify their existing information systems so that they may provide information relating to the termination of automobile insurance policies for reasons other than non-payment of premium, such as cancellation or nonrenewal, as the Director may require.

The Division perceives this method of insurance verification to be far superior to the discarded FS-4 insurance verification program because, under the new program, the Division will be receiving and comparing cancellation, new and existing policy activity data. As a result, the Division will only contact those individuals which it has a reasonable basis to believe do not have the required insurance coverage.

The following is a section by section analysis of the proposed new rules: N.J.A.C. 13:18-6.1, Definitions, defines various terms which are used in the proposed new rules.

N.J.A.C. 13:18-6.2, Reports of personal private passenger automobile insurance policy information to the Director of the Division of Motor Vehicles, sets forth the various types of reports insurers are required to make to the Director so that the Division's insurance verification program can, to the greatest extent possible, identify those motorists who are not in compliance with the compulsory motor vehicle liability insurance laws of this State. This section specifies in detail the information that must be submitted in the various reports. It also provides for the submission of reports not later than June 15, 1991 so that the Division may test and evaluate the insurance verification program prior to its implementation.

N.J.A.C. 13:18-6.3, Registration expiration, sets forth that for purposes of section 50(c)(1) of the FAIR Act and the proposed new rules, a vehicle registration certificate shall be deemed to be "expired" only if such certificate has not been renewed and either the expired registration certificate and plates for said vehicle have been surrendered to the Division of Motor Vehicles or ownership of said vehicle has been transferred to a third party.

N.J.A.C. 13:18-6.4, Suspension of vehicle registration; exceptions; surrender of registration certificate and plates; expiration of registration; removal of vehicle from United States and Canada; short term lapse in coverage not exceeding 15 days, sets forth the circumstances pursuant to which the Division shall suspend the registration of a vehicle pursuant to section 50(c) of the FAIR Act. The proposed new rule also specifies those instances in which the Division shall not suspend a vehicle registration pursuant to section 50(c) of the FAIR Act, and sets forth that the Director may withhold the suspension of a vehicle registration if the period of time in which the vehicle was both registered and uninsured does not exceed 15 days.

N.J.A.C. 13:18-6.5, Proof of insurance; submission of fictitious proof, specifies the various types of proof of motor vehicle liability insurance coverage acceptable to the Director for purposes of insurance verification pursuant to section 50 of the FAIR Act. The proposed new rule also sets forth that any person who submits or causes to be submitted to the Division any fictitious, falsely made, forged, altered or counterfeited proof of motor vehicle liability insurance coverage pursuant to N.J.A.C. 13:18-6 may be subject, upon notice and an opportunity to be heard, to a suspension of his or her driving privileges for a period not to exceed two years.

N.J.A.C. 13:18-6.6, Existence of "allowable circumstances"; avoidance of suspension; proof, specifies the various circumstances and proof thereof deemed by the Director to constitute sufficient good cause for purposes of section 50 of the FAIR Act to avoid the suspension of a vehicle registration after notice of cancellation of motor vehicle liability insurance has been received by the Division.

N.J.A.C. 13:18-6.7, Removal of vehicle from United States and Canada; proof thereof, pertains to the statement to be filed with the Director by a vehicle owner for purposes of section 50(c)(2) of the FAIR Act prior to the date of cancellation of motor vehicle insurance coverage for a vehicle which has been or will be removed from the United States and the Dominion of Canada and the proof which must be included therewith.

N.J.A.C. 13:18-6.8, Rescission of suspension; requirements; limitation; calculation of time, sets forth the circumstances in which the Director may rescind an order of suspension of a vehicle registration or drivers' license pursuant to subsections (d) and (g) of section 50 of the FAIR Act and specifies the requirements which must be met by a person seeking such rescission.

N.J.A.C. 13:18-6.9, Return of surrendered registration plates to registrant, specifies the procedures to be followed and fees to be paid by a registrant seeking a registration certificate and registration plates to replace the certificate and plates previously surrendered to the Division pursuant to section 50 of the FAIR Act.

N.J.A.C. 13:18-6.10, Confidentiality of information, provides that the information contained in the reports submitted by insurers pursuant to N.J.A.C. 13:18-6 is confidential and such reports shall not be subject to public inspection or copying pursuant to the "Right to Know Law," N.J.S.A. 47:1A-1 et seq. Confidentiality is required because the information at issue involves matters relating to the non-payment of private financial obligations which are not matters of public record.

N.J.A.C. 13:18-6.11, Operative date, sets forth that subsections (a) through (g) of section 50 of the FAIR Act shall become operative as of the effective date of the adoption of the proposed new rules by the Division of Motor Vehicles, in accordance with P.L. 1990, c.8, §103.

Social Impact

The proposed new rules have a beneficial social impact. The rules implement the public policy of this State as expressed by the FAIR Act. One of the primary objectives of the FAIR Act is to ensure that owners of automobiles which are registered or principally garaged in New Jersey maintain automobile liability insurance coverage. To this end, the proposed new rules provide an administrative procedure to identify those owners whose insurance coverage has been cancelled because of non-payment of premium or those owners who have never had insurance coverage and to institute suspension action against vehicle registrations and driving privileges when an owner fails to provide acceptable proof of insurance or prove the existence of special circumstances which the Director deems sufficient justification to withhold suspension activity.

It is anticipated that the new rules will assist in reducing the number of uninsured motor vehicles in New Jersey. The reduced number of uninsured vehicles should lower the cost of automobile insurance to the general public. The new rules will have no social impact upon the Division of Motor Vehicles.

Economic Impact

The proposed new rules impose an economic impact on the Division of Motor Vehicles in that DMV is responsible for the implementation and administration of an insurance verification program which satisfies the requirements of section 50 of the FAIR Act. It is estimated that the insurance verification program established by the proposed new rules will result in a total cost to the Division of Motor Vehicles of approximately \$5.4 million per year. The Division anticipates funding this new program as provided by law.

Insurers required to submit information pursuant to the proposed new rules will incur costs in connection with assimilating, preparing and supplying the required insurance information. These costs will vary greatly from company to company depending on the nature of their existing information systems and the extent of programming changes that are necessitated to comply with the new rules. For this reason, the Division cannot quantify with any degree of certitude the cost that will be incurred by an individual insurance company.

Motorists whose driving privileges are suspended by the Division pursuant to section 50 of the FAIR Act and the proposed new rules for failure to maintain liability insurance on a motor vehicle are subject to payment of a \$30.00 license restoration fee to the Division pursuant to N.J.S.A. 39:3-10a and N.J.A.C. 13:21-9.3.

Motorists may seek the rescission of an order of suspension of a vehicle registration or drivers' license pursuant to subsections (d) and (g) of section 50 of the FAIR Act and N.J.A.C. 13:18-6.8 as set forth in the proposal. Such rescission requires, among other things, the payment of a civil penalty in the amount of \$4.00 for each day up to 90 days for which motor vehicle liability insurance was not in effect after cancellation for nonpayment of premium. It must be noted that motorists are not obligated to seek such a rescission of suspension, and those choosing not to request such a rescission will not incur the above mentioned cost.

Motorists who have surrendered registration plates to the Division pursuant to section 50 of the FAIR Act and who thereafter acquire motor vehicle liability insurance coverage and furnish proof of same to the Director will incur a fee in connection with obtaining a valid set of replacement plates for those which had been surrendered. Such motorists will be required by the proposal to pay a fee of \$3.00 to the Division for the set of replacement plates. Such motorists seeking the return of surrendered registration plates which contain the same combination of letters and numbers as had been contained on the surrendered plates must

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first pay the \$3.00 fee specified above for replacement plates, to be followed by the payment to the Division of a \$10.00 fee for the set of special plates.

Regulatory Flexibility Analysis

The proposed new rules will affect insurers who qualify as "small businesses" as that term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Insurers will be required to submit on a monthly basis information relating to the cancellation of insurance policies because of nonpayment of premium and information concerning the issuance of new policies. Additionally, insurers will be required to submit semi-annually information relating to all current insurance policies issued by them. Insurers may also have to develop or modify existing information systems so as to comply with technical specifications prescribed by the Director. Approximately 139 insurance companies presently write automobile insurance policies in this State. The Division of Motor Vehicles estimates that less than five of those companies qualify as "small businesses". The initial capital costs and annual compliance costs to small businesses is limited to those costs incidental to making data programming changes that are necessary for the insurers to provide data in the format prescribed by the Director. These costs will vary greatly depending on the present capability of the information systems maintained by the insurance companies. For this reason, the Division cannot quantify with any degree of certitude the costs that will be incurred by an individual company. The Division anticipates that the new rules will not require small businesses to engage additional professional services to comply with it. Virtually every insurance company uses modern data processing techniques in the course of daily business. Furthermore, insurers already possess most of the information required to be submitted pursuant to the proposal since such information is necessarily kept as part of the course of business of insuring motor vehicles.

Since one of the statutes which provides authority for the Division of Motor Vehicles' proposed new rules, N.J.S.A. 39:3-4e, empowers the Division to promulgate regulations "requiring insurers to provide all information with respect to the issuance, renewal, cancellation, nonrenewal and termination of insurance as the director may deem necessary to assist the Division in enforcement of the provisions of this Title relating to insurance coverage for motor vehicles," and since neither that statute nor the FAIR Act provides for a small business exemption, insurers qualifying as small businesses are not exempted from the reporting, compliance and other requirements imposed by the proposed new rules. The Division's purpose in proposing these new rules is to implement section 50 of the FAIR Act and to enhance public compliance with this State's compulsory motor vehicle liability insurance laws by establishing an insurance verification program which depends upon information submitted by insurance companies on a monthly and semi-annual basis as to all passenger motor vehicles for which motor vehicle liability insurance has been cancelled, motor vehicles for which new policies have been issued and motor vehicles that have policies in effect. The Division would not be able to implement the statutory program if it is not apprised of this information by all insurers, since it would only have a partial list of uninsured passenger motor vehicles and would therefore be unable to determine the universe of passenger motor vehicles appearing to be without insurance coverage. Failure to include all insurance companies would create problems of proof for the Division in enforcement proceedings and would inconvenience and potentially jeopardize the registration and driving privileges of motorists who comply with the law by buying insurance from such nonreporting companies. Accordingly, since an exemption of insurers which qualify as small businesses from the proposed new rules would defeat the very purpose of the proposal (that is, to enhance public compliance with this State's compulsory motor vehicle liability insurance laws and reduce the cost of auto insurance to the public), a small business exemption from the reporting, compliance and other requirements set forth in the rules is not consistent with the statutory mandate.

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

SUBCHAPTER 6. INSURANCE VERIFICATION**[13:18-6.1 Notification of insurance coverage termination**

(a) An insurer shall submit notice of termination information to the Division of Motor Vehicles whenever a motor vehicle liability insurance policy is cancelled, by either the insurer or the named insured, or lapses due to nonpayment.

(b) An insurer shall not submit notice of termination information to the Division of Motor Vehicles if the policy is not renewed. An insurer shall not submit notice of termination information to the Division of Motor Vehicles when a vehicle is added to or dropped from a policy, or when the policy holder transfers his insurance to another state.

(c) An insurer shall supply the following notice of termination information to the Division of Motor Vehicles:

1. Commencing with termination information submitted on and after July 1, 1985, the complete driver license number of the named insured (not required on termination notices pertaining to commercial vehicles for which the named insured is a company or corporation and no driver license number is available);

2. The full name and address of the named insured;

3. The insurance company name and code number;

4. The insurance policy number;

5. The insurance policy effective date and, commencing with termination information submitted on and after July 1, 1985, the policy expiration date;

6. The insurance policy termination date;

7. The vehicle identification number, year and make of the vehicle for which insurance coverage has been terminated;

8. Any other information deemed necessary and appropriate by the Director of the Division of Motor Vehicles.

(d) Commencing with termination information submitted on and after July 1, 1985, an insurer shall submit notice of termination information to the Division of Motor Vehicles on computer magnetic tape(s), said information to be in such tape record format as the Director of the Division of Motor Vehicles shall prescribe.

(e) Notice of termination information shall be submitted to the Division of Motor Vehicles within 30 days following the effective date of a policy cancellation.]

13:18-6.1 Definitions

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

"Act" means the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Effective date of policy cancellation" means a date established by the insurer which is not earlier than 10 days prior to the last full day of which premium received by the insurer prior to the date of preparation of the cancellation notice would pay for coverage on a pro rata basis. The premium applicable to the coverage provided by the policy and the premium received by the company at or prior to the time cancellation notice was prepared shall be the premium used for the calculation and determination of the effective date.

"FAIR Act" means the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8.

"Insurer" means an entity authorized or admitted to transact the business of personal private passenger automobile insurance in New Jersey.

"Newly issued policy" means any contract or endorsement of personal private passenger automobile insurance that provides liability coverage for an automobile not previously covered by a contract of liability insurance issued by the insurer, or that was previously covered by a policy issued by the insurer which was cancelled for nonpayment of premium.

"Nonpayment of premium" means failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

"Personal private passenger automobile insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2 issued pursuant to a personal lines rating system filed and

approved in accordance with N.J.S.A. 17:29A-1 et seq., but excluding personal excess liability insurance.

13:18-6.2 Reports of personal private passenger automobile insurance policy information to the Director of the Division of Motor Vehicles

(a) Personal private passenger automobile insurers shall provide the Director, or his or her designee, information by vehicle identification number (VIN) concerning the cancellation and issuance of personal private passenger automobile insurance policies on and after February 1, 1991. This information shall be provided on a monthly basis in the manner and form as set forth in Appendices A and B, which are incorporated herein by reference. This information shall be provided in accordance with a schedule of dates set by the Director.

(b) Insurers shall report by magnetic computer tape or cartridge to the Director on a monthly basis beginning July 15, 1991, the following information concerning policies cancelled for nonpayment of premium and newly issued policies. These reports shall be provided to the Director in such format and at such times as he or she shall prescribe. The format for said reports is set forth in Appendices A and B, which are incorporated herein by reference.

1. Vehicle identification number;
2. Driver license number (of owner, if available; if not available, of the primary driver);
3. Automobile make, year and model;
4. Insurance company code;
5. Address of insured including street, city, state and zip code;
6. Transaction type (either cancellation or new policy);
7. Policy effective date;
8. Effective date of policy cancellation; and
9. The date on which the tape or cartridge containing the information was prepared.

(c) Insurers shall report the cancellation of personal private passenger automobile liability coverage for nonpayment of premium after the effective date of the cancellation of a policy.

(d) Insurers shall make reasonable provision to exclude from reports those policies cancelled for nonpayment of premium when the insurer knows that the reason for nonpayment of premium is the death of the insured, the permanent relocation of the insured outside of the State of New Jersey, the unrecovered theft of the motor vehicle, or the repossession of the motor vehicle by a lienholder.

(e) Insurers shall also report by magnetic computer tape or cartridge to the Director every six months, or at such other interval as may be specified by the Director, the following information concerning all of their current personal private passenger automobile insurance policies. These reports shall be provided to the Director in such format and at such times as he or she shall prescribe. The format for said reports is set forth in Appendices C and D which are incorporated herein by reference.

1. Vehicle identification number;
2. Driver license number (of owner, if available; if not available, of the primary driver);
3. Automobile make, year and model;
4. Insurance company code;
5. Policy effective date; and
6. The date on which the tape or cartridge containing the information was prepared.

(f) Insurers shall report to the Director the termination of policies of motor vehicle liability insurance for reasons other than nonpayment of premium, including any cancellation or nonrenewal, as may be required by the Director.

(g) In addition to the other information that must be submitted under these rules, insurers shall provide the Director, or his or her designee, a report of information concerning policies cancelled for nonpayment of premium for a month designated by the Director and a report of information concerning new policies issued for two consecutive months designated by the Director. The reports required to be submitted pursuant to this subsection shall be provided not later than June 15, 1991, and shall be utilized by the Division to test and evaluate the insurance verification program prior to its implementation.

(h) In order to ensure that reports submitted are compatible with the Division's information system, insurers shall transmit reports of infor-

mation required by the Director pursuant to this section in accordance with all of the Division's technical specifications including, but not limited to, data set name, internal and external labeling, data block size, codes, tape format and layout, and other physical characteristics of tapes or cartridges.

13:18-6.3 Registration expiration

For purposes of section 50(c)(1) of the FAIR Act and this subchapter, a vehicle registration certificate shall be deemed to be "expired" only if such certificate has not been renewed and either the expired registration certificate and registration plates for said vehicle have been surrendered to the Division of Motor Vehicles or ownership of said vehicle has been transferred to a third party.

13:18-6.4 Suspension of vehicle registration; exceptions; surrender of registration certificate and plates; expiration of registration; removal of vehicle from United States and Canada; short-term lapse in coverage not exceeding 15 days

(a) Except as otherwise provided in this section, the Division shall suspend the registration of a vehicle pursuant to section 50(c) of the FAIR Act if the owner has not filed with the Division and the Division has not received proof of motor vehicle liability insurance in a form specified in N.J.A.C. 13:18-6.5 or the owner has not presented proof of allowable circumstances as specified in N.J.A.C. 13:18-6.6.

(b) Proof of motor vehicle liability insurance or allowable circumstances shall be filed with and received by the Division within 30 days of the Division's notice to the owner issued in accordance with section 50(b) of the FAIR Act.

(c) The Division shall not suspend a vehicle registration pursuant to section 50(c) of the FAIR Act if the owner has surrendered or caused to be surrendered to the Director, or his or her designee, the registration certificate (including any duplicate registration certificate and family registration certificate), and registration plates issued thereto prior to the time the cancellation of insurance became effective.

(d) The Division shall not suspend a vehicle registration pursuant to section 50(c) of the FAIR Act if the registration of the vehicle has expired and has not been renewed prior to the time the cancellation of insurance became effective and the owner of the vehicle has surrendered or caused to be surrendered to the Director, or his or her designee, the expired registration certificate and registration plates for the vehicle prior to the time the cancellation of insurance became effective.

(e) The Division shall not suspend a vehicle registration pursuant to section 50(c) of the FAIR Act if the vehicle has been or will be removed from the United States in North America and the Dominion of Canada for the purpose of international traffic prior to the time the cancellation of insurance became effective. The owner of the vehicle must satisfy the following requirements:

1. File or cause to be filed with the Director, or his or her designee, a formal statement informing the Director that the vehicle has been or will be removed from the United States in North America and the Dominion of Canada for the purpose of international traffic;
2. File or cause to be filed with the Director, or his or her designee, proof in a form specified in N.J.A.C. 13:18-6.7 that the vehicle has been or will be removed from the United States in North America and the Dominion of Canada for the purpose of international traffic;
3. Agree to immediately notify the Director upon the return of the vehicle to the United States in North America or the Dominion of Canada; and
4. Agree to file or cause to be filed with the Director, or his or her designee, proof of motor vehicle liability insurance in a form specified in N.J.A.C. 13:18-6.5 when the vehicle is returned to the United States in North America or the Dominion of Canada.

(f) The Director may withhold the suspension of a vehicle registration pursuant to section 50(c) of the FAIR Act if the period of time during which the vehicle was both registered and uninsured does not exceed 15 days. For purposes of this subsection, the 15 day period shall commence on the date that the cancellation of insurance becomes effective. The owner of a vehicle must file or cause to be filed with the Director, or his or her designee, proof of motor vehicle liability insurance in a form specified in N.J.A.C. 13:18-6.5 which was effective within 15 days from the date of cancellation of motor vehicle liability insurance coverage.

PROPOSALS

Interested Persons see Inside Front Cover

LAW AND PUBLIC SAFETY

13:18-6.5 Proof of insurance; submission of fictitious proof

(a) For purposes of section 50 of the FAIR Act, proof of motor vehicle liability insurance coverage shall consist of the original or copy of the following:

1. A valid permanent insurance identification card issued in accordance with N.J.A.C. 11:3-6.2;
2. A valid temporary insurance identification card issued in accordance with N.J.A.C. 11:3-6.3;
3. The declaration page of an insurance policy;
4. An insurance policy binder;
5. A notice of policy reinstatement issued by the insurer which notified the Division of cancellation of motor vehicle liability insurance coverage pursuant to section 50(b) of the FAIR Act;
6. A certificate of self-insurance issued by the Department of Insurance pursuant to N.J.S.A. 39:6-52; or
7. Any other proof deemed acceptable by the Director, including post-audit verification by confirmation from the new policy data received from the insurance company.

(b) An owner may present proof of motor vehicle liability insurance coverage to the Division by mail or in-person.

(c) Any person who submits or causes to be submitted to the Division any falsely made, forged, altered or counterfeited proof of motor vehicle liability insurance coverage pursuant to this subchapter may be subject, upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19, to a suspension of his or her driving privileges for a period not to exceed two years.

13:18-6.6 Existence of "allowable circumstances"; avoidance of suspension; proof

(a) For purposes of section 50 of the FAIR Act, the Director deems the existence of the following circumstances sufficient good cause to avoid the suspension of a vehicle registration after notice of cancellation of motor vehicle liability insurance has been received by the Division:

1. The owner has transferred ownership of the vehicle to a third party as evidenced by the owner's surrender to the Division of the registration certificate and registration plates for the vehicle pursuant to N.J.A.C. 13:21-5.10 or the Division's issuance of a transfer registration to another vehicle for the unexpired portion of the registration period of the original vehicle pursuant to N.J.S.A. 39:3-30;
2. The vehicle is inoperable or not in use. The owner must submit to the Division a notarized statement setting forth a description of the vehicle, including the vehicle identification number and registration plate number issued therefore, and the condition of the vehicle which makes it inoperable and/or setting forth the reason why the vehicle is not being used by the owner. The owner must also surrender to the Division the registration certificate and registration plates for the vehicle;
3. The owner has established domicile in a State other than New Jersey as evidenced by the issuance of a certificate of ownership or registration certificate and registration plates for the vehicle by the State of domicile and the surrender of the New Jersey registration certificate and registration plates for the vehicle to the Division;
4. The owner has qualified as a self-insurer as evidenced by a certificate of self-insurance issued by the Department of Insurance pursuant to N.J.S.A. 39:6-52; or
5. The owner has removed or will remove the vehicle from the United States in North America and the Dominion of Canada for the purpose of international traffic as evidenced by his or her submission of the statement specified in N.J.A.C. 13:18-6.7.

13:18-6.7 Removal of vehicle from United States and Canada; proof thereof

(a) For purposes of section 50(c)(2) of the FAIR Act, the statement to be filed with the Director by a vehicle owner prior to the date of cancellation of motor vehicle insurance coverage for a vehicle which has been or will be removed from the United States in North America and the Dominion of Canada for the purpose of international traffic shall include the following proof that said vehicle has been or will be so removed:

1. A shipping document issued to the vehicle owner by the United States Customs Service prior to the date of motor vehicle insurance

coverage cancellation for the vehicle which indicates that the vehicle has been or will be removed from the United States in North America and the Dominion of Canada;

2. A bill of lading and receipt issued to the vehicle owner by the common carrier transporting the vehicle which confirms that said vehicle has been or will be removed from the United States in North America and the Dominion of Canada; or

3. Any other similar proof deemed acceptable by the Director.

13:18-6.8 Rescission of suspension; requirements; limitation; calculation of time

(a) The Director, in his or her discretion, may rescind an order of suspension of a vehicle registration and an order of suspension of a driver's license pursuant to subsections (d) and (g) of section 50 of the FAIR Act if the owner of the vehicle satisfies the following requirements:

1. Pays or causes to be paid to the Commissioner of Insurance, or the Director as his or her designee, a civil penalty in the amount of \$4.00 for each day up to 90 days for which motor vehicle liability insurance was not in effect after cancellation for nonpayment of premium; and either

- i. Surrenders or causes to be surrendered to the Director, or his or her designee, the registration certificate (including any duplicate registration certificate and family registration certificate) and registration plates for the vehicle not more than 90 days from the date of cancellation of motor vehicle liability insurance coverage; or

- ii. Files or causes to be filed with the Director, or his or her designee, proof of motor vehicle liability insurance in a form specified in N.J.A.C. 13:18-6.5 which was effective not more than 90 days from the date of cancellation of motor vehicle liability insurance coverage and which remains in effect.

(b) The Director may rescind a suspension of a vehicle registration or a driver's license pursuant to subsections (d) and (g) of section 50 of the FAIR Act only once during any 36 month period.

(c) For purposes of calculating the 36 month period with regard to rescission of a vehicle registration suspension or driver's license suspension pursuant to subsections (d) and (g) of section 50 of the FAIR Act, said 36 month period shall be calculated by referring to the respective dates of vehicle registration suspensions imposed upon a registrant pursuant to section 50 of the FAIR Act.

(d) For purposes of the submission of proof of motor vehicle liability insurance coverage to the Director by a registrant seeking rescission of a vehicle registration or driver's license suspension pursuant to subsections (d) and (g) of section 50 of the FAIR Act, such proof must be submitted to the Director no later than 180 days after the effective date of a vehicle registration suspension imposed upon the registrant pursuant to the FAIR Act unless the registrant is unable to submit such proof within said period of time due to an act of God or because of the registrant's absence from the State.

13:18-6.9 Return of surrendered registration plates to registrant

(a) In those instances in which a registrant has surrendered registration plates to the Division pursuant to section 50 of the FAIR Act and thereafter acquires motor vehicle liability insurance and furnishes proof of same to the Director as required by section 50 of the FAIR Act and this subchapter, the Division shall return to the registrant a valid set of replacement registration plates upon payment to the Division of a fee of \$3.00 for the set of replacement plates.

(b) If a registrant seeking the return of surrendered registration plates in accordance with subsection (a) of this section desires plates which contain the same combination of letters and numbers as had been contained on the surrendered plates, he or she shall first be issued a set of replacement plates at a fee of \$3.00 as set forth in (a) above. Upon receipt of the replacement registration plates, the registrant may apply to the Division for plates which contain the same combination of letters and numbers as had been contained on the surrendered plates. Such "special identifying marks", unless already issued to another registrant or unless such issuance is prohibited by N.J.S.A. 39:3-33.5, shall be issued to the registrant upon payment to the Division of a fee of \$10.00 for the set of special registration plates.

13:18-6.10 Confidentiality of information

All information contained in the reports submitted by insurers pursuant to the requirements of this subchapter shall be confidential and such reports shall not be subject to public inspection or copying pursuant to the "Right to Know Law," N.J.S.A. 47:1A-1 et seq.

13:18-6.11 Operative date

Subsections (a) through (g) of section 50 of the FAIR Act shall become operative as of the effective date of the adoption of this subchapter by the Division, in accordance with P.L. 1990, c.8, §103.

APPENDIX A

Insurance Verification Program

INSURANCE FILING RECORD—ONE (N.J.A.C. 13:18-6.2(b))

| ITEM NO. | FIELD POSITION | FIELD SIZE | ELEM. CHAR. | JUST | REQ. OPT. | FIELD NAME |
|----------|----------------|------------|-------------|------|-----------|-------------------------------|
| 1. | 1-19 | 19 | A/N | LJ | R | Vehicle-Identification-Number |
| 2. | 20-34 | 15 | A/N | NA | R | Driver-License-Number |
| 3. | 35-39 | 5 | A/N | LJ | R | Make |
| 4. | 40-43 | 4 | N | NA | R | Year |
| 5. | 44-48 | 5 | A/N | LJ | O | Model |
| 6. | 49-52 | 4 | N | NA | R | Insurance-Company-Code |
| 7. | 53-82 | 30 | A/N | LJ | R | Policy-Owner-Street-Address |
| 8. | 83-102 | 20 | A | LJ | R | Policy-Owner-City |
| 9. | 103-104 | 2 | A | NA | R | Policy-Owner-State |
| 10. | 105-113 | 9 | N | NA | R | Policy-Owner-Zip-Code |
| 11. | 114 | 1 | A | NA | R | Transaction-Type |
| 12. | 115-122 | 8 | N | NA | R | Policy-Effective-Date |
| 13. | 123-130 | 8 | N | NA | R | Policy-Cancel-Date |
| 14. | 131-138 | 8 | N | NA | R | Date-Stamp |
| 15. | 139-200 | 62 | A | NA | O | Filler |

Legend:

| | | |
|--------------------|----------------------|------------------|
| <u>Elem. Char.</u> | <u>Just</u> | <u>Reg. Opt.</u> |
| A/N = alphanumeric | LJ = left justified | R = required |
| A = alpha | RJ = right justified | O = optional |
| N = numeric | NA = not applicable | |

APPENDIX B

INSURANCE FILING RECORD—ONE (N.J.A.C. 13:18-6.2(b))

FIELD DESCRIPTION

| <u>NO. FIELD NAME</u> | <u>DESCRIPTION</u> |
|----------------------------------|--|
| 1. Vehicle-Identification-Number | If vehicle year 1981 or newer, must have 17 positions. |
| 2. Driver-License-Number | Owner of vehicle (preferred) or primary driver's driver license number. No spaces. |
| 3. Make | National Crime Information Center (NCIC) vehicle make code. |
| 4. Year | Four digit vehicle model year. |
| 5. Model | National Crime Information Center (NCIC) vehicle model code. Space fill if not available. |
| 6. Insurance-Company-Code | MVR code assigned by New Jersey Motor Vehicle Services for driver abstracts. |
| 7. Policy-Owner-Street-Address | Street address of policy holder. |
| 8. Policy-Owner-City | City of policy holder. |
| 9. Policy-Owner-State | State of policy holder. |
| 10. Policy-Owner-Zip-Code | Zip code of policy holder. Five digits required, nine digits if available. Space fill last four digits if nine digits are not available. |
| 11. Transaction-Type | C = Cancellation N = New Policy |
| 12. Policy-Effective-Date | Required if Transaction-Type = N, otherwise leave blank. Format is MMDDYYYY. |
| 13. Policy-Cancel-Date | Required if Transaction-Type = C, otherwise leave blank. Format is MMDDYYYY. |
| 14. Date-Stamp | Format is MMDDYYYY. |
| 15. Filler | Spaces. |

APPENDIX C

Insurance Verification Program

INSURANCE FILING RECORD—TWO (N.J.A.C. 13:18-6.2(e))

| ITEM NO. | FIELD POSITION | FIELD SIZE | ELEM. CHAR. | JUST | REQ. OPT. | FIELD NAME |
|----------|----------------|------------|-------------|------|-----------|-------------------------------|
| 1. | 1-19 | 19 | A/N | LJ | R | Vehicle-Identification-Number |
| 2. | 20-34 | 15 | A/N | NA | R | Driver-License-Number |
| 3. | 35-39 | 5 | A/N | LJ | R | Make |
| 4. | 40-43 | 4 | N | NA | R | Year |
| 5. | 44-48 | 5 | A/N | LJ | O | Model |
| 6. | 49-52 | 4 | N | NA | R | Insurance-Company-Code |
| 7. | 53-60 | 8 | N | NA | R | Policy-Effective-Date |
| 8. | 61-68 | 8 | N | NA | R | Date-Stamp |
| 9. | 69-80 | 12 | A | NA | O | Filler |

Legend:

| | | | | | |
|--------------------|----------------|-------------|-------------------|------------------|------------|
| <u>Elem. Char.</u> | | <u>Just</u> | | <u>Reg. Opt.</u> | |
| A/N | = alphanumeric | LJ | = left justified | R | = required |
| A | = alpha | RJ | = right justified | O | = optional |
| N | = numeric | NA | = not applicable | | |

APPENDIX D

INSURANCE FILING RECORD—TWO (N.J.A.C. 13:18-6.2(e))

FIELD DESCRIPTION

| <u>NO. FIELD NAME</u> | <u>DESCRIPTION</u> |
|----------------------------------|---|
| 1. Vehicle-Identification-Number | If vehicle year 1981 or newer, must have 17 positions. |
| 2. Driver-License-Number | Owner of vehicle (preferred) or primary driver's driver license number. No spaces. |
| 3. Make | National Crime Information Center (NCIC) vehicle make code. |
| 4. Year | Four digit vehicle model year. |
| 5. Model | National Crime Information Center (NCIC) vehicle model code. Space fill if not available. |
| 6. Insurance-Company-Code | MVR code assigned by New Jersey Motor Vehicle Services for driver abstracts. |
| 7. Policy-Effective-Date | Format is MMDDYYYY. |
| 8. Date-Stamp | Format is MMDDYYYY. |
| 9. Filler | Spaces. |

(a)

BOARD OF ELECTRICAL CONTRACTORS

Exempt work

Proposed Amendment: N.J.A.C. 13:31-1.4

Authorized By: Board of Electrical Contractors, John Q. Larkin, Chairman.

Authority: N.J.S.A. 45:5A-6.

Proposal Number: PRN 1991-166.

Submit written comments by May 1, 1991 to:
Christine DeGregorio, Executive Director
Board of Electrical Contractors
124 Halsey Street
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment retitles N.J.A.C. 13:31-1.4 as "Exempt work" (formerly named "Minor repair work") and adds a subsection which defines the term "qualified journeyman electrician" within the meaning of N.J.S.A. 45:5A-18(k). The Board has within its authority the ability to define this exemption and does so to provide criteria for firms or corporations who wish to avail themselves of this exemption, which has existed for over 20 years.

As stated in the amendment, a "qualified journeyman electrician" is one who has acquired 8,000 hours of practical experience (that is, working with tools in the installation, alteration or repair of wiring for electric light, heat or power) and a minimum of 576 classroom hours of related instruction. A firm or corporation employing a licensee to do electric work will also qualify for the exemption. This definition incorporates the common usage and understanding of the term "qualified journeyman electrician," which means someone who has significant training and on the job experience, comparable to that acquired under union auspices and who is not simply an "apprentice."

Social Impact

The proposed amendment will affect any firm or corporation doing electrical work, under the exemption, on its own premises. The amendment specifically sets forth qualifications which must be met by employees who perform exempt "in house" electrical installations.

The proposed definition will assist the Department of Community Affairs ("DCA"), which raised the question of the definition of the term, in determining when permit work must be done by an independent licensed contractor and when the employees of a firm or corporation may do the work themselves.

Future enforcement actions, based upon violations of this provision, will protect the public's health, safety and welfare.

Economic Impact

The proposed amendment will impact on firms or corporations currently engaging employees who are not "qualified journeyman electricians"

as specified by the definition set forth. As a result, these entities will be required to hire a qualified worker when doing their own electrical installations, or to contract with independent licensed contractors.

Due to the specificity of the definition of a "qualified journeyman electrician," Department of Community Affairs permit determinations and Board enforcement actions, which ultimately protect the public, will be pursued with increased certainty and uniformity.

Regulatory Flexibility Analysis

This proposed amendment will affect a large number of small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is impossible to state with precision how many will be so affected, since the number of firms which have their own "in house" electricians cannot be determined, nor whether electricians who can be described as "qualified journeyman electricians" are utilized by those companies. Nevertheless, because the amendment is based upon considerations of safety and public welfare, the amended rule must be uniformly applicable to all firms desiring to avail themselves of this exemption.

There are no reporting or recordkeeping requirements, nor are there costs for initial capital investment. However, the firm or corporation will have to ascertain the experience and training of employees currently performing "in house" electrical installation tasks in order to determine their status. Making this determination will obviously involve some cost for managerial time, but initial and annual costs of this type of personnel investigation are impossible to compute, lacking the numbers of affected employees.

Firms or corporations which have employees performing "in house" electrical installations who do not meet the criteria set forth in the definition will be required to hire a qualified employee or to contract with independent licensed electricians to perform the work. This may also in fact result in some higher costs; however, the Board is unable to mitigate this effect upon small businesses since to do so would lessen the proper safety standards which are the impetus for the proposal. Any adverse economic impact on small business is justified, in the Board's opinion, by the maintenance of high standards of professional preparation in electrical work. Such standards are necessary for public safety; they protect lives as well as property.

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

13:31-1.4 [Minor repair work] **Exempt work**

(a) Minor repair work within the meaning of N.J.S.A. 45:5A-18(a) shall include, without limitation, the replacement of lamps and fuses operating at less than 150 volts to ground with a like or similar item.

(b) The term "qualified journeyman electrician" as used in N.J.S.A. 45:5A-18(k) shall mean and include any person who is either:

1. The holder of a current valid license to practice electrical contracting issued by the Board; or
2. A person who has acquired 8,000 hours of practical experience working with tools in the installation, alteration or repair of wiring for electric light, heat or power and who has had a minimum of 576 classroom hours of related instruction. The requirement of practical experience shall not include time spent in supervising, engineering, estimating and other managerial tasks.

(a)

BOARD OF PSYCHOLOGICAL EXAMINERS

Fees

Proposed Amendment: N.J.A.C. 13:42-1.2

Authorized By: Board of Psychological Examiners, Jeannette V. Balber, Executive Director.

Authority: N.J.S.A. 45:1-3.2 and 45:14B-13.

Proposal Number: PRN 1991-170.

Submit written comments by May 1, 1991 to:

Jeannette Balber, Executive Director
Board of Psychological Examiners
P.O. Box 45017
Newark, NJ 07102

The agency proposal follows:

Summary

In order to cover increased investigative, examination and program costs associated with the administration of the New Jersey Board of Psychological Examiners, the Board is proposing to increase the fees listed in its current fee schedule, N.J.A.C. 13:42-1.2. The Board is also proposing to pro-rate the fee for initial licensure on an annual basis. With regard to temporary permits, the Board is proposing a new fee, in addition to the temporary permit fee, of \$25.00 for each additional supervisor; the additional \$25.00 fee is necessary to cover the increased administrative costs involved when a candidate chooses to have more than one supervisor, a situation which has occurred with increasing frequency over the past several years. Additionally, the Board is proposing to establish a \$25.00 fee to cover the administrative costs involved in reviewing requests for extensions of one-year and three-year temporary permits. This fee is necessary because of the increasing number of permit extension requests received during the past several years.

The Board is also proposing to delete the \$100.00 reciprocity fee and the \$15.00 notice of licensure fee because the Board's rules do not include a reciprocity provision and because the fee for licensure notification is included in the initial licensing fee.

Social Impact

The proposed fee increases, which will affect all current and potential licensees of the Board of Psychological Examiners, are necessary to enable the Board to discharge its statutory obligations, which include the evaluation of applicants for licensure and the regulation of the practice of psychology (including oversight of the independent professional review committee, investigation of complaints, and initiation of appropriate disciplinary and enforcement actions). The new fee schedule will provide the Board with the minimum financial resources to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed fee increases should yield revenues sufficient to cover the rising expenses generated by the Board's many statutory obligations: administration of examinations; issuance of licenses; investigation of complaints; initiation and prosecution of disciplinary actions; processing of review requests; and addressing issues relevant to the independent professional review committee process. The amendment will have a direct economic impact on Board licensees and, to the extent the proposed fee increases may be passed along to the client as a cost of doing business, may have an indirect economic impact on consumers. The Board points out, however, that the fees proposed to be amended hereunder have not been increased in over three years and that these increases are necessary to prevent a fiscal loss to the Board, which is required by statute to cover its expenses. In accordance with N.J.S.A. 45:1-3.2, the sums to be raised are estimated not to exceed the amount required.

Regulatory Flexibility Analysis

The Board of Psychological Examiners currently licenses approximately 2,300 individuals, most of whom practice independently or as employees of other entities. In the event such individuals may be classified as conducting "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following statements apply:

The proposed amendment constitutes a general increase in the Board's fee schedule. As such, the changes do not involve any reporting or recordkeeping nor do they necessitate the retention of professional services for compliance. The fee increases are necessary to enable the Board to avoid operating at a loss. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:42-1.2 Fees

(a) Charges for examinations, licensure and other services are:

1. Application fee: [\$75.00] **\$100.00**.
2. Examination fee: \$200.00 written, [75.00] **\$100.00** oral.
 - [i. Re-examination fee: \$200.00 written, \$75.00 oral.]
3. Initial license fee: [75.00.]
 - i. **During the first year of a biennial license renewal period: \$210.00.**

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- ii. During the second year of a biennial license renewal period: **\$105.00.**
- 4. License renewal fee, biennial: [\$140.00] **\$210.00.**
- 5. Late renewal fee in addition to biennial renewal: [\$25.00] **\$50.00.**
- 6. Reinstatement fee in addition to biennial renewal fee: [\$100.00] **\$150.00.**
- [7. Reciprocity: \$100.00.]
- [8.]7. Temporary permit: [\$50.00.]
- i. **\$75.00 plus \$25.00 for each additional supervisor.**
- ii. **Review of extension request for one-year and three-year permits, each: \$25.00.**
- [9.]8. Replacement wall certificate: [\$20.00] **\$50.00.**
- [10.]9. Verification of licensure: [\$25.00] **\$35.00.**
- [11. Notice of licensure: \$15.00.]
- [12.]10. Duplicate renewal certificate: [\$15.00] **\$25.00.**
- (b) (No change.)

(a)

DIVISION OF STATE POLICE

Combat Auto Theft Program

Proposed New Rules: N.J.A.C. 13:63

Authorized By: Colonel Justin J. Dintino, Superintendent,
Division of State Police.

Authority: N.J.S.A. 39:3-85.5 et seq., specifically 39:3-85.10.
Proposal Number: PRN 1991-168.

Submit comments by May 1, 1991 to:

Lt. Daniel J. McAlee
Auto Theft Unit
Division of State Police
Rt. 130 and Beverly-Rancocas Road
Beverly, NJ 08010

The agency proposal follows:

Summary

N.J.S.A. 39:3-85.5 et seq. (P.L. 1990, c.98) establishes a voluntary registration program to combat motor vehicle thefts. This Act allows for the voluntary participation by all registered owners of motor vehicles. These voluntary participants sign informed consent agreements stating that they do not normally operate their vehicle between the hours of 1:00 A.M. and 5:00 A.M. and authorizing law enforcement officers to stop their vehicle between these hours to determine if the person operating the motor vehicle is the registered owner. To facilitate identification of a participant's vehicle, a decal, designed by the Superintendent of State Police and supplied by the local police departments, is issued to the participant and conspicuously placed on their vehicle as provided in these rules.

The Chief Law Enforcement Officer of the municipality may charge a fee for the informed consent forms and the decals provided under this program. The fee shall not exceed the actual cost incurred by the municipality in providing the informed consent forms and decals, and in administering the program authorized under these rules.

Finally, the Superintendent of the Division of State Police will provide for the recording of the registered owners of motor vehicles who participate in this program. The records shall be available to all law enforcement departments, agencies and forces. The Superintendent will cooperate with and assist all law enforcement officers and other agencies in tracing or examining any questionable motor vehicles in order to determine the ownership thereof.

Social Impact

The intent of the proposed rules is to deter motor vehicle theft in the State of New Jersey by allowing registered owners of motor vehicles to voluntarily participate in the Combat Auto Theft Program. The program decal will aid law enforcement officers in identifying stolen vehicles that are operated between the hours of 1:00 A.M. and 5:00 A.M. Additionally, the conspicuous placement of the decal will deter thieves from stealing the vehicles of owners who participate in this program. This rule will have a positive social impact.

Economic Impact

The proposed new rules will have a negligible economic impact. While the law requires all local police departments to participate in the program, the rules also allow those police departments to charge a fee for providing informed consent forms and the decals. The fee charged shall not exceed the actual cost incurred by the police department. Any cost to police departments, therefore, will be voluntarily incurred.

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 rules impact the State Police, local law enforcement and the registered owners of motor vehicles and have no significant effect on small businesses.

Full text of the proposal follows:

CHAPTER 63

COMBAT AUTO THEFT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

13:63-1.1 Purpose

The purpose of this chapter is to implement N.J.S.A. 39:3-85.5 et seq. (P.L. 1990, c.98) and to combat the theft of motor vehicles in New Jersey. In furtherance of this purpose, this chapter provides for a voluntary registration program which will aid law enforcement in identifying stolen vehicles while at the same time deterring the theft of vehicles registered in the program.

13:63-1.2 Definitions

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

"Chief law enforcement officer" means the highest ranking officer of a local law enforcement agency or a State Police Station Commander or their designee.

"Division" means the Division of State Police.

"Informed Consent Agreement" means the form designed by the Superintendent and provided by the Chief Law Enforcement Officer for the purpose of participation in the program. The agreement form is annexed to this chapter as Appendix A, incorporated herein by reference.

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles pursuant to N.J.S.A. 39:1-1.

"Police department" means the local law enforcement agency or State Police station which provides full law enforcement services for a municipality.

"Program" means the Combat Auto Theft (CAT) Program.

"Program decal" means a sticker designed by the Superintendent and provided by the chief law enforcement officer which indicates participation in the program.

"Program participant" means the registered owner of a motor vehicle who agrees to abide by all rules and regulations of the program by signing the Informed Consent Agreement.

"Superintendent" means the Superintendent of the Division of State Police.

SUBCHAPTER 2. RESPONSIBILITIES

13:63-2.1 Program participants' responsibilities

(a) A person who is a New Jersey resident and the owner of a motor vehicle registered in any state may voluntarily participate in this program.

(b) A registered owner who volunteers to participate in this program shall appear in person before the chief law enforcement officer of the municipality in which the registered owner resides.

(c) A program participant shall complete an informed consent agreement (Appendix A) provided by the chief law enforcement officer and receive a copy of the signed informed consent agreement and a program decal. The program participant shall pay a fee, where applicable, to cover the cost of reproducing the informed consent agreement form, the program decal and of administering the program.

(d) The program participant shall affix the issued program decal to the inside lower driver's side corner of the rear window. If not practical, the program decal shall be affixed to the most conspicuous location on the motor vehicle for detection by law enforcement personnel.

(e) A program participant may withdraw from this program in person or by written notification to the chief law enforcement officer and removal of the program decal.

13:63-2.2 Chief law enforcement officer's responsibilities

(a) The chief law enforcement officer shall reproduce the informed consent agreement form as it appears in Appendix A.

(b) The chief law enforcement officer shall provide an informed consent agreement to any registered owner of a motor vehicle who volunteers to participate in this program.

(c) The chief law enforcement officer shall ensure the proper completion of the informed consent agreement.

(d) Upon completion of the informed consent agreement, the chief law enforcement officer shall retain the completed original informed consent agreement and provide a copy to the program participant.

(e) The chief law enforcement officer shall maintain a file of completed informed consent agreements which are still in effect.

(f) The chief law enforcement officer shall make the completed informed consent agreements available to personnel under his or her command for the purpose of handling inquiries about program participation from other law enforcement agencies.

(g) The chief law enforcement officer shall issue to the program participant the next sequentially numbered program decal.

(h) The chief law enforcement officer shall inform the program participant of the proper location to affix the program decal as set forth at N.J.A.C. 13:63-2.1(d).

(i) The chief law enforcement officer may establish a fee, to be paid by the program participant, for the reproduction of the informed consent form and the program decal. The fee charged shall not exceed the actual costs incurred by the police department.

(j) The chief law enforcement officer shall provide the Division with any information regarding the program which the Superintendent deems necessary.

SUBCHAPTER 3. RECORDKEEPING

13:63-3.1 Recordkeeping responsibilities

(a) The Superintendent shall provide for the recording of the registered owners of motor vehicles who participate in this program. The records shall be available to all law enforcement departments, agencies and forces.

(b) The Superintendent shall cooperate with and assist all law enforcement officers and other agencies in tracing or examining any questionable motor vehicles in order to determine the ownership thereof.

SUBCHAPTER 4. DECALS

13:63-4.1 Decal specifications

(a) All police departments issuing decals pursuant to this program shall adhere to the following decal specifications. The decal shall be:

1. Inside window reflective with laminated adhesive;
2. Three inches by three inches in size;
3. Colored in light resistant blue and/or black ink; and
4. Feature 3/16 inch black consecutive numbering.

(b) The general design and lettering of the decal shall conform to the sample in Appendix B, incorporated herein by reference.

(c) An area no larger than 1.25 inches by 1.25 inches in the center of the decal will be used for the insignia and/or name of the issuing police department.

(d) The lower left corner of the decal will contain the four digit municipality identification code number of the issuing police department except State Police stations which will utilize a telephone number for identification.

(e) Each decal will be sequentially numbered. The lower right corner of the decal will contain the sequential number assigned by the police department.

Appendix A

INFORMED CONSENT AGREEMENT

Decal No. _____

Owner Information:

Name _____ Telephone # _____

Address _____

Driver's License Number and State _____

Vehicle Information:

Make _____ Model _____ Year _____ Color _____

Registration No. _____ State _____

VIN # _____

Other Authorized Drivers:

Name _____ D.L. No. and State _____

As a voluntary participant in the State of New Jersey Combat Auto Theft Program I,

(Print)

represent that I am the registered owner of the vehicle identified above and that I do not normally operate that vehicle between the hours of 1:00 a.m. and 5:00 a.m. I freely consent to and authorize any sworn police officer of the State of New Jersey to stop my decaled vehicle between 1 a.m. and 5:00 a.m., without probable cause, to ascertain why the vehicle is being operated and to conduct any further investigation necessary to ascertain the true owner of the vehicle and to determine whether the vehicle is stolen. It is also my responsibility to notify any person who operates my decaled vehicle that the vehicle is registered in the program.

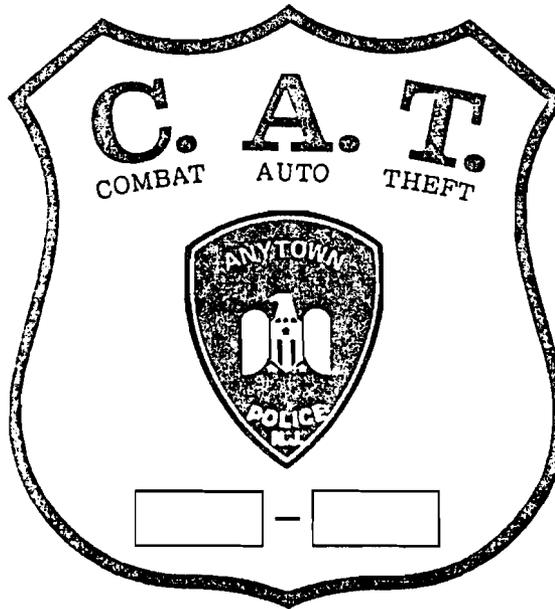
I also realize that participation in this program is no guarantee that my decaled vehicle will not be stolen. I am aware that the program has been enacted as a deterrent to auto theft and as an aid for police to identify stolen vehicles in the State of New Jersey.

I am responsible for notifying the police department where I completed this form, in person or in writing, whenever I move, sell the vehicle or no longer wish to participate in the program. Furthermore, under any of these conditions, I must remove the program decal from my vehicle.

I fully understand the terms and conditions of this program, and voluntarily agree to participate.

Signature _____ Date _____

Appendix B



TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

Rules of the State Investment Council

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

17:16

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1991-169.

Submit comments by May 1, 1991 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 17:16 (subchapters 1 through 52) were due to expire on December 2, 1990. An extension was granted by Governor Florio that they may continue in effect through May 2, 1991 (see 23 N.J.R. 26(a)). The State Investment Council has reviewed each subchapter and has determined that the majority of the rules established in these subchapters are necessary, reasonable and

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proper for the purpose for which they were originally promulgated, as required by the Executive Order. In addition to a complete recodification, the State Investment Council is proposing a number of changes in these rules to include the repeal of outdated and unnecessary sections of subchapters along with proposed revisions of several subchapters. Many of the revisions are intended to clarify ambiguous language, delete obsolete references, conform regulations and respond to comments from the Council's independent auditors. Other proposed changes reflect policy changes of the Council. These changes are summarized as follows:

N.J.A.C. 17:16-1 (SIC Art 1)

The accounting definitions contained in this subchapter are more properly and completely defined by the standards set by State auditors and the accounting profession. The Division's books are audited by both the State and an independent auditor, and the accounts presently conform to generally accepted accounting principles. This subchapter is proposed for repeal.

N.J.A.C. 17:16-2 (SIC Art 2)

The State Investment Council has reviewed the subchapter and believes that it can be deleted. Amortization definitions are already established in generally accepted accounting principles, and the rule is redundant.

N.J.A.C. 17:16-3 (SIC Art NONE)

The State Investment Council notes that the rule is inoperative and has not been included in the Council's list of rules for many years, and believes that it can be deleted. The subchapter specifies a monthly report of purchases, but State law already requires a monthly report of all transactions.

N.J.A.C. 17:16-4 (SIC Art NONE)

The State Investment Council notes that the rule, which related to investment controls, is presently inoperative. Investment controls are inherent in the accounting and auditing standards established by the State Auditor and the generally accepted accounting standards of the accounting profession.

N.J.A.C. 17:16-5 (SIC Art 3)

The rules classify the funds under the jurisdiction of the Council according to their investment characteristics: Pension and Annuity Group, State Group; Demand Group, Temporary Reserve Group, and Trust Group. Differing investment programs may be prescribed for these groups in other rules of the Council. The proposed modification would omit the requirement that the Council add or delete funds by specific action, and would simply require the Division to notify Council members of the classification, which is dictated by the individual law authorizing the respective funds and needs no further definition by the Council.

N.J.A.C. 17:16-6 (SIC Art 11)

This subchapter permits the Division of Investment of the Treasury Department to purchase United States Treasury and related obligations for any fund under the jurisdiction of the State Investment Council. Such obligations represent the highest quality securities available in the capital markets of the United States.

This subchapter is not being amended on re-adoption. The Division believes that the current text is sufficient for defining the eligibility of this investment.

N.J.A.C. 17:16-7 (SIC Art 12)

Two changes are proposed for this subchapter, which governs investments in corporate obligations. The first moves one of the investment standards from the first rule to the second, where it is aggregated with a list of other standards, so that the subchapter can be more easily read. The second change eliminates a redundancy, where the percentage of debt permitted for eligible bond issuers (60 percent) is repeated, and need only be stated once.

N.J.A.C. 17:16-9 (SIC Art 14)

The subchapter has been completely revised to reflect the following modifications: (a) addition of a minimum A/A rating requirement; (b) reducing the interest coverage requirement from 1.25 to 1.0 percent; (c) increasing the minimum capitalization from \$75 million to \$200 million to allow for inflation since 1977 when the rule was originally approved; (d) eliminating the requirement that the debt be eligible for New Jersey insurance companies—(this standard has generally been replaced by the prudent person standard); (e) setting the maximum amount of any issue that can be purchased at 10 percent of the issue; (f) elimination of the

certification requirement; and (g) enabling funds other than pension and annuity funds to purchase finance company debt, if the fund is eligible for such investment.

N.J.A.C. 17:16-10 (SIC Art 55)

The subchapter permits investment by the State pension funds in FHA hospital mortgages. The mortgages are guaranteed by the U.S. Government and are of the highest quality. The rules require approval of the investment by a mortgage advisory committee. The subchapter is proposed for re-adoption as is, except for references to other rules which are intended to be deleted.

N.J.A.C. 17:16-11 (SIC Art 17)

The proposed changes: (1) broaden the groups of eligible funds which can purchase general obligation bonds; (2) define the only circumstance that the tax-exempt State funds would purchase a tax-exempt bond, that is, as a legal arbitrage for the proceeds of a bond issue; and (3) set a minimum quality standard (A or better) and maximum level of purchases for individual bond issues, in order to ensure diversification. The proposed amendments also delete the requirement that eligible bonds must be legal investments for savings banks within the State. This standard has been superseded by the State's Prudent Investor Law, which applies to all of the Division's investments.

N.J.A.C. 17:16-12 (SIC Art 18)

The proposed changes: (1) broaden the groups of eligible funds which can purchase public authority revenue obligations; (2) define the only circumstance that the tax-exempt State funds would purchase a tax-exempt bond, that is, as a legal arbitrage for the proceeds of a bond issue; and (3) set a minimum quality standard (A or better) and maximum level of purchases for individual bond issues, in order to ensure diversification. The proposed amendments also delete the requirement that eligible bonds must be legal investments for savings banks within the State. This standard has been superseded by the State's Prudent Investor Law, which applies to all of the Division's investments.

N.J.A.C. 17:16-13 (SIC Art 31)

The proposed change broadens the definition of funds eligible to invest in commercial paper to specifically include the State of New Jersey Cash Management Fund. This fund has invested in such securities for many years under authorization contained in another subchapter. The proposed change was suggested by the Division's independent auditors in order to clarify the requirements and conform the two subchapters.

N.J.A.C. 17:16-14 (SIC Art NONE)

The State Investment Council notes that the subchapter, which relates to investment in obligations of the International Bank for Reconstruction and Development, is inoperative and is proposed for repeal. Such investment is permitted by law and cited in another subchapter.

N.J.A.C. 17:16-15 (SIC Art 51)

The subchapter relates to Capehart Mortgages, which are no longer issued by the government and are no longer held by the Division. The subchapter is no longer necessary and is being deleted from the New Jersey Administrative Code.

N.J.A.C. 17:16-16 (SIC Art NONE)

The State Investment Council notes that the subchapter is presently inoperative and is proposed for deletion. The rules relate to a class of securities which are authorized under another subchapter.

N.J.A.C. 17:16-17 (SIC Art 41)

This subchapter defines permissible stock investments for various State-administered funds. The proposed changes help simplify and clarify the language of the subchapter, but do not change the effect of the subchapter on the investment guidelines. The elimination of the dividend requirement is moot, since the Council could always waive it and did so on many occasions. The addition of the Deferred Compensation Plan to the list of eligible funds conforms to another subchapter establishing the fund, and was recommended by the Division's independent auditors.

N.J.A.C. 17:16-18 (SIC Art NONE)

The State Investment Council notes that the subchapter is presently inoperative. The rules relate to a class of securities which are authorized under another subchapter; therefore, the subchapter is being deleted.

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This subchapter, which refers to single family FHA mortgages, is no longer necessary, since such mortgages are now pooled by Federal agencies and marketed more efficiently as parts of such pools. The Division of Investment participates extensively in pools issued by GNMA, FHLMB and FNMA, which are authorized by another subchapter. The subchapter is proposed for repeal.

N.J.A.C. 17:16-20 (SIC Art 57)

This subchapter, which refers to single family VA mortgages, is no longer necessary since such mortgages are now pooled by Federal agencies and marketed more efficiently as parts of such pools. The Division of Investment participates extensively in pools issued by GNMA, FHLMB and FNMA, which are permitted by another subchapter. Subchapter 20 is proposed for repeal.

N.J.A.C. 17:16-21 (SIC Art 15)

The subchapter in its current form is completely deleted and is replaced in its entirety with the new proposed subchapter. In substance, the investment prerequisites for bank debentures remain very nearly the same, in terms of quality and diversification standards. The original subchapter requires that the obligor bank be incorporated in the U.S., have debt equal to no more than 35 percent of its capital funds, have paid dividends for five years and be eligible for investment by life insurance companies. The proposed new subchapter would eliminate these requirements and substitute a minimum single-A rating requirement by the rating agencies. Furthermore, the proposed rules would increase the minimum equity capital requirement from \$50 million to \$200 million, to allow for the effects of inflation since 1976, the date of the original rules. The proposed subchapter would also allow for investment in banks which are controlled by overseas banks; for instance, NatWest. Finally, an extensive section has been added which details the types of legal papers which would be required. This new section conforms to the requirements set forth in another subchapter of the Council which defines eligible investment in industrial debt.

N.J.A.C. 17:16-22 (SIC Art 42)

The subchapter permits two of the State's trust funds to invest in common stocks and convertible securities. The issuing corporations must meet certain quality standards, and all stocks must be approved by the State Investment Council and must be listed on an exchange.

N.J.A.C. 17:16-23 (SIC Art 16)

The proposed changes: (1) specify more accurately which funds can invest in Canadian obligations, particularly Common Pension Funds B and D which are the pooled vehicles for the pension funds to invest in domestic and international fixed income securities; (2) delete the requirement that each issuer be approved by the Council; and (3) add a minimum rating requirement of "A" or better for any eligible securities.

N.J.A.C. 17:16-24 (SIC Art NONE)

The State Investment Council notes that the subchapter is presently inoperative. The rules relate to a class of securities which are authorized under another subchapter. Subchapter 24 is proposed for repeal.

N.J.A.C. 17:16-25 (SIC Art NONE)

The State Investment Council notes that the subchapter is presently inoperative and refers to a class of securities which are no longer used by the Division of Investment. Subchapter 25 is proposed for repeal.

N.J.A.C. 17:16-26 (SIC Art 52)

This subchapter was promulgated in order to implement a specific investment program. This program has been discontinued and the rules are no longer necessary. Subchapter 26 is proposed for repeal.

N.J.A.C. 17:16-27 (SIC Art 32)

The proposed change broadens the definition of funds eligible to invest in certificates of deposit to specifically include the State of New Jersey Cash Management Fund. This fund has invested in such securities for many years under authorization contained in another subchapter. The proposed change was suggested by the Division's independent auditors in order to clarify and conform the two subchapters.

N.J.A.C. 17:16-28 (SIC Art 53)

The subchapter permits investment by the State pension and annuity funds to invest in FHA insured multi-family mortgages. The mortgages are guaranteed by the U.S. Government and are of the highest quality.

The rules also set quality standards for the mortgagees and the mortgage servicers. The rules are proposed for re adoption as is, except for references to other rules which are intended to be deleted.

N.J.A.C. 17:16-29 (SIC Art 54)

The subchapter permits investment by the State pension funds in FHA insured multi-family construction mortgages. The mortgages are guaranteed by the U.S. Government and are of the highest quality. The rules also set quality standards for the mortgagees and the mortgage servicers. The subchapter is proposed for re adoption as is, except for references to other rules which are intended to be deleted.

N.J.A.C. 17:16-30 (SIC Art NONE)

The State Investment Council notes that the subchapter is presently inoperative and is no longer necessary. Subchapter 30 is proposed for repeal.

N.J.A.C. 17:16-31 (SIC Art 61)

Subchapter 31 establishes the investment and accounting structure for the State of New Jersey Cash Management Fund. The proposed modification would permit the Council to raise the fee paid by non-state participants (which includes municipalities, school boards, and independent agencies) from one-twentieth of one percent to one-tenth of one percent. The possible increase in fees would be applied to the increased cost of the custodian bank. The fee, even at the higher level, is only a fraction of the fees charged by privately sponsored short-term investment funds.

N.J.A.C. 17:16-32 (SIC Art 62)

The subchapter defines the accounting and investment standards for Common Pension Fund A, which is the pooled investment vehicle for investment by the State-administered pension funds in equities.

N.J.A.C. 17:16-33 (SIC Art NONE)

The State Investment Council notes that the subchapter is presently inoperative and is no longer necessary. Subchapter 33 is proposed for repeal.

N.J.A.C. 17:16-34 (SIC Art NONE)

The State Investment Council notes that the subchapter is presently inoperative and is no longer necessary. Subchapter 34 is proposed for repeal.

N.J.A.C. 17:16-36 (SIC Art 63)

The subchapter defines the accounting and investment standards for Common Pension Fund B, which is the pooled investment vehicle for investment by the State-administered pension funds in bonds.

N.J.A.C. 17:16-37 (SIC Art 33)

The proposed change broadens the definition of funds eligible to invest in repurchase agreements to specifically include the State of New Jersey Cash Management Fund. This fund has invested in such securities for many years under a separate subchapter which defines the fund. The proposed change was suggested by the Division's independent auditors in order to clarify and conform the two subchapters.

N.J.A.C. 17:16-38 (SIC Art 66)

This subchapter created a new common fund for the State pension funds to invest in short-term investments. This new fund was never implemented, because the State of New Jersey Cash Management Fund was able to serve as a short-term investment vehicle for the pension funds. Therefore, the subchapter is proposed for repeal.

N.J.A.C. 17:16-39 (SIC Art 34)

The proposed change broadens the definition of funds eligible to invest in bankers' acceptances to specifically include the State of New Jersey Cash Management Fund. This fund has invested in such securities for many years under authorization contained in another subchapter. The proposed change was suggested by the Division's independent auditors in order to clarify and conform the two subchapters.

N.J.A.C. 17:16-40 (SIC Art 19)

This subchapter permits the State to invest in obligations of U.S. chartered institutions which are fully collateralized by GNMA government-guaranteed mortgage pools. Such collateralized obligations provide high quality investment opportunities for the State funds.

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N.J.A.C. 17:16-41 (SIC Art 35)

The subchapter permits investment by the Division of Investment in loan participation notes. These notes must bear the highest credit rating and their maturity is limited to 180 days. They provide the State funds with a high quality vehicle for short-term investment.

N.J.A.C. 17:16-42 (SIC Art 43)

Covered call options permit selected State funds to realize additional income and modify the risk of individual stock holdings. When covered calls are sold, the State earns a premium, and at times such calls can be closed out at a profit.

N.J.A.C. 17:16-43 (SIC Art 58)

The subchapter permits various State funds to invest in mortgage backed securities (private passthrough). The subchapter sets collateral requirements and requires a minimum Aa rating for any securities purchased under the rules of this subchapter.

N.J.A.C. 17:16-44 (SIC Art 65)

The rules establish the accounting and investment policies for the State's Deferred Compensation Plan. This plan enables State employees to defer a portion of their income and invest in any of three options: stocks, bonds and short-term investments. Payment of Federal taxes on such deferred income is deferred until the income is distributed.

N.J.A.C. 17:16-45 (SIC Art 71)

The proposed changes broaden the Council's definition of eligible investment by the State pension funds in individual real estate ventures. The definition of eligible investments has been specifically amended to include office buildings, warehouses and shopping centers. Furthermore, this subchapter has been amended to increase the level of permitted ownership from 1/3 to 51 percent, and investment in subordinated debt of a real estate venture has been added to the permissible investment in equity of the venture.

N.J.A.C. 17:16-46 (SIC Art 67)

The rules establish Common Pension Fund D, and provide the accounting and investment policies for the fund. The proposed change broadens the permitted source of market prices for currency valuation from just the Wall Street Journal to any recognized pricing service.

N.J.A.C. 17:16-47 (SIC Art 20)

This subchapter enables the State to invest in international sovereign debt with Triple-A ratings. Investment is limited to 5 percent of the portfolio. Eligible investments also include international agencies such as the World Bank, the African Development Bank, the Inter-American Development Bank and the European Economic Community.

N.J.A.C. 17:16-48 (SIC Art 44)

The subchapter sets forth the guidelines for the State-administered pension funds to invest in stocks of international companies. These investments are effected through Common Pension Fund D, and are specifically authorized through another subchapter. However, the Council's independent auditors suggested adding Common Pension Fund D to the list of applicable funds in this subchapter as well.

N.J.A.C. 17:16-49 (SIC Art 81)

This subchapter permits the Division of Investment to enter into foreign exchange contracts for the purpose of hedging foreign exchange exposure of any securities held by State fund which are denominated in foreign currency. The rule further provides that at least 75 percent of the book value of the international investment portfolio will be hedged.

N.J.A.C. 17:16-50 (SIC Art 21)

The subchapter permits the use of U.S. Treasury futures contracts by the State pension funds. These futures are used to increase or decrease investment exposure to U.S. Treasury bonds, the highest quality investment in U.S. debt markets.

N.J.A.C. 17:16-51 (Reserved)

N.J.A.C. 17:16-52 (SIC Art 45)

The subchapter permits selected State funds to purchase put options against individual stocks. A put permits the State to sell the designated stock at a specific price for a period of time, and thus can provide insurance against a sharp market drop.

In addition to the repeals, amendments and new rules noted above, the chapter has been recodified to group the subchapters in the following subject matter areas:

| <u>N.J.A.C. Citation</u> | <u>Subject</u> |
|------------------------------|------------------------|
| N.J.A.C. 17:16-3 | General |
| N.J.A.C. 17:16-11 through 21 | Bonds |
| N.J.A.C. 17:16-31 through 36 | Short-Term |
| N.J.A.C. 17:16-41 through 45 | Stock |
| N.J.A.C. 17:16-51 through 58 | Mortgages |
| N.J.A.C. 17:16-61 through 67 | Common Funds |
| N.J.A.C. 17:16-71 | Real Estate |
| N.J.A.C. 17:16-81 | International Currency |

A recodification chart follows:

| <u>Old Citation</u> | <u>New Citation</u> |
|---------------------|--------------------------------|
| 17:16-1 | — |
| 17:16-2 | — |
| 17:16-3 | — |
| 17:16-4 | — |
| 17:16-5 | 17:16-3 |
| 17:16-6 | 17:16-11 |
| 17:16-7 | 17:16-12 |
| 17:16-8 (Reserved) | — |
| 17:16-9 | — |
| 17:16-10 | 17:16-55 |
| 17:16-11 | 17:16-17 |
| 17:16-12 | 17:16-18 |
| 17:16-13 | 17:16-31 |
| 17:16-14 | — |
| 17:16-15 | — |
| 17:16-16 | — |
| 17:16-17 | 17:16-41 |
| 17:16-18 | — |
| 17:16-19 | — |
| 17:16-20 | — |
| 17:16-21 | — |
| 17:16-22 | 17:16-42 |
| 17:16-23 | 17:16-16 |
| 17:16-24 | — |
| 17:16-25 | — |
| 17:16-26 | — |
| 17:16-27 | 17:16-32 |
| 17:16-28 | 17:16-53 |
| 17:16-29 | 17:16-54 |
| 17:16-30 | — |
| 17:16-31 | 17:16-61 |
| 17:16-32 | 17:16-62 |
| 17:16-33 | — |
| 17:16-34 | — |
| 17:16-35 (Reserved) | — |
| 17:16-36 | 17:16-63 |
| 17:16-37 | 17:16-33 |
| 17:16-38 | — |
| 17:16-39 | 17:16-34 |
| 17:16-40 | 17:16-19 |
| 17:16-41 | 17:16-35 |
| 17:16-42 | 17:16-43 |
| 17:16-43 | 17:16-58 |
| 17:16-44 | 17:16-65 |
| 17:16-45 | 17:16-71 |
| 17:16-46 | 17:16-67 |
| 17:16-47 | 17:16-20 |
| 17:16-48 | 17:16-44 |
| 17:16-49 | 17:16-81 |
| 17:16-50 | 17:16-21 |
| 17:16-51 (Reserved) | 17:16-36 (Reserved) |
| 17:16-52 | 17:16-45 |
| — | 17:16-53 |
| — | 17:16-54 |
| — | 17:16-55 |
| — | 17:16-56 (Reserved) |
| — | 17:16-57 (Reserved) |
| — | 17:16-58 |
| — | 17:16-59 through 64 (Reserved) |
| — | 17:16-65 |
| — | 17:16-66 (Reserved) |

| <u>Old Citation</u> | <u>New Citation</u> |
|---------------------|--------------------------------|
| — | 17:16-67 |
| — | 68 through 70 (Reserved) |
| — | 17:16-71 |
| — | 17:16-72 through 80 (Reserved) |
| — | 17:16-81 |

Social Impact

The social impact of each subchapter is delineated below.

N.J.A.C. 17:16-1 through 4

Deletion of these subchapters will simplify the rules of the State Investment Council.

N.J.A.C. 17:16-5

The rules, with the proposed modification, help to accurately establish the formal framework for investment standards for the funds under the jurisdiction of the Council. The modification would simplify the classification process and eliminate any hiatus that would exist between the creation of the fund and its classification at a meeting of the Council.

N.J.A.C. 17:16-6

Investment in U.S. Treasury and related agency obligations is the highest quality investment available to the State and helps preserve the State's capital assets. Income from such investments help fund the State expenditures for social services.

N.J.A.C. 17:16-7

Investment in corporate obligations, as specified in this subchapter, is a high quality investment available to the State which helps to preserve the State's capital assets. Income from such investments helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

The proposed changes would clarify the language of the subchapter, which should help improve the comprehension of the subchapter by the general public.

N.J.A.C. 17:16-9

All of the proposed revisions are intended to conform to the rule to the format of other rules of the State Investment Council and to define the quality standards in investment in finance company senior debt to current legal and market standards. Investment in such securities provides returns which help fund the State's pension fund obligations and support the State's general budget.

N.J.A.C. 17:16-10

Investment in FHA hospital mortgages by the State pension funds provides financing for hospitals in New Jersey and market returns to the State pension funds.

N.J.A.C. 17:16-11

Subchapter 11 specifies the New Jersey State and municipal general obligations eligible for investment by the Division.

The proposed changes would more accurately define eligible investment for general obligation bonds.

As a practical matter, the State never invests in tax-exempt general obligation bonds, since taxable offerings always provide superior rates. However, it is possible that the proceeds of bond issues could be invested in tax-exempt bonds, and that any positive returns over the cost of the bond issues would not have to be refunded to the Federal government and could be retained by the State. Such purchases could enhance revenues available to the State for public purposes.

N.J.A.C. 17:16-12

Subchapter 12 specifies public authority revenue obligations which can be invested in by the Division.

The proposed changes would more accurately define eligible investment for public authority revenue obligations.

As a practical matter, the State never invests in tax-exempt public authority revenue obligations, since taxable offerings always provide superior rates. However, it is possible that the proceeds of bond issues could be invested in tax-exempt bonds, and that any positive returns over the cost of the bond issues would not have to be refunded to the Federal government and could be retained by the State. Such purchases could enhance revenues available to the State for public purposes.

N.J.A.C. 17:16-13

Subchapter 13 defines "commercial paper" and sets out the investment standards for the Division in this area.

The proposed change would clarify the subchapter and conform it to another subchapter. The elimination of any ambiguity would be helpful to the general public.

Investment in commercial paper helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

N.J.A.C. 17:16-14 through 16

The deletion of these subchapters will help simplify the rules of the State Investment Council.

N.J.A.C. 17:16-17

Investment in common and preferred stocks and issues convertible into common stock, as specified in this subchapter, is an investment available to the State which helps to preserve the State's capital assets. Income from such investments helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

The proposed modification would simplify and clarify the subchapter.

N.J.A.C. 17:16-18 through 20

The deletion of these subchapters will help simplify the rules of the State Investment Council.

N.J.A.C. 17:16-21

The proposed revised subchapter would have little effect on the eligibility of bank debentures for investment by the State funds. The addition of a rating requirement will help assure that investments are of high quality and will help protect the State from any bank defaults.

N.J.A.C. 17:16-22

The rules set the standards for investment in stocks by the Supplemental Annuity Collective Trust, an employee mutual fund, and an endowment fund of the University of Medicine and Dentistry. The former fund is a vehicle for employee voluntary savings, which could enhance their retirement security, and the latter benefits the programs of the University of Medicine and Dentistry.

N.J.A.C. 17:16-23

Investment in Canadian obligations is specified in this subchapter. Income from such investments helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

Increased clarity of expression and definition of quality standards now provided in the rules will benefit the general public. The social impact is slight, since the changes are not substantive.

N.J.A.C. 17:16-24 through 26

The deletion of these subchapters will help simplify the rules of the State Investment Council.

N.J.A.C. 17:16-27

Investment in Certificates of Deposits is specified in this subchapter. Income from such investments helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

The proposed change would clarify the subchapter and conform it to another subchapter. The elimination of any ambiguity would be helpful to the general public.

N.J.A.C. 17:16-28

Investment in FHA guaranteed multi-family mortgages permits the State pension funds to realize premium returns at certain times, which benefits beneficiaries and State taxpayers. Such investment also stimulates the housing industry.

N.J.A.C. 17:16-29

Investment in FHA guaranteed multi-family construction financing by the State pension funds provides short-term financing to builders and market returns to the State pension funds.

N.J.A.C. 17:16-30

The deletion of this subchapter will help simplify the rules of the State Investment Council.

N.J.A.C. 17:16-31

The State of New Jersey Cash Management Fund provides a low cost, efficient investment vehicle for the State and its subdivisions. Furthermore, investment in the fund is free of conflicts of interest, which

were the subject of a Grand Jury presentment in 1975. The social impact of any increase in fees would be slight. The fees would be used to cover the cost of higher bank custody fees set under a recent competitive bid.

N.J.A.C. 17:16-32

The rule has enabled the State pension funds to invest in a pooled fund of stocks. Pooled investment reduces paperwork and increases the efficiency of trading, accounting and reporting. These investments have provided superior returns, which helped provide retirement security to pension fund beneficiaries and have benefited the State's taxpayers by reducing State and local contributions.

N.J.A.C. 17:16-33 and 34

The deletion of these subchapters will help simplify the rules of the State Investment Council.

N.J.A.C. 17:16-36

The subchapter has enabled the State pension funds to invest in a pooled fund of bonds. Pooled investment reduces paperwork and increases the efficiency of trading, accounting and reporting. These investments have produced stable returns, which have benefited the State's taxpayers by reducing State and local contributions.

N.J.A.C. 17:16-37

Investment in repurchase agreements is specified in this subchapter. Income from such investments helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

The proposed change would clarify the subchapter and conform it to another subchapter. The elimination of any ambiguity would be helpful to the general public.

N.J.A.C. 17:16-38

Deletion of this subchapter will simplify the rules of the State Investment Council.

N.J.A.C. 17:16-39

Investment in banker's acceptances is specified in this subchapter. Income from such investments would be used to help fund the State's expenditures for social services and other services to the residents of New Jersey.

The proposed change would clarify the subchapter and conform it to another subchapter. The elimination of any ambiguity would be helpful to the general public.

N.J.A.C. 17:16-40

Investment in obligations collateralized by government-guaranteed mortgages provides high quality investment opportunities for the State and helps provide liquidity to the mortgage market.

N.J.A.C. 17:16-41

Any income premium earned on investment in loan participation notes adds to the earnings of State funds, which helps fund State services.

N.J.A.C. 17:16-42

Covered call options can provide income to the State pension and annuity funds, which benefits the beneficiaries of the funds and the taxpayers of the State.

N.J.A.C. 17:16-43

Investment in private passthrough mortgage-backed securities helps add liquidity to the market for conventional mortgages and, on occasion, can provide premium returns for the State pension funds, which benefits pension fund beneficiaries and State taxpayers.

N.J.A.C. 17:16-44

The Deferred Compensation Plan benefits State employees by providing a tax-deferred investment vehicle. State employees can voluntarily set aside funds to insure their retirement security.

N.J.A.C. 17:16-45

Increased access to real estate investment provides the possibility of broader diversification and potentially higher earnings for the State pension funds. Any increased earnings could, over the long term, benefit the State's taxpayers and help fund other social programs in the State.

N.J.A.C. 17:16-46

The requirements for investments of Common Pension Fund D are specified in this subchapter. Income from such investments helps to fund

the State's expenditures for social services and other services to the residents of New Jersey.

A broadening of eligible currency pricing services from just the Wall Street Journal to include other services will ensure greater accuracy in pricing the securities held by Common Pension Fund D.

N.J.A.C. 17:16-47

Investment in international sovereign credits and international agencies helps finance infrastructure and social needs around the world. Such investment provides diversification and income flows of the highest quality for the State's pension funds, and to the extent that higher returns are realized by the pension funds, over the long term more funds will be available to the State budget to finance the State's social needs.

N.J.A.C. 17:16-48

Investment in common and preferred stocks and issues convertible into common stock of international corporations, as specified in this subchapter, is an investment available to the State which helps to preserve the State's capital assets. Income from such investments helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

The proposed changes would add clarity to the subchapter and respond to the recommendation of independent auditors.

N.J.A.C. 17:16-49

The subchapter permits and requires hedging of the foreign exchange exposure of the State's international investment. Such hedging provides insurance against volatility of foreign exchange values.

N.J.A.C. 17:16-50

Investment in U.S. Treasury futures enhances the liquidity of U.S. Treasury bond national markets and enhances the placement of such securities. There would be little or no social impact on the State level.

N.J.A.C. 17:16-51 (Reserved)**N.J.A.C. 17:16-52**

Covered put options can be purchased by selected State funds to hedge against downturns in the market for such stocks. Such hedging can protect pension fund beneficiaries and reduce pension funding levels for the State's taxpayers.

Economic Impact

The economic impact of each subchapter is described below.

N.J.A.C. 17:16-1 through 4

Deletion of these subchapters will have no economic impact.

N.J.A.C. 17:16-5

Proper classification of investment funds adds efficiency to the investment process and helps protect the funds from any inappropriate investments.

N.J.A.C. 17:16-6

Investment in government securities by the State provides high levels of secure income from the State's investments.

N.J.A.C. 17:16-7

Investment in corporate obligations, as specified in this subchapter, is a high quality investment available to the State which helps to preserve the State's capital assets. Such investment can provide a higher return than U.S. Treasury obligations.

The proposed changes would effect no substantive changes and there would be no economic impact.

N.J.A.C. 17:16-9

Investment in senior debt of high quality finance companies can at times provide premium returns which benefit all funds administered by the State.

N.J.A.C. 17:16-10

Investment in FHA hospital mortgages provides market returns which help benefit pension fund beneficiaries and State taxpayers.

N.J.A.C. 17:16-11

The economic effect could be positive, as described under the Social Impact, where the State could profitably invest the proceeds of tax-exempt bond issues in general obligation bonds and retain income realized over and above the cost of such bonds.

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The economic income could be positive, as described under Social Impact, where the State could profitably invest the proceeds of tax-exempt bond issues in public authority revenue obligations and retain income realized over and above the cost of such bonds.

N.J.A.C. 17:16-13

Investment in commercial paper, as specified in this subchapter, provides a good quality investment with a more enhanced rate of return, in general, than is provided by government obligations.

There is no economic impact arising from the proposed change.

N.J.A.C. 17:16-14 through 16

Deletion of these subchapters will have no economic impact.

N.J.A.C. 17:16-17

Investment in common and preferred stocks and issues convertible into common stock, as specified in this subchapter, is an investment available to the State which helps to preserve the State's capital assets. Studies have shown that over any 20-year period such investment has appreciated. Income from such investments helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

There is no economic impact arising from the proposed changes.

N.J.A.C. 17:16-18 through 20

Deletion of these subchapters will have no economic impact.

N.J.A.C. 17:16-21

The economic effect is limited, since the quality and diversification standards for investment in bank debentures have not materially changed. However, the addition of a minimum single-A rating might help protect the State from the costs related to any bank default.

N.J.A.C. 17:16-22

Investment in stocks and convertible securities can provide returns which over the long term can exceed the rate of inflation and benefit the beneficiaries of the funds.

N.J.A.C. 17:16-23

Investment in Canadian obligations, as specified in this subchapter, is an investment available to the State which provides diversification and helps to preserve the State's capital assets. Income from such investments helps to fund the State's expenditures for social services and other services to the residents of New Jersey.

The economic impact is slight. There is no substantive change in the eligibility of Canadian debt for purchase by the State funds.

N.J.A.C. 17:16-24 through 26

Deletion of these subchapters will have no economic impact.

N.J.A.C. 17:16-27

Investment in Certificates of Deposit, as specified in this subchapter, provides a good quality investment with a more enhanced rate of return, in general, than is provided by government obligations.

There is no economic impact arising from the proposed change.

N.J.A.C. 17:16-28

Investment in FHA guaranteed multi-family mortgages provides premium returns at certain times to the State pension funds, which in turn benefits the pension fund beneficiaries and the State taxpayers.

N.J.A.C. 17:16-29

Investment in FHA guaranteed multi-family construction financing provides market returns which benefit pension fund beneficiaries and State taxpayers.

N.J.A.C. 17:16-30

Deletion of this subchapter will have no economic impact.

N.J.A.C. 17:16-31

The State of New Jersey Cash Management Fund provides an inexpensive and efficient investment vehicle for the State and its subdivisions. Over the years the returns have consistently outperformed funds in the private sector. The pooling of individual funds into the State of New Jersey Cash Management Fund achieves substantial operating, investment and accounting efficiencies.

The possible increase in fees would raise as much as \$500,000, which would be applied to the increased cost of retaining a new custodian bank

when the former custodian resigned from the account and a competitive bid was undertaken to find a successor.

N.J.A.C. 17:16-32

Stock returns in the fund for the five fiscal years through June 30, 1990, averaged 14.1 percent on an asset based of \$12.8 billion at June 30, 1990.

N.J.A.C. 17:16-33 and 34

Deletion of these subchapters will have no economic impact.

N.J.A.C. 17:16-36

Bond returns in the fund for the five fiscal years through June 30, 1990, average 11.3 percent on an asset base of \$8.4 billion at June 30, 1990.

N.J.A.C. 17:16-37

Investment in repurchase agreements, as specified in this subchapter, provides a good quality investment with a more enhanced rate of return, in general, than is provided by government obligations.

There is no economic impact arising from the proposed change.

N.J.A.C. 17:16-38

Deletion of this subchapter will have no economic impact.

N.J.A.C. 17:16-39

Investment in banker's acceptances, as specified in this subchapter, provides a good quality investment and helps to preserve the State's capital assets.

There is no economic impact arising from the proposed change.

N.J.A.C. 17:16-40

Earnings from investment in obligations collateralized by government-guaranteed mortgages produce secure sources of income which helps fund the State's obligations to pensioners.

N.J.A.C. 17:16-41

Loan participation notes at times provide attractive interest rates when compared to other short-term investments and thus can provide incremental income to State funds.

N.J.A.C. 17:16-42

Covered call options provide premium income to selected State funds and helps modify the risk of individual holdings.

N.J.A.C. 17:16-43

Investment in private passthrough mortgage-backed securities can provide diversification and, on occasion, premium returns, which benefit pension fund beneficiaries and State taxpayers.

N.J.A.C. 17:16-44

The Deferred Compensation Plan is an attractive benefit for State employees. Earnings on their investment are exempt from taxes until such time as they are distributed, with substantial savings to the employee.

N.J.A.C. 17:16-45

The proposed modification would have little direct economic effect on the State; however, as was noted in the discussion of Social Impact, greater access to real estate could improve the returns of the pension funds, which in turn could help the State's taxpayers.

N.J.A.C. 17:16-46

Investment through Common Pension Fund D provides the diversification available in the international market in debt securities, corporate common stock or issues convertible into common stock, currencies, currency futures and approved options.

A broadening of eligible currency pricing services for Common Pension Fund D will provide access to more accurate and timely price data bases, and may possibly reduce the cost of obtaining market prices.

N.J.A.C. 17:16-47

Internal studies and the studies of outside consultants have shown that investment in international sovereign and agency bonds can provide diversification and premium returns for the pension funds.

N.J.A.C. 17:16-48

Investment in common and preferred stocks and issues convertible into common stock of international corporations, as specified in this subchapter, is an investment available to the State which helps to preserve the State's capital assets. Such investment provides the diversification

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available in the international market. Studies have shown that over any 20-year period such investment has appreciated.

There is no economic impact caused by the proposed changes.

N.J.A.C. 17:16-49

Hedging of foreign exchange helps provide stability of returns and reduces risk in State portfolios.

N.J.A.C. 17:16-50

The economic impact of using U.S. Treasury futures can be positive for the State-administered pension funds. For instance, futures can be used to hedge against falling bond prices and help maintain the value of the Division's bond portfolio.

N.J.A.C. 17:16-51 (Reserved)

N.J.A.C. 17:16-52

Purchase of covered put options can help protect the stock holdings of State funds and enhanced investment returns for fund beneficiaries, which in turn can reduce the need for taxpayer support over the long-term.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the rules proposed for re-adoption and the proposed amendments have no effect on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. The rules regulate the operation of the Division of Investment.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:16.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 17:16-1 through 4, 9, 14 through 16, 18 through 21, 24 through 26, 30, 33, 34, and 38.

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

17:16-[5.1]3.1 General [provision] provisions

(a) Funds having similar investment characteristics and objectives under their respective enabling acts shall be grouped together in any of the following classifications:

1. Pension and Annuity Group:

- i. Consolidated Police and Firemen's Pension Fund;
- ii. Police and Firemen's Retirement System;
- iii. Public Employees' Retirement System;
- iv. Prison Officers Pension Fund;
- v. State Police Retirement System;
- vi. Teachers' Pension and Annuity Fund; and
- vii. Judicial Retirement System of New Jersey;

2. Static Group:

- i. Trustees for the Support of Public Schools;
- ii. Waste Water Treatment Fund; and
- iii. Waste Water Treatment Trust Fund;

3. Demand Group:

- i. Boarding House Rental Assistance Fund;
- ii. Catastrophic Illness in Children Relief Fund;
- iii. Clean Communities Account Fund;
- iv. Development Fund—Luxury Tax;
- v. Emergency Services Fund;
- vi. Enterprise Zone Assistance Fund;
- vii. Higher Education Assistance Fund;
- viii. Luxury Tax Fund;
- ix. Motor Vehicle Security Responsibility Fund;
- x. New Jersey Automobile Insurance Guaranty Fund;
- xi. New Jersey Insurance Development Fund;
- xii. New Jersey Spill Compensation Fund;
- xiii. New Jersey Uncompensated Care Trust Fund;
- xiv. Outstanding Checks Account;
- xv. Real Estate Guaranty Fund;
- xvi. Resource Recovery Investment Tax Fund;
- xvii. Sanitary Landfill Facility Contingency Fund;
- xviii. Solid Waste Services Tax Fund;
- xix. State Disability Benefits Fund;
- xx. State Recycling Fund;

- xxi. Unclaimed Personal Property Trust Fund;
 - xxii. Unemployment Compensation Auxiliary Fund;
 - xxiii. Unsatisfied Claim and Judgment Fund;
 - xxiv. Volunteer Emergency Service Organizations Loan Fund;
 - xxv. Worker and Community Right to Know Fund;
 - xxvi. Workmen's Compensation Security Fund—Mutual; and
 - xxvii. Workmen's Compensation Security Fund—Stock;
4. Temporary Reserve Group: [and]
 - i. Alcohol Education Rehabilitation and Enforcement Fund;
 - ii. Beaches and Harbors Fund;
 - iii. Capital City Redevelopment Loan and Grant Fund;
 - iv. Clean Waters Fund;
 - v. CMF/Administrative Expense Fund #097;
 - vi. CMF/Non-State Fund #098;
 - vii. CMF/Pension Division Funds;
 - viii. CMF/Reserve Fund #099;
 - ix. Community Development Bond Fund;
 - x. Correctional Facilities Construction Fund of 1982;
 - xi. Correctional Facilities Construction Fund of 1987;
 - xii. Emergency Flood Control Fund;
 - xiii. Energy Conservation Fund;
 - xiv. Farmland Preservation Fund;
 - xv. 1989 Farmland Preservation Fund;
 - xvi. General Investment Fund;
 - xvii. General Trust Fund;
 - xviii. 1987 Green Acres Cultural Centers and Historic Preservation Bond Fund;
 - xix. Green Trust Fund;
 - xx. Hazardous Discharge Fund—1981;
 - xxi. Hazardous Discharge Site Cleanup Fund;
 - xxii. Higher Education Buildings Construction Fund (Act of 1971);
 - xxiii. Housing Assistance Fund;
 - xxiv. Human Services Facilities Construction Fund;
 - xxv. Institutional Construction Fund;
 - xxvi. Institutions Construction Fund;
 - xxvii. 1988 Jobs, Education and Competitiveness Fund;
 - xxviii. Jobs, Science and Technology Fund;
 - xxix. Medical Education Facilities Fund;
 - xxx. Mortgage Assistance Fund;
 - xxxi. Natural Resources Fund;
 - xxxii. New Home Warranty Security Fund;
 - xxxiii. New Jersey Bridge Rehabilitation Fund;
 - xxxiv. New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Fund;
 - xxxv. 1983 New Jersey Green Acres Fund;
 - xxxvi. 1989 New Jersey Green Acres Fund;
 - xxxvii. 1989 New Jersey Green Trust Fund;
 - xxxviii. New Jersey Local Development Financing Fund;
 - xxxix. New Jersey Medical Malpractice Reinsurance Recovery Fund;
 - xl. Pension Adjustment Fund;
 - xli. Pension Payroll Investment Fund;
 - xl. Pinelands Infrastructure Trust Fund;
 - xl. Prescription Drug Program Fund;
 - xl. Public Buildings Construction Fund;
 - xl. Public Purpose Buildings and Community-Based Facilities Construction Fund;
 - xl. Public Purpose Buildings Construction Fund;
 - xl. Resource Recovery and Solid Waste Disposal Facility Fund;
 - xl. Safe Drinking Water Fund;
 - xl. Shore Protection Fund;
 - l. State Facilities for Handicapped Fund;
 - li. State Health Benefits Fund;
 - lii. State Land Acquisition and Development Fund;
 - liii. State Lottery Fund—Investment;
 - liv. State of New Jersey—Alternate Benefit Program;
 - lv. State of New Jersey Cash Management Fund;
 - lvi. State of New Jersey—New Jersey State Dental Program;
 - lvii. State Recreation and Conservation Land Acquisition Fund (Act of 1971);
 - lviii. State Recreation and Conservation Land Acquisition and Development Fund;

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- lix. State Transportation Fund;
- lx. State Water Development Fund;
- lxi. Stormwater Management and Combined Sewer Overflow Abatement Fund;
- lxii. Transportation Rehabilitation and Improvement Fund;
- lxiii. University of Medicine and Dentistry of New Jersey—Self Insurance Reserve Fund #110;
- lxiv. Urban Development Investment Fund;
- lxv. Veterans' Loan Guaranty and Insurance Fund (Veterans Guaranteed Loan Fund);
- lxvi. Water Conservation Fund;
- lxvii. Water Supply Fund; and
- lxviii. Water Supply Replacement Trust Fund;
- 5. Trust Group:
 - i. Deferred Compensation Plan—Equity Fund;
 - ii. Deferred Compensation Plan—Fixed Income Fund;
 - iii. Deferred Compensation Plan—Cash Management Fund;
 - iv. Deferred Compensation Plan—Administrative Charges;
 - v. Deferred Compensation Plan—Distribution Account;
 - vi. Deferred Compensation Plan—Holding Account;
 - vii. Supplemental Annuity Collective Trust; and
 - viii. Tischler Memorial Fund.

17:16-[5.2]3.2 Approved list

A "list of funds under the supervision of the Council" shall be maintained by the Director. [Funds will be added to or deleted from the list by approval of the Council.]

17:16-[6.1]11.1 [Purchases subject to regulations; United States Treasury and related obligations] **United States Treasury and Government Agency Obligations**

(No change in text.)

SUBCHAPTER [7]12. CORPORATE OBLIGATIONS[—LEGAL FOR SAVINGS BANKS]

17:16-[7.1]12.1 Permissible investments

The Director may invest and reinvest the moneys of any fund in [any] corporate obligations which meet the standards set forth in **17:16-12.110** below. [provide the total amount of debt issues purchased or acquired of any one corporation shall not exceed 25 percent of the outstanding long-term debt of the company, (defined by standard accounting practice) and not more than 25 percent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council.]

17:16-[7.2]12.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity fund, static group fund, trust group fund, Common Pension Fund B, or where maturities are less than one year, the State of New Jersey Cash Management Fund in corporate obligations provided that:

1.-3. (No change.)

4. The obligor has a stockholders' equity, (consisting of the sum of equity accounts, capital surplus and earned surplus) of at least \$50 million; and furthermore the long term debt ratio (defined as the ratio of long term debt to the sum of stockholders' equity and long term debt) of the obligor shall be less than [50 percent] **60 percent**, except that in the case of telephone utilities the debt ratio shall be less than [55 percent] **60 percent**.

5. (No change.)

6. **The total amount of debt issues purchased or acquired in a fund of any one corporation shall not exceed 25 percent of the outstanding long term debt of the company, and not more than 25 percent of the issue at the time of issue.**

17:16-[10.3] 55.3 Limitations

(a) (No change.)

(b) The book value of mortgages purchased under [Subchapters 15, 19, 20, 28 and 10 of this Chapter] N.J.A.C. **17:16-53 and 55** shall not exceed 20 percent of the assets of any pension and annuity fund at any one time.

17:16-[11.1]17.1 Applicable funds

The Director may invest and reinvest monies of any pension and annuity group, or other fund [and the Unemployment Compensation Auxiliary] in the obligations of the State of New Jersey or any municipal or political subdivision of this State [provided that such obligations are legal investments for savings banks in this State.] as set forth in this subchapter.

17:16-[11.2]17.2 [Legal papers] **Investment prerequisites**

(a) [Prior to any commitment to purchase obligations of the type described in this Subchapter, the] **The Director [shall have received:] may invest monies of any eligible fund provided that:**

[1. a written opinion from Moody's Investors Service to the effect that such obligations qualify as legal investments for savings banks in this State, and

2. a written opinion from the Attorney General that the purchase of such obligations is authorized by the provisions of Chapter 270, P.L. 1950, as amended and supplemented.

(b) Subsequent to the purchase, the Director shall obtain:

1. An unqualified approving opinion of recognized bond counsel to the effect that the obligations have been duly authorized and issued and are the legal, valid and binding obligations of the issuer:

2. An affidavit from the chief fiscal officer of the issuer to the effect that the issuer has not, within 5 years prior to the making of the investment, been in default for more than 6 months in the payment of any part of the principal or interest of any debt evidenced by its bonds, notes or other obligations;

3. Such other documents or opinions which the Attorney General may require; and

4. A written approving opinion from the Attorney General to the effect that all such documents and opinions received by the Director are satisfactory as to form and substance.]

1. **The obligor is not in default as to the payment of principal or interest upon any of its outstanding obligations;**

2. **The obligor has a credit rating of A/A or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available. If a rating has not been obtained from either service, the issue may be purchased if the publicly issued outstanding debt of the issuer carries a A/A rating or higher. Subsequent to purchase, if ratings fall below A/A for such issues, they do not have to be sold, and they may be exchanged with issues of credits rated lower than A/A if the credits received in exchange are, on balance, similarly rated;**

3. **The total amount of debt issues purchased or acquired of any one political entity shall not exceed 10 percent of the outstanding debt of the entity, and not more than 10 percent of any one issue, serial note or maturity may be purchased in the aggregate by all eligible funds; and**

4. **Not more than 2 percent of the assets at the time of purchase of any one fund shall be invested in senior debt of any one political entity maturing more than 12 months from date of purchase.**

(b) **Investment made pursuant to this subchapter shall comply with Federal arbitrage regulations.**

17:16-17.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this office, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this article and the Division shall have received:

1. On new issues, a prospectus describing the issue; and

2. On existing issues, a copy of the description of the issue as contained in Moody's or in the Standard & Poor's or in any other financial records publication or service accepted as reliable by investors for such obligations.

17:16-[11.3]17.4 Purchases for Temporary Reserve Group, Demand and Static Funds

The Director may invest and reinvest any moneys of [a Temporary Reserve Group] **an eligible fund** in the obligations of any State or political subdivision thereof provided that such investment in tax exempt securities is required in order to comply with Federal arbitrage regulations.

trage regulations and further provided that such investment qualifies [as a legal investment for savings banks in this State] under this subchapter and that the obligation was issued with an unqualified approving opinion of a recognized bond counsel to the effect that the obligations have been duly authorized and issued and are legal, valid and binding obligations of the issuer. [unless] If the obligation is guaranteed by the Federal Government, the above requirement may be waived.

17:16-[12.1]18.1 Definitions

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

"Public authority" means any State or any political subdivision thereof, any authority, department, district or commission, or any agency or instrumentality of any of the foregoing, or any agency or instrumentality of the Federal Government, or a commission or other public body created by an Act of Congress or pursuant to a compact between any two or more States.

"Revenue obligations" means any bonds or other interest-bearing obligations of a public authority, the principal and interest of which are by their terms payable from the revenues derived from a utility or enterprise owned or operated by the public authority which issued such bonds or obligations, or by an agency or instrumentality thereof.

17:16-[12.2]18.2 Applicable funds

(a) Subject to the limitations contained in N.J.A.C. 17:16-[12.3] 18.3, the Director may invest and reinvest the moneys of any pension and annuity group fund or other fund in the revenue obligations of any public authority provided that: [such obligations qualify as legal investments for savings banks in this State.

(b) Also, the Director may invest and reinvest any moneys of a Temporary Reserve Fund in the revenue obligations of any public authority, provided that such investment in tax exempt securities is required to comply with Federal arbitrage regulations and further provided that such obligations qualify as legal investments for savings banks in this State.]

1. Such investment in tax exempt securities is required to comply with Federal arbitrage regulations;
2. Such obligations are rated A or better by Moody's Investors Service and the Standard and Poor Corporation; and
3. No more than 10 percent of any one issue, serial note or maturity may be purchased in the aggregate by all eligible funds.

17:16-[12.3]18.3 Limitations

Not more than two percent of the assets of any [pension and annuity group] eligible fund described in N.J.A.C. 17:16-[12.2]18.2 shall be invested in the obligations of any one public authority.

[17:16-13.3 Static group; temporary reserve group; demand group

The Director may purchase "prime commercial paper" for any static, temporary reserve or demand group fund providing the maturity purchase does not exceed 270 days.

17:16-13.4 Pension and annuity group; trust group

The Director may purchase "prime commercial paper" for any pension and annuity or trust group fund providing the maturity purchase does not exceed 180 days.]

17:16-31.3 All funds

The Director may purchase "prime commercial paper" for any fund, including the State of New Jersey Cash Management Fund, providing the maturity purchase does not exceed 270 days.

SUBCHAPTER 14. FINANCE COMPANIES; SENIOR DEBT

17:16-14.1 Permissible investments

The Director may invest and reinvest the moneys of any eligible fund in the debt securities of finance companies as is set forth in this subchapter.

17:16-14.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity fund, static group fund, trust group fund, Common Pension Fund B or, where maturities are less than a year, The State of New

Jersey Cash Management Fund, in the debt securities of finance companies provided that:

1. The issue has been registered with the Securities and Exchange Commission, except that this requirement may be waived by the State Investment Council;
2. The obligor is incorporated under the laws of the United States or any State thereof or of the District of Columbia;
3. The obligor is not in default as to the payment of principal or interest upon any of its outstanding obligations;
4. The obligor has a capitalization of at least \$200 million;
5. The obligor or its predecessors shall have had an average pre-tax interest coverage of 1.00 times for the last five reported fiscal years;
6. The obligor has a credit rating of A/A or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available. If a rating has not been obtained from either service, the issue may be purchased if the publicly issued outstanding debt of the issuer carries a A/A rating or higher. Subsequent to purchase, if ratings fall below A/A for such issues, they do not have to be sold, and they may be exchanged with issues of credits rated lower than A/A if the credits received in exchange are, on balance, similarly rated;
7. The total amount of debt issues purchased or acquired of any one corporation shall not exceed 10 percent of the outstanding debt of the corporation, and not more than 10 percent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council.
8. Not more than two percent of the assets at the time of purchase of any one fund shall be invested in senior debt of any one company maturing more than 12 months from date of purchase.

17:16-14.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this subchapter, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this article and the Division shall have received:

1. With respect to issues registered with the Securities and Exchange Commission:
 - i. On new issues, a prospectus describing the issue; and
 - ii. On existing issues, a copy of the description of the issue as contained in Moody's Manuals or in the Standard & Poor's or in any other corporation records publication or service published for the use of and accepted as reliable by investors in such obligations;
2. With respect to issues not registered with the Securities and Exchange Commission:
 - i. On new issues, in the case of private placements:
 - (1) An offering memorandum describing the terms of the issue and the business and operations of the issuer;
 - (2) A written approving opinion from the Attorney General to the effect that the purchase agreement is satisfactory as to form and substance;
 - (3) At the closing for the purchase of the private placement, legal opinions of counsel for the purchaser and counsel for the issuer, which opinions shall include a statement to the effect that the bonds are properly authorized and valid obligations of the issuer;
 - ii. On existing issues, in the case of issues which were originally offered to the public, a copy of the description of the issue as contained in Moody's Manuals or Standard & Poor's Corporation records or in any other publication or service published for the use of and accepted as reliable by investors in such obligations;
 - iii. On existing issues, in the case of issues which were originally placed privately:
 - (1) A copy of the original offering memorandum describing the terms of the issue and the business and operations of the issuer at the time of the original issue;
 - (2) A copy of the purchase agreement for the issue, together with all amendments thereto;
 - (3) A copy of the form 10-K of the issuer which was most recently filed with the Securities and Exchange Commission, or if the company does not file form 10-K reports, then the most recent audited financial statement;

(4) Representation, in writing, from the seller to the Division to the effect that: there are no restrictions on the sale of the bonds to funds managed by the Division; no registration of the issue with the Securities and Exchange Commission is required if the bonds are sold to funds managed by the Division; and the seller purchased the bonds directly from the issuer when the issue was originally sold. In the event that other owners have intervened between the issuer and the seller, the seller must substitute for the representation that the seller purchased the bonds directly from the issuer when the issue was originally sold the representation that no such intervening transaction required registration of the securities with the Securities and Exchange Commission. The seller may substitute for these representations a no-action letter of the Securities and Exchange Commission regarding any requirements to register the bonds;

(5) A written approving opinion from the Attorney General that the representations or no-action letter required by (d) above are satisfactory; and

(6) Approval of the State Investment Council.

SUBCHAPTER 15. BANK DEBENTURES

17:16-15.1 Permissible investments

The Director may invest and reinvest the moneys of any eligible fund in the debt securities of banks as is set forth in this subchapter.

17:16-15.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity fund, static group fund, trust group fund, Common Pension Fund B or, where maturities are less than a year, The State of New Jersey Cash Management Fund, in the debt securities of banks provided that:

1. The issue has been registered with the Securities and Exchange Commission, except that this requirement may be waived by the State Investment Council;

2. The obligor is incorporated under the laws of the United States or any State thereof or of the District of Columbia;

3. The total amount of debt issues purchased or acquired of any one corporation shall not exceed 10 percent of the outstanding debt of the corporation and not more than 10 percent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council;

4. The obligor:

i. Is not in default as to the payment of principal or interest upon any of its outstanding obligations;

ii. Has common equity (including surplus and retained earnings) of at least \$200 million;

iii. The issuer, at the date of its last published balance sheet preceding the date of investment, was in conformance with all capital requirements as stipulated by:

(1) The Federal Reserve Board, in the case of United States banks; and

(2) The appropriate national regulatory body, in the case of foreign-headquartered banks.

5. Has a credit rating of A/A or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available. If a rating has not been obtained from either service, the issue may be purchased if the publicly issued outstanding debt of the issuer carries a A/A rating or higher. Subsequent to purchase, if ratings fall below A/A for such issues, they do not have to be sold, and they may be exchanged with issues of credits rated lower than A/A if the credits received in exchange are, on balance, similarly rated; and

17:16-15.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this article, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this article and the Division shall have received:

1. With respect to issues registered with the Securities and Exchange Commission:

i. On new issues, a prospectus describing the issue;

ii. On existing issues, a copy of the description of the issue as contained in Moody's Manuals or in the Standard & Poor's or in any other corporation records publication or service published for the use of and accepted as reliable by investors in such obligations;

2. With respect to issues not registered with the Securities and Exchange Commission:

i. On new issues, in the case of private placements:

(1) An offering memorandum describing the terms of the issue and the business and operations of the issuer;

(2) A written approving opinion from the Attorney General to the effect that the purchase agreement is satisfactory as to form and substance; and

(3) At the closing, for the purchase of the private placement, legal opinions of counsel for the purchaser and counsel for the issuer, which opinions shall include a statement to the effect that the bonds are properly authorized and valid obligations of the issuer;

ii. On existing issues, in the case of issues which were originally offered to the public, a copy of the description of the issue as contained in Moody's Manuals or Standard & Poor's Corporation records or in any other publication or service published for the use of and accepted as reliable by investors in such obligations;

iii. On existing issues, in the case of issues which were originally placed privately:

(1) A copy of the original offering memorandum describing the terms of the issue and the business and operations of the issuer at the time of the original issue;

(2) A copy of the purchase agreement for the issue, together with all amendments thereto;

(3) A copy of the form 10-K of the issuer which was most recently filed with the Securities and Exchange Commission, or if the company does not file form 10-K reports, then the most recent audited financial statement;

(4) Representation, in writing, from the seller to the Division to the effect that (i) there are no restrictions on the sale of the bonds to funds managed by the Division, (ii) no registration of the issue with the Securities and Exchange Commission is required if the bonds are sold to funds managed by the Division, and (iii) the seller purchased the bonds directly from the issuer when the issue was originally sold. In the event that other owners have intervened between the issuer and the seller, the seller must substitute for the representation that the seller purchased the bonds directly from the issuer when the issue was originally sold the representation that no such intervening transaction required registration of the securities with the Securities and Exchange Commission. The seller may substitute for these representations a no-action letter of the Securities and Exchange Commission regarding any requirements to register the bonds;

(5) A written approving opinion from the Attorney General that the representations or no-action letter required by (d) above are satisfactory; and

(6) Approval of the State Investment Council.

17:16-[17.1]41.1 Permissible investments

(a) (No change.)

[(b) Regular dividends, either cash or stock, must have been paid on the common stock for five years next preceding the date of purchase of securities under this Subchapter (includes dividends paid by predecessor companies) from earnings equal to or greater than the dividend paid. This requirement may be waived by the State Investment Council providing the earnings of the corporation satisfy the requirements of the New Jersey Life Insurance Company Laws.]

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

17:16-[17.2]41.2 Applicable funds

(a) Applicable funds are as follows:

1.-8. (No change.)

9. The Deferred Compensation Equity Fund.

17:16-[17.3]41.3 Limitations

(a) The book value of total investments in common and preferred stock for anyone of the funds listed in N.J.A.C. 17:16-[17.2]41.2 shall not exceed 40 percent of the book value of such fund, with the exception of Common Pension Fund A.

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

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17:16-[23.1]16.1 Permissible investments

Subject to the limitations contained in this subchapter, the [director] Director may invest and reinvest the moneys of any pension and annuity group fund **including common Pension Fund B and Common Pension Fund D** in obligations issued by any company incorporated within the Dominion of Canada or which are the direct obligations of or are unconditionally guaranteed as to principal and interest by the Government of Canada, or by a province thereof **and which are rated A or better by Moody's Investors Service and Standard & Poor's Corporation**. All such securities must be payable as to both principal and interest in United States dollars.

(b) The director shall submit a list of Canadian obligations to the council for its approval. Such list may be amended or enlarged from time to time subject to the council's approval and shall be designated the "Approved Canadian List".

(c) The Director shall only select issues of Canadian obligations from the "Approved List" to be recommended for purchase by the pension and annuity group.]

17:16-[23.2]16.2 Limitations

(a) Not more than [ten]10 percent of the assets of any pension and annuity group fund shall be invested in Canadian obligations, whether direct or guaranteed.

(b) Not more than two percent of the assets of any pension and annuity group fund shall be invested in Canadian obligations, whether direct or guaranteed, of any one issuer.

(c) The total amount of debt issues purchased or acquired of any one issuer on the approved list shall not exceed [ten] 10 per cent of the outstanding debt of the issuer, and not more than the greater of \$10 million or [ten] 10 per cent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council.

17:16-[27.1]32.1 Permissible investments

(a) The following pertains to uncollateralized certificates of deposit:

1. Subject to the limitations contained in this [subsection] subchapter, the Director may invest and reinvest moneys of any [pension and annuity, static, demand, temporary reserve or trust group] fund, **including the State of New Jersey Cash Management Fund**, in certificates of deposit of banks provided that:

i.-iii. (No change.)

17:16-[28.3]53.3 Limitations

(a) (No change.)

(b) The book value of mortgages purchased under [Subchapters 15, 19, 20 and 28] **this subchapter** shall not exceed 20 percent of the assets of any pension and annuity fund at any one [item] time.

(c)-(h) (No change.)

17:16-[29.3]54.3 Limitations

(a) (No change.)

(b) The book value of construction mortgages and those purchased under [Subchapters 15, 19, 20, 28 and 29] N.J.A.C. 17:16-53 and 54 of this Chapter shall not exceed 20 percent of the assets of any pension and annuity fund at any one time.

17:16-[31.3]61.3 Distribution of income

[All income, as calculated under N.J.A.C. 17:16-31.9 of the State of New Jersey Cash Management Fund shall be invested in units of participation in accordance with N.J.A.C. 17:16-31.10 and such units may be withdrawn in accordance with N.J.A.C. 17:16-31.11.]

All income of the State of New Jersey Cash Management Fund, as calculated under N.J.A.C. 17:16-61.9, shall be invested in units of participation in accordance with the requirements of N.J.A.C. 17:16-61.10. Such units of participation may be withdrawn in accordance with the requirements of N.J.A.C. 17:16-61.11.

17:16-[31.9]61.9 Calculation of daily income per participating unit

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

(d) Similarly, the Other Than State participants' pro rata share of any gains realized upon the sale of securities by the Fund should be credited to the Reserve Fund. The charge for administrative expenses shall be in the sum of up to and not to exceed [1/20] **one tenth** of

1 percent per annum of the aggregate value of the units owned by the Other Than State Funds, and the Daily Income Per Participating Unit owned by such Other Than State Funds shall reflect their pro rata share of such sum. The charge for administrative expenses shall be paid into a fund whose assets shall be at the disposal of the Treasurer.

(e) (No change.)

17:16-[32.7]62.7 Method of valuation

(a) The Director of the Division of Investment shall use the following method of valuation of investments:

1. Where there have been recorded sales or bid and asked prices of an investment in a common fund on a security exchange or exchanges approved [in subchapter 17 (Common and Preferred Stocks) of this chapter] pursuant to N.J.A.C. 17:16-41, the last recorded sale price, if there has been a recorded sale, shall be used, unless on a day subsequent to such sale, there shall have been recorded bid and asked prices, in which event the mean of the most recent of such bid and asked prices shall be used.

2.-7. (No change.)

17:16-[32.12]62.12 Limitations

(a) The Common Pension Fund A shall be permitted to invest in the Cash Management Fund and in such securities subject to the limitations and conditions contained in the rules of the State Investment Council, N.J.A.C. 17:16, particularly N.J.A.C. 17:16-[17]41, except for the condition as to classification of funds contained in N.J.A.C. 17:16-[5]3.

(b) (No change.)

17:16-[36.5]63.5 Valuation

(a) Upon each valuation date, as defined in [subsection (b) of this section] N.J.A.C. 17:16-63.6, there shall be a valuation for every investment in the common fund in the method provided for in [these regulations] **this chapter**.

17:16-[36.10]63.10 Amendments

(a) [These regulations may be amended from time to time by regulation of the State Investment Council.] **This subchapter may be amended from time to time by the State Investment Council.**

(b) Any amendment adopted by [such council] the **State Investment Council** shall be [finding] **binding** upon all participating trusts and beneficiaries thereof.

(c) An amendment shall become effective[, unless otherwise provided for therein, on the date it becomes effective under the Administrative Procedures Act] **on the date the adoption notice is published in the New Jersey Register. The State Investment Council may, at its discretion, postpone the effectiveness of any amendment by including an operative date in the adoption notice.**

17:16-[36.12]63.12 Limitations

(a) The Common Pension Fund B shall be permitted to invest in the Cash Management Fund and in such securities subject to the limitations contained in the rules of the State Investment Council, N.J.A.C. 17:16, except for the condition as to classification contained in N.J.A.C. 17:16-[5]3.

(b) (No change.)

17:16-[37.1]33.1 Permissible investments

(a) Subject to the limitations contained in this article, the Director may invest and reinvest moneys of any [pension and annuity, static, demand, temporary reserve or trust group] fund **including the State of New Jersey Cash Management Fund** in repurchase agreements of any bank, provided that:

1.-3. (No change.)

17:16-[39.1]34.1 Permissible investments

(a) Subject to the limitations contained in this article, the Director may invest and reinvest moneys of any [pension and annuity, static, demand, temporary reserve or trust group] fund, **including the State of New Jersey Cash Management Fund** in bankers acceptances of banks provided that:

1.-4. (No change.)

PROPOSALS

Interested Persons see Inside Front Cover

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17:16-[40.2]19.2 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this subchapter, the [director] Director shall have obtained:

1. (No change.)

2. A certification signed by two members of the [division's] Division's staff and endorsed by the [director] Director stating that each proviso enumerated under N.J.A.C. 17:16-[40.1]19.1 had been checked by them and that in their opinion the security under consideration qualified as a satisfactory investment as outlined by N.J.A.C. 17:16-[40.1]19.1.

3. (No change.)

17:16-[41.2]35.2 Permissible investments

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

(c) The Director may purchase loan participation notes only from originating banks which meet the requirements [as permitted under N.J.A.C. 17:16-27 of the rules of the State Investment Council] of N.J.A.C. 17:16-32.

17:16-[44.3]65.3 Distribution of income

All income as calculated [under N.J.A.C. 17:16-44.7] pursuant to N.J.A.C. 17:16-65.7 shall be invested in units of participation in accordance with N.J.A.C. 17:16-[44.9]65.9 and such units shall be withdrawn in accordance with N.J.A.C. 17:16-[44.10]65.10.

17:16-[44.4]65.4 Permissible investments

(a) The Director may invest the assets of the State of New Jersey Deferred Compensation Plan in securities which are legal investments for fiduciaries of trust estates in New Jersey which are permitted under N.J.S.A. 52:18A-163, subject to the applicable provisions of the regulations of the State Investment Council. The New Jersey State Employees Deferred Compensation Fixed Income Fund will be invested in fixed income securities having a maturity of one year or more, and the New Jersey State Employees Deferred Compensation Equity Fund will be invested in such common and preferred stocks and issues convertible into common stock as are permitted under [Article 41 of the Rules and Regulations of the State Investment Council] N.J.A.C. 17:16-41 subject, in the case of both funds, to the exception noted in (b) below. The New Jersey State Employees Deferred Compensation Cash Management Fund shall be invested in the State of New Jersey Cash Management Fund, which in turn will be invested in accordance with [Article 61 of the Rules and Regulations of the State Investment Council] N.J.A.C. 17:16-61, or in such other fixed income securities maturing in less than one year as may be permitted by [the rules and regulations of the State Investment Council] N.J.A.C. 17:16.

17:16-[44.5]65.5 Units of participation

Each unit of participation shall represent an equal beneficial interest in each of the funds and no unit shall have priority or preference over any other in each respective fund. Each unit of participation shall be valued at the net asset value per unit as defined in N.J.A.C. 17:16-[44.7]65.7.

17:16-[45.1]71.1 Permissible investment for pension and annuity group

(a) The Director may invest the moneys of any pension and annuity fund, with the exception of the Consolidated Police and Firemen's Pension Fund, in real estate equity in any of the following ways:

1.-2. (No change.)

[3. Participation in up to one-third of the equity in any single office building is permissible, provided that the purchase price of the building is at least \$250 million, the Director has received an independent appraisal of the value of the building at the time of purchase and the investment is recommended by the Director and approved by the Council.]

3. Participation in real estate ventures consisting of commercial property, including office buildings, warehouses, and shopping centers, provided:

i. The value of the real estate venture is at least \$150 million, and the Director has received an independent appraisal of the venture's value at the time of purchase.

ii. The investment is recommended by the Director and approved by the Council.

iii. Participation may consist of up to 51 percent of the equity in the venture or up to 25 percent of the venture's senior non-subordinated debt, provided that the debt contains equity characteristics consisting of cash and/or equity ownership/participation.

17:16-[46.2]67.2 Permissible investments

The Common Pension Fund D shall be a fund created for the purpose of investing in international debt securities, international corporate common stocks or securities convertible into such stock, currencies and currency futures and options which are approved for investment under N.J.A.C. 17:16-[47, 48 and 49]20, 44 and 81, and in the State of New Jersey Cash Management Fund. Said Common Fund shall be composed of units of ownership of unlimited quantity. All units of ownership shall be represented by a certificate prepared by and issued by the Director of the Division of Investment. Each such certificate may represent one or more units of ownership. All units shall be purchased by cash payments or in kind. All units shall be purchased by the participating fund for the principal valuation price determined by these rules. At the outset of said Common Fund, all initial purchases shall be made for a principal valuation price of \$1,000 per unit.

17:16-[46.5]67.5 Valuation

Upon each valuation date, as defined in N.J.A.C. 17:16-[46.16]67.6 there shall be a valuation for every investment in the Common Fund in the method provided for in this subchapter. The valuation shall be for the principal value per outstanding unit and the income value per outstanding unit.

17:16-[46.6]67.6 Date of valuation

The valuation shall be determined at the opening of business of the first business day of each quarter, and shall be based on market prices and accruals as of the close of the previous day, in very case converted into United States dollars as provided in N.J.A.C. 17:16-[46.7]67.7.

17:16-[46.8]67.8 Valuation of units

(a) The following method shall be used in determining the principal value per unit:

1. To the valuation of investments determined as provided in N.J.A.C. 17:16-[46.7]67.7, there shall be added:

i.-iv. (No change.)

2. (No change.)

(b) (No change.)

17:16-[46.9]67.9 Admission date

(a) No admission to or withdrawal from the Common Fund shall be permitted except on the basis of the principal unit value determined as described in N.J.A.C. 17:16-[46.8]67.8 and no participation shall be admitted to or withdrawn from the Common Fund except on a valuation date or within 15 days thereafter; however, in the event that an admission or withdrawal occurs within the 15 day period aforementioned, it shall be based upon the principal value as of the last valuation date preceding said admission or withdrawal.

(b) All admissions or withdrawals shall be made by cash payments or in kind. The price for purchasing units, except for original units issued by the Common Fund, shall be the principal valuation per unit as determined on each valuation date pursuant to N.J.A.C. 17:16-[46.8]67.8. Dividends and interest earned shall be retained within the Common Fund, but may be distributed in whole or in part to the participatory pension funds, at the direction of the State Investment Council.

17:16-[46.10]67.10 Amendments

This subchapter may be amended from time to time by the State Investment Council. Any amendment adopted by the council shall be binding upon all participating trusts and beneficiaries thereof. An amendment shall become effective, unless otherwise provided for therein, on the date it becomes effective under the Administrative Procedures Act N.J.S.A. 52:14B-1 et seq.] on the date the adoption notice is published in the New Jersey Register. The State Investment

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Council may, at its discretion, postpone the effectiveness of any amendment by including an operative date in the adoption notice.

17:16-[46.12]67.12 Limitations

(a) The Common Pension Fund D shall be permitted to invest in the Cash Management Fund and in such securities subject to the limitations and conditions contained in the rules of the State Investment Council, particularly N.J.A.C. 17:16-[47, 48 and 49]20, 44 and 81, except for the conditions as to classification of funds contained in N.J.A.C. 17:16-[5]3.

(b) (No change.)

17:16-[48.1]44.1 Permissible investments

(a) Permissible investments include stock issued by a company or bank incorporated or organized under the laws of the countries listed

on the Approved List of International Government and Agency Obligations set forth in N.J.A.C. 17:16-[47.4]20.4.

(b)-(g) (No change.)

17:16-[48.2]44.2 Applicable funds

(a) The following funds may invest in common and preferred stock of international corporations pursuant to this subchapter:

1.-3. (No change.)

4. Teacher's Pension and Annuity Fund; [and]

5. Judicial Retirement System of New Jersey[.]; and

6. Common Pension Fund D.

17:16-[49.2]81.2 Limitations

(a) The following limitations apply to those investments permitted under N.J.A.C. 17:16-[49.1]81.1:

1.-2. (No change.)

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Government Unit Deposit Protection Act Rules

Adopted Amendments: N.J.A.C. 3:1-4.2, 4.7, 4.9 and 4.10

Proposed: June 18, 1990 at 22 N.J.R. 1809.

Adopted: March 6, 1991 by Jeff Connor, Commissioner, Department of Banking.

Filed: March 8, 1991 as R.1991 d.186, **without change, but with the proposed amendment to N.J.A.C. 3:1-4.8 not adopted.**

Authority: N.J.S.A. 17:9-43.

Effective Date: April 1, 1991.

Operative Dates: April 1, 1991, N.J.A.C. 3:1-4.2 and 4.7; June 1, 1991, N.J.A.C. 3:1-4.9 and 4.10.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department of Banking received five comments, three from financial institutions and two from trade associations.

1. James R. Silkensen, Executive Vice President, New Jersey Savings League.

2. Robert C. Forrey, President, and Michael F. Spicer, Esq., New Jersey Bankers Association.

3. Joram Friedman, Vice President, National Westminster Bank.

4. John E. Homestead, Executive Vice President, Midlantic National Bank.

5. Cynthia L. Rigg, Vice President, Bank of Mid-Jersey.

A summary of comments and responses follows:

COMMENT: Four commenters suggested that the proposed amendment, which required approval of the Department and payment of a \$25.00 fee prior to any substitution of collateral, was overly burdensome. Some of the commenters recommended that the Department require this prior approval only when the substituted collateral offered was significantly different in type or quality. All commenters recommended that substitutions be permitted without application if the market value and quality of the collateral being offered were substantially similar.

RESPONSE: In response to these comments, the Department is considering allowing such substitutions, with notice provided to the Department within 10 days after substitution. Upon consultation with the Office of the Attorney General, it has been concluded that this less burdensome alternative would be acceptable and would not detrimentally effect its security interest in the collateral.

The Department has therefore not adopted the proposed amendment concerning substitution contained in N.J.A.C. 3:1-4.8. Instead, the Department intends to submit a proposal in the near future to require notice within 10 days after substitution. Until such a rule is proposed, the public depository may substitute collateral of equal value without application or notice pursuant to current rules.

COMMENT: Two commenters suggested a phase-in period to allow them sufficient time to arrange for third party custodians, where needed.

RESPONSE: This suggestion is accepted. The Department considers a 60-day lead-in period for the rules concerning third party custodians to be sufficient. It is noted that only 13 institutions are currently pledging loans which are not held by third party custodians.

COMMENT: One commenter suggested that purchased mortgage servicing rights be included in the definition of surplus.

RESPONSE: Adding mortgage servicing rights to the definition of capital would, in effect, reduce the collateral pledged against municipal deposits in certain situations. The purpose of the Act is to place the municipal deposits in a preferred position. Since the inclusion of any intangible asset in the calculation of capital funds will weaken the overall strength of the pool of funds, this recommendation was not adopted.

COMMENT: One commenter suggested that readily marketable investment grade securities be further defined.

RESPONSE: The Department agrees with this suggestion, and will define in an upcoming proposal the investment grade securities which are eligible to be pledged.

COMMENT: One commenter suggested changes to N.J.A.C. 3:1-4.9(d) so that required capital ratios are defined and specified. In addition, the suggested changes would permit the Commissioner to require 95 percent collateralization of deposits, rather than 120 percent as set forth in the proposal.

RESPONSE: The Department has not changed the language from the proposal, which permits the Commissioner to require additional collateralization when the depository fails to meet its minimum regulatory capital requirements as established by the appropriate Federal agency or meets the requirements set forth in N.J.S.A. 17:16J-2(a). However, the Department is considering rules which would substitute its own capital standards for those of the federal supervisory agency, with percentages of collateralization based on the degree of compliance with those State standards. It is anticipated that a proposal setting forth these changes will be forthcoming in the near future.

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

3:1-4.2 Filing of certified statement by public depository

Every public depository shall file with the Commissioner of Banking, on forms furnished by the Commissioner, a certified statement signed by its president or vice president and one other officer indicating the average daily balance or the alternate average balance as provided in the Act of either collected or uncollected public funds on deposit during the six-month period ending on the next preceding valuation date (June 30 or December 31 of each year). The statement shall include information as to the capital funds of the depository and detailed information, including location pertaining to the eligible collateral pledged to secure public funds. The statement shall be filed as of June 30 and December 31 of each year and at such other times as the Commissioner may require. The public depository shall remit to the Department with each such statement a filing fee of \$25.00.

3:1-4.7 Scope of terms surplus and undivided profits

(a) As included within the definition of capital funds in N.J.S.A. 17:9-41:

1. The terms "surplus" and "undivided profits" shall, in the case of a State bank or national bank, include any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:

i. Exclude any specifically allocated reserves or reserves for known specific charges; and

ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

2. The term "surplus" shall, in the case of a savings bank, include undivided profits, any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:

i. Exclude any specifically allocated reserves or reserves for known specific charges; and

ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

3. The term "undivided profits" shall, in the case of an association, include any reserve for contingency and included within the definition of capital funds in N.J.S.A. 17:9-4.1, reserve for bad debts as computed for Federal income tax purposes, but shall:

i. Exclude any specifically allocated reserves or reserves for known specific charges; and

ii. Be reduced by the booked value or any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

BANKING**ADOPTIONS****3:1-4.8 Substitution of collateral**

[(a)] Public depositories **shall have the right to** *[(may)]* make substitutions of eligible collateral between valuation dates **without notification to and** *[(upon)]* approval by the Commissioner*[, or an employee of the Department specifically authorized by the Commissioner in writing to approve these substitutions]*; provided, that any substituted collateral have a market value as of the date of substitution which is at least equal to the market value of the collateral so replaced as reported on the last valuation date. *[(A letter to the Commissioner requesting such a substitution of collateral shall indicate the collateral to be substituted and the reason or reasons for such substitution. The public depository shall remit to the Department a \$25.00 filing fee with each such request. The Commissioner shall transmit in writing his or her approval or disapproval of such substitution to the public depository and the custodial depository. (b)]* Any withdrawal of pledged collateral without replacement **as mentioned aforesaid** requires the prior approval of the Commissioner*[, or an employee of the Department specifically authorized by the Commissioner in writing to approve withdrawal of collateral]*. A letter to the Commissioner requesting such withdrawal of collateral shall indicate the collateral to be withdrawn and the reason or reasons for such withdrawal. *[(The public depository shall remit to the Department a \$25.00 filing fee with each such request.)]* The Commissioner shall transmit in writing his *[(or her)]* approval or disapproval of such withdrawal to the public depository *[(and the custodial depository)]*.

3:1-4.9 Agreement or resolution; custodial depository and Commissioner

(a) The depositories specified in N.J.S.A. 17:9-44(c) shall be known as custodial depositories. A public depository shall not deposit collateral in a custodial depository which is a parent or subsidiary of the public depository, or is otherwise related to the public depository.

(b) A custodial depository shall be required to have a written agreement with the Commissioner authorizing such depository to hold securities as collateral for public funds under the terms and conditions enumerated therein.

(c) A public depository who pledges mortgage loans, student loans or Small Business Administration loans insured or guaranteed by the United States of America or an instrumentality thereof or by the State of New Jersey or an instrumentality thereof as to the payment of principal and interest shall file with the Commissioner at the time each certification statement is filed a report of the current status of each mortgage, student loan or Small Business Administration loan pledged as collateral on forms subject to the approval of the Commissioner:

1. The bond or note and mortgage collateral instruments shall be deposited with a custodial depository.

2.-5. (No change.)

(d) If a public depository fails to meet its minimum regulatory capital requirements as established by the appropriate supervising Federal agency or meets the criteria set forth in N.J.S.A. 17:16J-2(a), the Commissioner may:

1. Require that the public depository pledge readily marketable investment grade securities only, and pledge such securities to the extent of 120 percent of the amount of public funds on deposit not insured by the appropriate Federal insurance fund; and/or

2. Issue a limited certificate which prohibits the public depository from accepting public deposits not insured by the appropriate Federal insurance fund.

3:1-4.10 Agreement or resolution; public depository and custodial depository

(a) Each public depository shall be required to have a written agreement with a custodial depository. Said agreement shall indicate that the collateral pledged is to be held subject to the order of the Commissioner or his or her authorized deputy and is held as security for public funds as required under the Act.

(b) Each public depository that pledges insured or guaranteed mortgages, student loans or Small Business Administration loans as security for public funds shall file with the Commissioner a resolution

of the board of the depository at the time of the initial pledge. The resolution must authorize the pledging of such mortgages, student loans or Small Business Administration loans in a custodial depository, together with other documentation which may be required by the Commissioner.

(c) The aforesaid written agreement or resolution shall indicate that the collateral pledge is to be held in a custodial depository subject to the order of the Commissioner or his or her authorized deputy and is held as security for public funds as required by the Act.

(a)

DIVISION OF REGULATORY AFFAIRS**General Provisions****Readoption with Amendments: N.J.A.C. 3:6**

Proposed: January 22, 1991 at 23 N.J.R. 147(a).

Adopted: March 1, 1991 by Jeff Connor, Commissioner, Department of Banking.

Filed: March 1, 1991 as R.1991 d.171, **without change**.

Authority: 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.

Effective Dates: March 1, 1991, Readoption; April 1, 1991, Amendments.

Expiration Date: March 1, 1996.

Summary of Public Comments and Agency Responses:

The Department received two comments, one from the trade group representing New Jersey savings and loan associations and one from a New Jersey trust company.

1. James R. Silkens, Executive Vice President, New Jersey Savings League.

2. Eugene H. Bauer, Chairman of the Board and Chief Executive Officer, United Counties Trust Company.

COMMENT: Proposed amendments to subchapter 4 of these rules changed the reporting requirements for suspected criminal activities. Whereas banks and savings banks previously had to report to the Department apparent criminal activity involving \$1,500 or more for agents or employees of the bank, and \$2,500 for unrelated persons, the proposed amendments increased the respective thresholds to \$5,000 and \$9,000. The trade group suggests that similar increases be extended to associations. In particular, the trade group suggests that the State's reporting requirements mirror those now contained in Federal rules. In addition, it suggests that the rules allow institutions the flexibility to decide if law enforcement authorities should be contacted, depending upon the particular circumstances.

RESPONSE: The Department agrees that the threshold criminal reporting requirements for savings and loan associations need to be increased. It is anticipated that such increases will be proposed in the near future.

COMMENT: The trust company suggests that the \$100,000 limitation on loans to executive officers contained in subchapter 3 is archaic, and recommends that it be increased.

RESPONSE: The Department will study this suggestion, and may increase the amount in a future proposal.

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

Full text of the adopted amendments follows:

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 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

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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 \$5,000 or less 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 in 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 \$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.

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3:6-10.2 Limitations on such investments

A savings bank may sell unsecured days funds (term federal funds) to any insured bank, as defined in N.J.A.C. 3:6-10.1, provided the total amount sold to any one insured bank does not exceed 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.

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(a)

STATE BOARD OF EDUCATION

Governor's Teaching Scholars Program

Readoption with Amendments: N.J.A.C. 6:12

Proposed: December 17, 1990 at 22 N.J.R. 3672(a).

Adopted: March 6, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: March 8, 1991 as R.1991 d.182, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-15 and 18A:71-86.

Effective Date: March 8, 1991, Readoption; April 1, 1991, Amendments.

Expiration Date: March 8, 1996.

Summary of Public Comments and Agency Responses:

The Department of Education received only one comment and it was from Martin J. Malague. The comment stated that the Governor's Teaching Scholars Program is not able to guarantee loan recipients a teaching position, that the program was designed to correct a teacher shortage which does not exist, that he has been hampered by his being part of

the Alternate Route, and that the options for persons unable to obtain a teaching position, that is a one year deferment or financial repayment, do not present an acceptable choice.

The Department agrees that the State cannot guarantee teaching positions to Governor's Teaching Scholars. Rather the legislation provides for the Department to assist scholar graduates in their search for a position. The Department believes that the Governor's Teaching Scholars Program was designed to attract academically well qualified students into the profession and the need for quality teachers continues to exist. Department figures indicate that approximately 25 percent of the 1990 scholars earned their certificates through the Alternate Route, and out of 46 scholars hired 11 earned their certificate through the Alternate Route. The year of deferment was designed to permit scholars without positions to substitute teach, continue to search for positions or earn further certification if they wish. Frequently, teachers are hired in the middle of the year. Six out of the 46, 1990 scholars hired were employed after September 1, 1990.

Summary of Agency Changes Upon Adoption:

At N.J.A.C. 6:12-1.5(a)2, the agency added the words "at least" before the number 27 so that language is consistent.

At N.J.A.C. 6:12-1.8, the agency deleted subsection (f) because it was a duplication of language contained in N.J.A.C. 6:12-1.9(d).

At N.J.A.C. 6:12-1.9(f), the agency added the sentence, "No interest shall accrue during the period of deferment," because this was implied but not clearly stated in the text.

At N.J.A.C. 6:12-1.9(g), the agency deleted paragraph (g)5 because it was a duplication of the language contained in subsection (f) and is therefore unnecessary. The word "additional" was added before the word "reasons" to clarify the statement. Paragraph (g)6 was renumbered as (g)5. The word "or" was added to paragraph (g)4.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:12.

Full text of the adopted amendments follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

6:12-1.2 Definitions

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

"Academic progress" means attaining a minimum academic average of "B" or 3.0 grade point average in a full-time college or university program leading to graduation in a four year time period.

"Academic year" means the period between the time school opens after the general summer vacation until the next succeeding summer vacation.

"Academically superior" means that the student has reached a high school class rank in the upper one fifth of the student's graduating class at the end of the junior year, and has a minimum combined SAT score of 1100.

"Approved program" means a course of study either in teacher training or in a specialized field of study, indicated as an accepted curriculum program by the college or university attended.

"College budget" means the costs of tuition, room and board, fees, books, travel and personal expenses as provided by the college.

"Full-time high school student" means one who will graduate with the senior class at the end of the current academic year.

"Loan redemption schedule" means the plan whereby redemption (forgiveness) of the loan is based upon number of years the borrower has taught in a public school in New Jersey and the schedule shall take into account the location of teaching assignment.

"Minority" means any United States citizen who is a member of a racial-ethnic group that has been historically disadvantaged in obtaining access to equal educational opportunities as designated by the United States Department of Education, Office of Civil Rights, including Blacks, Hispanics, Native Americans, Asians and Pacific Islanders.

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6:12-1.3 Administration of the program

(a) The Governor's Teaching Scholars Program (GTSP) shall be jointly administered by the Department of Education and the Higher Education Assistance Authority under the auspices of the Department of Higher Education. Their respective responsibilities shall be as follows:

1. The New Jersey Department of Education shall serve as the lender, guarantor and selector of the participants of this loan program and is required to:

i.-ii. (No change.)

iii. Convene a committee of at least 12 members appointed by the Commissioner of Education to review and recommend nominations to the GTSP. The Commissioner shall fill any vacancy on the committee in a timely manner. The committee shall be composed of public and private school educators, school administrators, a representative of the Department of Higher Education and a representative from the Department of Education;

iv.-vi. (No change.)

vii. Render assistance to college graduates in the GTSP in order that they may secure a teaching position in the State of New Jersey.

2. The New Jersey Department of Higher Education shall serve as the servicer of the loan program and is required to:

i.-iii. (No change.)

iv. Assume responsibility for fiscal tracking and pursuit of repayment in the event that the loan recipient does not enter redemption or ceases to be eligible for redemption.

6:12-1.4 Program eligibility

(a) The GTSP will be open to all high school senior students from public and non-public high schools who are citizens of the United States or its territories and legal residents of the State of New Jersey who plan to attend an accredited college or university in the United States.

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

6:12-1.5 Academic requirements

(a) To qualify for academic eligibility under the GTSP, an applicant must:

1. (No change.)

2. Attain a combined Scholastic Aptitude Test test score of at least 1100 or an American College Test score of ***at least*** 27;

3. (No change.)

(b) (No change.)

6:12-1.6 Loan application and selection process

(a) All high school senior students who are New Jersey residents and citizens of the United States or its territories having attained the level of academic achievement as previously set forth in N.J.A.C. 6:12-1.5 are considered eligible for the loan program. The applicant must submit in packet form:

1. An official transcript complete with grades from the first marking period of the applicant's senior academic year, class rank at the end of the junior year and Scholastic Aptitude Test scores or American College Test scores. Preliminary Scholastic Aptitude Test Scores are not acceptable. If the applicant's high school regulations require that this information be submitted directly by high school personnel, the applicant must include a copy of a letter to the high school principal as evidence that the request has been made;

Recodify existing 3.-6. as 2.-5. (No change in text.)

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

(d) The Commissioner shall select a minimum of 100 high school graduates eligible to receive the GTSP loans from the pool of students nominated by the selection committee as meeting the criteria for the GTSP. However, if the appropriation for a fiscal year changes, the number of nominees selected will reflect that change.

(e) The Commissioner shall notify nominees of the selections on or before April 15 each year that the program continues.

6:12-1.7 Program participant responsibilities

(a) Students selected for GTSP participation shall:

1. (No change.)

2. Maintain academic progress in the college or university selected;

3.-4. (No change.)

5. Provide a letter to the Commissioner from the college or university indicating the cost of the schooling, known as the "college budget," each year that the student participates in the program;

6. Submit an official college or university transcript to the Commissioner for review at the conclusion of each school year that the loan is in effect;

7. Submit an annual letter of intent to the Commissioner to continue as a participant in the program;

8. (No change.)

9. Report immediately in writing to the Commissioner any planned or actual changes in college attendance or career intentions;

10. Provide the Department of Education verification of registration for an academic term in an undergraduate degree program and appropriate transcripts when required; and

11. Provide updated information to the Commissioner on the progress of their individual careers.

(b) Program participants will be encouraged to attend the yearly conference with recent nominees.

6:12-1.8 Source of loan funds

(a) The eligible student will be considered a Governor's Teaching Scholar if selected by the Commissioner from the pool of nominees. The amount of the loan will depend on the tuition, room and board and necessary fees and expenses, known as the "college budget." Verification of this budget is provided in N.J.A.C. 6:12-1.7(a)5.

(b) (No change.)

(c) The loan may not exceed the student's costs as determined by the educational institution which the student has selected, less the total value of other scholarships and grants received by the participant for any given academic year.

(d) Loans shall accrue interest at the highest established rate by the U.S. Department of Education at the time of disbursement, and during the time a participant is enrolled as a full-time student in the program; however, the combination of principal and interest can be redeemed after graduation for full-time teaching service in the State of New Jersey. Interest will not accrue while the loan recipient is engaged in the approved redemption service. Substitute teaching is not permitted as approved redemption service.

(e) (No change.)

[(f) Total cancellation of loan indebtedness will not exceed the maximum of \$30,000 plus accrued interest per student. Any other loans obtained by the borrower will not be eligible for loan redemption.]

6:12-1.9 Redemption

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

Recodify existing (e) and (f) as (d) and (e) (No change in text.)

(f) If a participant is unable to secure a position in New Jersey's public schools after demonstrably showing that he or she has applied for and been interviewed for positions, the participant may request a one year deferment from loan redemption. ***No interest shall accrue during the period of deferment.*** This request will be referred to a three member panel appointed by the Commissioner. The panel will make its recommendation for deferment to the Commissioner who shall issue a final determination to the participant and inform the Department of Higher Education of the decision.

(g) Temporary deferments of loan repayment/redemption may be granted by the Commissioner of Education upon receipt of written requests from GTSP candidates for the following ***additional*** reasons. The candidate is:

1. Engaging in a full-time graduate study program in the field of education, or the recipient's teaching field, at an accredited institution of higher education;

2. Serving, not in excess of three years, as a member of the armed services of the United States;

3. Temporarily disabled, as established by sworn affidavit of a qualified physician. The Department of Education reserves the right to require the requesting candidate to submit to a medical examination by a physician(s) selected by the Department of Education;

4. Unable to secure employment for a period not to exceed 12 months by reasons of the care required by a spouse who is disabled; ***or***

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[5. Seeking and unable to secure fulltime employment in a public elementary or secondary school not to exceed 12 months as per (f) above; or]

*[6.]**5.* On maternity leave for a period not to exceed 12 months for each leave.

6:12-1.10 Terms of repayment

(a) Repayment of loans under the GTSP shall be governed under the following conditions:

1. (No change.)

2. Interest will be waived from the month of graduation until employment begins the following September. Interest will begin to accrue again on or as close to September 16 as possible if a copy of the teaching contract has not been presented to the Commissioner. The interest period will be deferred while the borrower is employed as a full-time teacher in the New Jersey public school system and is therefore participating in the redemption plan. Substitute teaching is not permitted as approved redemption service;

3. If the participant is deemed ineligible for loan redemption or chooses not to have the loans redeemed, he or she will pay back the entire capitalized principal balance, plus accruing interest at the rate determined by the U.S. Department of Education in equal monthly installments over a repayment period that lasts no more than 10 years.

6:12-1.11 Special loan forgiveness

(a) (No change.)

(b) Requests for deferment or forgiveness of loans must be made by the borrower to the Commissioner. Such requests shall be referred for an initial recommendation to a three member panel appointed by the Commissioner. Following receipt of such recommendation, the Commissioner shall issue a final determination and inform the Department of Higher Education of the decision.

6:12-1.12 Termination and forgiveness of service

(a) Borrowers who terminate their participation in the program or who are not reemployed as teachers while in the redemption phase will notify the Commissioner by certified mail within 15 days of the termination.

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

6:12-1.13 Review and adjustments

The State Board of Education upon the recommendation of the Commissioner may make periodic adjustments to the loan amount for students entering the program.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Surf Clam Management

Adopted Concurrent Repeal and New Rules:

N.J.A.C. 7:25-12

Proposed: January 22, 1991 at 23 N.J.R. 223(a).

Adopted: March 4, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: March 5, 1991 as R.1991 d.173, with a substantive and a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: 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.

DEP Docket Number: 001-91-01.

Effective Date: March 5, 1991, Concurrent New Rules; April 1, 1991, Changes upon Adoption.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

The repeal and new rules were proposed concurrently with an adopted emergency repeal and new rules on January 22, 1991 at 23 N.J.R. 223(a).

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Two commenters, Beverly and James Jordan, jointly submitted written comments prior to the February 21, 1991 close of comment period.

COMMENT: Proposed changes will only benefit multi-vessel owners.

RESPONSE: The Surf Clam Advisory Committee discussed the possibility that license consolidation would greatly benefit multi-vessel owners and provide an economic disadvantage to single vessel owners. After much discussion with input from single and multi-vessel owners, it was agreed that, while unlimited consolidation would provide a great economic advantage to multi-vessel owners, limiting license consolidation to three licenses per vessel would have virtually no adverse impact on single-vessel owners.

COMMENT: License consolidation will promote overfishing.

RESPONSE: The retention of the annual quota and limited entry system provides the controls necessary to ensure that the resource will not be excessively depleted. The Department will continue monitoring the condition of the resource through annual stock assessment, which provides the basis for the annual quota. License consolidation and the elimination of the weekly quota system will allow all vessel owners to fish when weather and market conditions are favorable.

COMMENT: Multi-vessel owners will flood the market with surf clams.

RESPONSE: It is unlikely that multi-vessel owners will prevent single-vessel owners from obtaining "a fair share of the market." Since the number of single- and multi-vessel owners remains virtually unchanged, the single-vessel owners should continue to have the same share of the market under the new rules as they did under the repealed rules. The Surf Clam Advisory Committee and other industry representatives indicated that limited consolidation would have virtually no negative economic impact on single-vessel owners.

Summary of Agency-Initiated Changes:

For purposes of clarity, reference was made to Shellfish Growing Water Classification Charts at N.J.A.C. 7:25-12.11(b). A new section, N.J.A.C. 7:25-12.20, was added to set forth a licensee's hearing rights prior to license suspension or revocation in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*).

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:

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"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, attempting to take, harvesting, or dredging of surf clams, or the participation therein, in State waters, except the following:

1. Research, inventory or educational activities involving surf clams conducted under a certificate issued by the Division pursuant to N.J.S.A. 23:4-52 or a permit issued by the Department pursuant to N.J.S.A. 50:2-6.1 for research, inventory or educational purposes;
2. Gathering from beaches of surf clams cast there by the sea, in areas adjacent to approved waters. Such harvest activities are subject to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2, and 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 sale from areas in approved waters. Such harvest activities are subject to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2, and a clamming license is required therefor as described in N.J.A.C. 7:25-8.

(b) Compliance with this subchapter shall not exempt any person from compliance with shellfish rules adopted to protect the public health by the Department, under authority of N.J.S.A. 58:24-1 et seq., or by any department of State government or any Federal 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 vessel shall not take, attempt to take, harvest, or dredge for surf clams, or participate therein, in any State waters without first obtaining a surf clam license and harvest tags as described in N.J.A.C. 7:25-12.12 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 control the harvest of surf clams from State waters are as follows:

1. The captain of a surf clam vessel possessing a surf clam license, or of a licensed bait clam vessel, or his or her designee, shall notify the Department of the intended fishing location of the vessel and the intended port and time of landing each day it fishes in State waters. The notification shall be made by calling the Division's Marine Enforcement Unit, Bureau of Law Enforcement, at (609) 748-2050, prior to fishing in State waters and prior to change of location. Changes in port of landing or time of landing must be given four 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 between 6:00 A.M. and 6:00 P.M. Eastern Standard Time.

3. Any person fishing for surf clams at any time, or who has reported his intention to fish, in State waters shall have the vessel's entire harvest for that fishing trip counted as part of the licensed season allocation of surf clams.

4. A person shall not transfer surf clams from a surf clam vessel or bait clam vessel to any other vessel. All surf clams harvested in State waters shall be landed in this State. Specific hours of landing may be designated by the Division. A person shall not operate a surf clam vessel or bait clam vessel to fish in or land surf clams from both State and Federal waters on a single fishing trip. A surf clam vessel shall not land any quahogs or surf clams taken from Federal waters during the same fishing trip for which the Division's Marine Enforcement Unit, Bureau of Law Enforcement, has received notification of intent to use that vessel in State waters to harvest surf clams.

5. All surf clams shall be landed in their shells and offloaded in cages. All surf clam cages containing surf clams shall be tagged with tags obtained from the Division before offloading. The tags must be used sequentially as issued. Tags shall not be removed until cages are emptied at the processing plant, at which point the removed tags shall be destroyed and discarded.

6. It shall be unlawful to possess an empty cage to which a tag 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, the annual season for taking surf clams in State waters shall begin on October 1 and extend through and including May 31.

7:25-12.9 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 Atmospheric Administration Nautical Chart 12318 (35th, August 11/84) available for inspection at the Nacote Creek Shellfish Office:

- i. From the shore on the bay side of Little Beach, latitude 39 degrees 28.3 minutes N, longitude 74 degrees 19.4 minutes W;

- ii. Thence seaward 090.5 degrees T one nautical mile to a point, latitude 39 degrees 28.3 minutes N, longitude 74 degrees 17.2 minutes W, LORAN C 9960-X-26958, 9960-Y-43099;

- iii. And thence south following the line of the beach one nautical mile offshore to a point, latitude 39 degrees 21.0 minutes N, longitude 74 degrees 23.6 minutes W, LORAN C 9960-X-26983, 9960-Y-43020 (generally marked by a buoy charted as "1" FI G 4s GONG);

- iv. Thence 333 degrees T to latitude 39 degrees 21.5 minutes N, longitude 74 degrees 23.9 minutes W, LORAN C 9960-X-26986, 9960-Y-43026 (generally marked by a buoy charted as R "2" FI R 2.5s); and

- v. Thence 309 degrees T to the light charted as FI G 4 sec. 29 ft. "7" at the end of the southernmost jetty in Absecon Inlet, latitude

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39 degrees 21.8 minutes N, longitude 74 degrees 24.5 minutes W, LORAN 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 Atmospheric Administration Nautical Chart 12323 (19th Edition, November 15/80), available for inspection at the Nacote Creek Shellfish 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 39 degrees 52.9 minutes N, longitude 74 degrees 3.6 minutes W, LORAN C 9960-X-26924, 9960-Y-43357;

ii. Thence south following the line of the beach one nautical mile off shore to a point; latitude 39 degrees 45.9 minutes N, longitude 74 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 with a latitude 39 degrees 45.8 minutes N, longitude 74 degrees 6.4 minutes W; and

3. Those areas closed to shellfishing by N.J.A.C. 7:12.

7:25-12.10 Harvest limitations; surf clam harvest quota

(a) The Commissioner, with the advice of Council, shall establish annually a season quota of between 250,000 and 700,000 bushels of surf clams. The season quota shall be set at approximately 10 percent of the State's estimated standing stock of surf clams.

(b) By September 15 of each year the Department shall send notice to all license holders by first class mail, and file notice for publication in the New Jersey Register, of the season quota for the upcoming surf clam harvest season.

(c) If the Department does not give notice of the season quota for the surf clam harvest season pursuant to (b) above, the season quota for the upcoming season shall be 500,000 bushels.

(d) Each surf clam license allocation shall be 1/57th of the season quota.

7:25-12.11 Bait clams

(a) A person or vessel shall not take, attempt to take, harvest, or dredge for bait clams, or participate therein, in any State waters without first obtaining:

1. A bait clam vessel license as provided for at N.J.A.C. 7:25-12.15; and

2. A special permit for bait clam harvest from the Division of Water Resources, as provided for at N.J.A.C. 7:12.

(b) Bait clam vessel licensees shall harvest bait clams only from condemned waters, ***as delineated at N.J.A.C. 7:12 and illustrated in the current Shellfish Growing Water Classification Charts,*** but not from condemned waters located within the prohibited fishing areas delineated at N.J.A.C. 7:25-12.9(a)1 and 2.

(c) Bait clam vessel licensees shall report fishing area daily as provided at N.J.A.C. 7:25-12.7(b)1 and file weekly harvest reports as provided at N.J.A.C. 7:25-12.13.

(d) The season for taking bait clams shall extend throughout the year.

(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

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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.

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(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.

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(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 Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq., at N.J.S.A. 23:2B-14. Penalties may include monetary penalties of \$100.00 to \$3,000 for a first violation, and \$200.00 to \$5,000 for any further violations. Penalties may also include confiscation of any vessel or equipment used in committing a violation, 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.

*7:25-12.20 Hearings

(a) Except as provided in (b) below, prior to the suspension or revocation of any license, the licensee has the right to a hearing, upon the licensee's request to the Department. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and 52:14F, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) When necessary to protect the public health, safety or welfare, the Department may immediately suspend a license without a pre-suspension hearing. In that case, the hearing shall be conducted on an expedited basis.*

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Petition for Delisting of Hazardous Waste at Beecham Laboratories

Adopted New Rule: N.J.A.C. 7:26-8 Appendix I

Adopted Amendment: N.J.A.C. 7:26-8.17

Proposed: November 19, 1990 at 22 N.J.R. 3430(b).

Adopted: March 4, 1991 by Scott A. Weiner, Commissioner,
Department of Environmental Protection.

Filed: March 5, 1991 as R.1991 d.172, **without change**.

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

DEP Docket Number: 037-90-10.

Effective Date: April 1, 1991.

Expiration Date: October 25, 1995.

ADOPTIONS

Summary of Public Comments and Agency Responses:

The new rule and amendment were proposed November 19, 1990. The public comment period closed January 18, 1991. **No comments were received.** The new rule and amendment are being adopted without change.

Full text of the adoption follows.

7:26-8.17 Delisting procedure

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

(l) The Department shall give public notice of proposed delistings by publication in the New Jersey Register. A period of at least 30 days shall be allowed for public comment. Public hearings will be scheduled, if in the discretion of the Department, the public comment has raised issues affecting the public health and safety, and/or the environment. Public comments will be reviewed and answered in the final notice. A proposed delisting will become effective upon publication of the final notice in the New Jersey Register, and the delisting will be described in Appendix I of this subchapter, incorporated herein by reference.

APPENDIX I

WASTES EXCLUDED UNDER N.J.A.C. 7:26-8.17

Table 1—Wastes Excluded From Non-Specific Sources

| Facility (Reserved) | Address | Waste Description |
|------------------------|---------|-------------------|
| | | |

Table 2—Wastes Excluded From Specific Sources

| Facility (Reserved) | Address | Waste Description |
|------------------------|---------|-------------------|
| | | |

Table 3—Wastes Excluded From Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof

| Facility | Address | Waste Description |
|--------------|------------------------|---|
| Beecham Labs | Piscataway, New Jersey | Contaminated soil (approximately 2,400 cubic yards) which contains acetone, methylene chloride, methyl isobutyl ketone and toluene each in concentrations of 4.7 ppm or less. |

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Tuition Policies for Public Institutions

Adopted New Rules: N.J.A.C. 9:5

Proposed: November 19, 1990 at 22 N.J.R. 3437(a).

Adopted: February 6, 1991 by the Board of Higher Education,

Edward D. Goldberg, Chancellor and Secretary.

Filed: March 7, 1991 as R.1991 d.177, **without change.**

Authority: N.J.S.A. 18A:62-3, 18A:62-4, 18A:64-13.4.

Effective Date: April 1, 1991.

Expiration Date: April 1, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

N.J.A.C. 9:5 expired on January 21, 1991, pursuant to Executive Order No.66 (1978). In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are adopted herein as new rules.

Full text of the adopted new rules proposed for reoption can be found in the New Jersey Administrative Code at N.J.A.C. 9:5.

Full text of the adopted amendments to the rules proposed for reoption follows.

HIGHER EDUCATION

SUBCHAPTER 1. PUBLIC COLLEGES AND UNIVERSITIES—GENERAL TUITION POLICIES

9:5-1.1 (Reserved)

9:5-1.2 Eligibility for New Jersey resident tuition

(a) (No change.)

(b) Any dependent student, as defined in N.J.A.C. 9:7-2.6, who is domiciled in this State for tuition purposes and who is enrolled in an institution of higher education in New Jersey shall continue to be eligible for New Jersey resident tuition status despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year.

(c) (No change.)

9:5-2.1 Proof of eligibility

(a) (No change.)

(b) Eligible individuals currently employed must submit proof of recognition of their unemployed status by the New Jersey Department of Labor, Division of Employment Services, to the institution. Said proof of eligibility must be dated no earlier than 30 days prior to the college's course registration day for the semester in which the job training course is to be taken.

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

9:5-2.3 Eligible coursework

(a) Each institution shall ordinarily designate all of its course offerings for eligibility under this program. Customized courses that are underwritten by specific employers for the benefit of their respective employees may be exempted from eligibility under this program.

(b) (No change.)

9:5-2.6 Inclusion of program in college enrollment count

All enrollments in credit bearing courses through this program may be included in the college's official enrollment count.

(b)

STUDENT ASSISTANCE BOARD

Garden State Scholarships

Award Amounts

Adopted Amendment: N.J.A.C. 9:7-4.4

Proposed: January 7, 1991 at 23 N.J.R. 4(a).

Adopted: February 26, 1991 by the Student Assistance Board,

M. Wilma Harris, Chairperson.

Filed: March 7, 1991 as R.1991 d.178, **without change.**

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-26.10.

Effective Date: April 1, 1991.

Expiration Date: February 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENTS: Two comments were received by the Department, one from Randall W. Richards, Director of Financial Aid at Montclair State College, and the other from Dr. Elsa Gomez, President of Kean College of New Jersey, which support the proposed amendment.

RESPONSE: Accepted.

Full text of the adoption follows.

9:7-4.4 Award amounts

(a) Garden State Scholars shall receive annual awards of up to \$500.00 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(h). If sufficient funds are available, the award may be increased up to an additional \$500.00 based upon the student's New Jersey Eligibility Index (NJEI) pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following table:

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| NJEI | Additional Amount of Grant | | | |
|------------|----------------------------|----------------|--------------------------|----------------------------|
| | County Colleges | State Colleges | Independent Institutions | Rutgers Univ. NJIT & UMDNJ |
| Under 1500 | \$500 | \$500 | \$500 | \$500 |
| 1500- 2499 | 250 | 500 | 500 | 500 |
| 2500- 3499 | 250 | 250 | 500 | 500 |
| 3500- 4499 | 250 | 250 | 250 | 250 |
| 4500- 5499 | 250 | 250 | 250 | 250 |
| 5500- 6499 | 0 | 250 | 250 | 250 |
| 6500- 7499 | 0 | 250 | 250 | 250 |
| 7500- 8499 | 0 | 0 | 250 | 250 |
| 8500- 9499 | 0 | 0 | 250 | 250 |
| 9500-10499 | 0 | 0 | 250 | 0 |
| Over 10499 | 0 | 0 | 0 | 0 |

(b) Distinguished Garden State Scholars shall receive annual awards of up to \$1,000 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(c), (d), and (e). If sufficient funds are available, the award may be increased up to an additional \$1,000 based upon the student's New Jersey Eligibility Index (NJEI) pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following table:

| NJEI | Additional Amount of Grant | | | |
|------------|----------------------------|----------------|--------------------------|----------------------------|
| | County Colleges | State Colleges | Independent Institutions | Rutgers Univ. NJIT & UMDNJ |
| Under 1500 | \$1000 | \$1000 | \$1000 | \$1000 |
| 1500- 2499 | 500 | 1000 | 1000 | 1000 |
| 2500- 3499 | 250 | 500 | 1000 | 1000 |
| 3500- 4499 | 250 | 500 | 500 | 500 |
| 4500- 5499 | 250 | 250 | 500 | 500 |
| 5500- 6499 | 0 | 250 | 500 | 250 |
| 6500- 7499 | 0 | 250 | 250 | 250 |
| 7500- 8499 | 0 | 0 | 250 | 250 |
| 8500- 9499 | 0 | 0 | 250 | 250 |
| 9500-10499 | 0 | 0 | 250 | 0 |
| Over 10499 | 0 | 0 | 0 | 0 |

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services Manual

Readoption with Amendments: N.J.A.C. 10:50

Proposed: January 7, 1991 at 23 N.J.R. 5(a).
 Adopted: February 27, 1991, by Alan J. Gibbs, Commissioner,
 Department of Human Services.

Filed: February 27, 1991 as R.1991 d.167, **without change**.

Authority: N.J.S.A. 30:4D-6b(15), 30:4D-7, 7a, b and c;
 30:4D-12; 42 CFR 440.170(a).

Effective Date: February 27, 1991, Readoption; April 1, 1991,
 Amendments.

Expiration Date: February 27, 1996.

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. 10:50.

Full text of the adopted amendments follows.

10:50-1.3 General policies for participation

(a) The approval process for becoming a transportation service provider is as follows:

1.-3. (No change.)

4. A potential provider seeking approval to provide livery service shall attach to the Medicaid Provider Application (Form FD-20) the following documents, each of which shall bear the name and address of the livery company or the company's principal owner(s), for each vehicle in the provider's fleet:

i. A photocopy of the license to operate a livery service, issued by the clerk of the municipality in which the place of business is located;

ii. A photocopy of the State of New Jersey Insurance Identification Card, issued by the provider's insurance company;

iii. A photocopy of the vehicle registration bearing the classification "Livery", issued by the New Jersey Division of Motor Vehicles;

iv. A Certificate of Insurance, including a 10-day notice of cancellation, listing as Certificate Holder: State of New Jersey, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625-0712; and

v. A photocopy of an Operator License for each driver, issued by the New Jersey Division of Motor Vehicles.

(1) (No change.)

5. An approved provider of livery service shall forward to the fiscal agent for the New Jersey Medicaid Program photocopies of the above-mentioned documents (license, registration and insurance) when the documents are renewed on an annual basis, and when additional livery service vehicles are added to a provider's fleet. A provider shall also forward written notification to the fiscal agent when a livery service vehicle is taken out of service.

6. A Medicaid-enrolled provider of ambulance and/or invalid coach service seeking approval to provide livery service shall complete another Medicaid Provider Application (Form FD-20) and attach the required photocopies as indicated above.

7. For livery service, specific requirements concerning vehicles and drivers are located at N.J.A.C. 10:50-1.4.

8. The completed provider agreement, disclosure statement, and/or provider application shall be submitted to the fiscal agent for the New Jersey Medicaid Program.

9. Once approved, the applicant will receive a Medicaid provider number and an initial supply of pre-printed claim forms from the fiscal agent for the New Jersey Medicaid Program.

(b) (No change.)

10:50-1.4 Services covered by the New Jersey Medicaid Program

(a) Ambulance service is a covered service under the following conditions:

1.-2. (No change.)

3. When the use of any other method of transportation is medically contraindicated and the service is provided as specified in New Jersey Department of Health rules N.J.A.C. 8:40-5.1 and 6.1.

Recodify 5-7 as 4-6 (No change in text.)

(b) (No change.)

(c) Livery service is a covered service under the following conditions:

1. When the service is provided to an individual as indicated in N.J.A.C. 10:50-1.6(b).

2. Livery service shall be limited to the transport of ambulatory passengers. Only a New Jersey-based company is eligible to participate in the New Jersey Medicaid Program as a provider of livery service.

3.-5. (No change.)

10:50-1.6 Reimbursement policy

(a) (No change.)

(b) Transportation service provided to a Medicaid recipient is reimbursable by the New Jersey Medicaid Program under the following conditions only:

1. (No change.)

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2. The medical service rendered to the Medicaid recipient by the provider/facility is a covered Medicaid service (as listed in N.J.A.C. 10:49-1.4) at the time the transportation is provided.

(c) Reimbursement is not permitted when a Medicaid recipient is transported:

1. For the purpose of obtaining a non-Medicaid-covered service, such as a service that is primarily educational, vocational, or social in nature;

2. From home to a medical day care center or the reverse; or

3. From a medical day care center to any service provided indirectly by a medical day care center.

(d) (No change in text.)

(e) Hospital-based transportation service provided to a Medicaid recipient who is transported to other than the base hospital is reimbursable on a fee-for-service basis in the same manner as a non-hospital-based transportation provider. In such instances, the hospital shall be enrolled as a transportation provider as defined in N.J.A.C. 10:50-1.2. A "Transportation Claim" (Form MC-12) and Transportation Certification shall be used when submitting a claim for transportation services, as described in N.J.A.C. 10:50-2.5 and 2.7.

(f) When a transportation provider renders a round trip service to an individual in a general hospital whose status remains "inpatient", the transportation provider bills the hospital for the service.

Recodify existing (f)-(k) as (g)-(l) (No change in text.)

APPENDIX I

Instructions for the completion of the "Transportation Claim" (Form MC-12).

Items 1-10 (No change.)

Item 11: Individual ordering transportation.

Items 12-12C (No change.)

Item 12D: Indicate the street address and city of both the origin and destination points. Include the name of the provider's office, medical clinic, hospital, or nursing facility to which or from which the individual is transported. Indicate the total number of miles being billed. Indicate waiting time, if any, in accordance with Subchapter 3 of this manual and attach an explanation of the need for waiting time to the Form MC-12 claim form. (Waiting time for livery service is not reimbursable.)

Items 12E-16 (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only

New Eligibility Computation Amounts

Adopted Concurrent Amendments: N.J.A.C.

10:71-5.4, 5.5, 5.6 and 5.9

Proposed: January 22, 1991 at 23 N.J.R. 233(a).

Adopted: March 1, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: March 1, 1991 as R.1991 d.169, **without change.**

Authority: N.J.S.A. 30:4D-3i(7), 7a, b and c; 42 CFR 435.210 and 435.1005; 20 CFR 416.1163 and 416.2025.

Effective Date: March 1, 1991.

Expiration Date: December 24, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

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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:

\$155.67 for an individual

\$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 | \$203.00 | | |
| 2. Remaining income amount | Head of Household | Receiving Support and Maintenance | |
| | \$203.00 | \$135.33 | |
| 3. Spouse to Spouse Deeming—Eligibility Levels | | | |
| a. Residential Health Care Facility | | | \$1,095.05 |
| b. Eligible individual living alone with ineligible spouse | | | \$ 839.36 |
| c. Living alone or with others | | | \$ 641.25 |
| d. Living in the household of another | | | \$ 499.76 |
| 4. Parental Allowance—Deeming to Children | | | |
| Remaining income is: | 1 Parent | Parent & Spouse of Parent | |
| a. Earned only | \$814.00 | \$1,220.00 | |
| b. Unearned only | \$407.00 | \$ 610.00 | |
| c. Both earned and unearned | \$407.00 | \$ 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 | Individual | Medicaid Eligibility Income Standards | Couple |
| I. Residential Health Care Facility | \$ 557.05 | | \$1,095.36 |
| II. Living Alone or with Others | \$ 438.25 | | \$ 635.36 |
| III. Living alone with Ineligible Spouse | \$ 635.36 | | |
| IV. Living in the Household of Another | \$ 315.65 | | \$ 499.76 |
| V. Title XIX Approved Facility: | \$1,221.00* | | |

Includes persons in acute general hospitals, nursing facilities, intermediate care facilities/mental retardation (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 exclusion) is applied to this Medicaid "Cap."

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(d)-(g) (No change.)

10:71-*[5.7]**5.9* Deeming from sponsor to alien

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

(e) To determine the amount of income to be deemed to an alien the CWA shall proceed as follows:

1. (No change.)

2. Subtract \$407.00 for the sponsor, \$610.50 for the sponsor if living with his or her spouse, \$814.00 for the sponsor if his or her spouse is a co-sponsor.

3. Subtract \$203.50 for any other dependent of the sponsor 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 Concurrent Amendment: N.J.A.C. 10:83-1.11

Proposed: January 22, 1991 at 23 N.J.R. 234(a).

Adopted: February 27, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: February 27, 1991 as R.1991 d.168, **without change.**

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Effective Date: February 27, 1991.

Expiration Date: January 19, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:83-1.11 New Jersey Supplemental Security Income payment levels

(a) New Jersey Supplemental Security Income payment levels are as follows:

| Living Arrangement Categories | Payment Level 1/1/91 |
|--|-------------------------|
| Eligible Couple | |
| Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less | \$80/610.00† |
| Residential Health Care Facilities and certain residential facilities for children and adults | \$1095.36 |
| Living Alone or with Others | \$ 635.36 |
| Living in Household of Another, Receiving Support and Maintenance | \$ 499.76 |
| Eligible Individual | |
| Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less | \$40/407.00† |
| Residential Health Care Facilities and certain residential facilities for children and adults | \$557.05 |
| Living Alone or with Others | \$438.25 |
| Living with Ineligible Spouse (No other individuals in household) | \$635.36 |
| Living in Household of Another, Receiving Support and Maintenance | \$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.

CORRECTIONS

(b)

THE COMMISSIONER

Fiscal Management

Expenditure of Inmate Welfare Funds

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

Proposed: January 22, 1991, at 23 N.J.R. 155(a).

Adopted: March 5, 1991 by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 8, 1991, R.1991 d.188, **without change.**

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

Effective Date: April 1, 1991.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 3. EXPENDITURE OF INMATE WELFARE FUNDS

10:2-3.1 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.

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(a)

THE COMMISSIONER

Medical and Health Services

Distribution of Money and Personal Belongings of Deceased Inmates

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

Proposed: January 22, 1991 at 23 N.J.R. 156(a).

Adopted: March 6, 1991 by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 8, 1991 as R.1991 d.187, **without change**.

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

Effective Date: April 1, 1991.

Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

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

(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.)

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(b)

DIVISION OF CONSUMER AFFAIRS

STATE BOARD OF EXAMINERS OF MASTER PLUMBERS

General Rules and Regulations

Application for Examination; Identification of Licensees; Requirement of Pressure Seal Defined; Return of Pressure Seal; Supervision; Professional Prices

Adopted New Rules: N.J.A.C. 13:32-1.10, 1.11 and 1.12

Adopted Amendments: N.J.A.C. 13:32-1.2, 1.7 and 1.8

Proposed: March 5, 1990 at 22 N.J.R. 784(a).

Adopted: August 16, 1990, by the Board of Examiners of Master Plumbers, Allen Feid, President.

Filed: March 1, 1991 as R.1991 d.170, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:14C-7.

Effective Date: April 1, 1991.

Expiration Date: October 23, 1992.

The Board of Examiners of Master Plumbers afforded all interested parties an opportunity to comment on proposed new rules N.J.A.C. 13:32-1.10, 1.11 and 1.12 and proposed amendments to N.J.A.C. 13:32-1.2, 1.7 and 1.8, relating to application for examination, identification of licensees, requirement of pressure seal defined, return of pressure seal, supervision, and professional prices. The official comment period ended on April 4, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 5, 1990 at 22 N.J.R. 784(a). Announcements were also forwarded to the New Jersey League of Master Plumbers, the New Jersey Association of Plumbing-Heating-Cooling Contractors, the Star Ledger and the Trenton Times.

A full record of this opportunity to be heard can be inspected by contacting the Board of Examiners of Master Plumbers, 1207 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Board of Examiners of Master Plumbers received eight comments to the proposed amendments and new rules. These comments were from the New Jersey Association of Plumbing-Heating-Cooling Contractors; the New Jersey Business and Industry Association; the Utility and Transportation Contractors Association of New Jersey; James R. Zazzali, Esq., of Zazzali, Zazzali, Fagella and Nowak, counsel for two New Jersey laborers unions; three licensees (C. Len Schmidt & Son, Inc., Max Sr. and Paul Schoenwalder, and A-1 Plumbing & Heating, Inc.); and Thomas S. Boyd, Jr., Esq., of Greenstone, Sokol, Behot and Fiorenzo, counsel for an out-of-State contractor, J&L Concrete Construction Company. A summary of the comments received and the responses of the Board follows:

N.J.A.C. 13:32-1.7

COMMENT: The New Jersey Association of Plumbing-Heating-Cooling Contractors and a Board licensee stated that requiring a licensee's home address to appear on business correspondence, stationery and advertising is an invasion of privacy.

RESPONSE: It was not the Board's intent to require a home address on correspondence and advertising. Accordingly, the Board has changed the rule upon adoption to clarify its intent that all business correspondence and stationery and all advertising display the business address of the owner or qualified bona fide representative.

N.J.A.C. 13:32-1.8

COMMENT: A licensee suggested that the penalty for securing a permit for an unlicensed person should be mandatory license revocation since this is a continuing problem.

RESPONSE: The Board is of the opinion that a potential loss of license, the penalty set forth in the rule as adopted, provides a sufficient deterrent against violation of this rule.

N.J.A.C. 13:32-1.8 and 1.11

COMMENT: A commenter objected to the proposed amendment and new rule as being anti-competitive, without a bona fide public purpose and in conflict with the Commerce Clause of the United States Constitution. Specifically, this commenter, the attorney for an out-of-State general contractor, stated that these rules will force all contractors to employ subcontractors, will bar out-of-State contractors from competing for construction projects within the State, and will create a burden upon contractors without any foreseeable public benefit.

RESPONSE: The amendment to N.J.A.C. 13:32-1.8, which states that the securing of a permit for an unlicensed person is prohibited, merely emphasizes the existing prohibition against license lending. That this prohibition may adversely affect some out-of-State and in-State contractors does not outweigh the significant protection it affords to the consumer, who will be assured that the plumbing work is being performed under the supervision of a licensee who has attained the standards of competency set by statutory mandate as well as Board rules. Similarly, new rule N.J.A.C. 13:32-1.11 merely furthers existing statutory provisions requiring licensee supervision of plumbing work. Since a licensee cannot effectively supervise those he does not employ, the requirement that those he supervises be his employees is necessary to assure appropriate supervision.

N.J.A.C. 13:32-1.11

COMMENT: The Utility and Transportation Contractors Association of New Jersey and counsel for two New Jersey laborers unions stated that this rule contradicts an Attorney General opinion letter of November 29, 1989 regarding the installation or removal of piping and plumbing

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fixtures located between a property line and a building located on such property. It was suggested that the rule be revised to make it clear that pipelaying work outside buildings is work that does not require supervision by licensed master plumbers.

RESPONSE: N.J.A.C. 13:32-1.11 does not contradict the cited Attorney General opinion letter. That opinion letter addressed the specific question of whether unlicensed individuals may perform certain work between a building and the property line and concluded that a license issued by the Board may not be legally required to perform such work. The new rule, on the other hand, requires licensee supervision in all cases where a license to perform plumbing work is required. The Board believes the rule is clear as drafted and therefore no modification will be made.

N.J.A.C. 13:32-1.12

COMMENT: Three commenters objected to this proposed new rule. The New Jersey Association of Plumbing-Heating-Cooling Contractors stated its opinion that this rule was subjective, arbitrary and vague and requested that it be deleted; it was suggested that the Board already has statutory authority to act in excessive fee cases. The New Jersey Business and Industry Association stated its opinion that while price-gouging is wrong, the Board does not have authority to have legal contracts for plumbing work overturned "after the fact." Finally, a Board licensee stated his strong objection to this rule on the basis that it constituted price fixing. He suggested that complaints about pricing should be referred to the court system and questioned the Board's authority to determine legal matters.

RESPONSE: The Board wishes to stress that the intent of this new rule is not to set prices or restructure contracts but rather to establish guidelines which will aid the Board in determining when a price is excessive. The rule lists some of the factors considered, but it is important to note that each case will be determined individually. The Board unquestionably has statutory authority to act in excessive price cases. The establishment of these regulatory guidelines, which are similar to those used successfully by other boards, will strengthen the Board's ability to pursue excessive price cases. The Board also points out that the rule will be enforced only against those whose prices substantially deviate from the guidelines. Moreover, the guidelines will benefit licensees, who will be advised of some of the factors considered in determining a reasonable price.

General Comments

COMMENT: One commenter, a Board licensee, expressed support for the proposal, stating that the amendments and new rules appear to be positive actions to govern and protect the licensed plumber, protect the industry from unscrupulous representatives and protect the consumer from unfair business practices. This commenter was concerned, however, that enforcement of the current and proposed rules is problematic and suggested that an arbitration committee be established consisting of a licensed inspector, a master plumber/contractor and an independent citizen.

RESPONSE: The Board acknowledges this commenter's support for the proposal. With regard to the suggestion that an arbitration committee be established, the Board points out that a licensed inspector, a master plumber/contractor and an independent citizen currently serve as Board members. The Board is of the opinion that a separate arbitration committee is not necessary at this time.

COMMENT: One commenter, a Board licensee, stated he was opposed to the proposal; he suggested the Board punish the "handy-man specials" who work out of their garages rather than punish the licensed contractor.

RESPONSE: Although it is unclear how the commenter believes the proposal to punish licensees, the Board points out as a general statement that these rules are not designed to punish licensees but rather to protect the public health and safety.

Summary of Changes Upon Adoption:

1. In response to comments received, N.J.A.C. 13:32-1.7 has been amended to clarify the Board's intent that all business correspondence and stationery and all advertising display the business address, not the home address, of the owner or qualified bona fide representative.

2. A sentence has been added to N.J.A.C. 13:32-1.8, which prohibits the securing of a plumbing permit for an unlicensed person, to clarify that this provision is not intended to prohibit a bona fide representative from securing a permit for the plumbing contractor he represents.

3. N.J.A.C. 13:32-1.12 has been clarified by including as an additional factor which may be considered in determining whether a price is excessive, the price customarily charged in the locality for similar services.

The Board has made this section more explicit; obviously, enforcing this rule would of necessity involve consideration of the usual fees for similar work.

4. The word "price" has been substituted for the word "fee" in N.J.A.C. 13:32-1.12 since that word is more widely used in the industry.

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

13:32-1.2 Application for examination; notice

(a) (No change.)

(b) In order to be considered by the Board an application shall be complete in all respects and shall include a street name. An application containing a post office box number as a mailing address is not a complete application.

(c) (No change.)

13:32-1.7 Identification of licensees

(a) (No change.)

(b) All business correspondence and stationery and all advertising shall display the license number and ***business*** address, including ***the*** street name^[.] ***and number*** of the owner or qualified bona fide representative.

(c) Every State-licensed master plumber whose name, office address, place of practice or license number appears or is mentioned in any advertisement of any kind or character shall be presumed to have caused, permitted, or approved the advertising and shall be personally responsible for its content and character.

13:32-1.8 Requirement of pressure seal defined

(a) (No change.)

(b) Use of a seal by any person other than the State licensed master plumber to whom it was issued or the securing of a plumbing permit for an unlicensed person shall be deemed to be the use or employment of dishonesty, fraud, deception, misrepresentation or false pretense. Such conduct may be grounds for the suspension or revocation of the license of the unauthorized user if he is already licensed by the Board. With respect to an unlicensed user, such conduct shall be grounds for the refusal to issue a State license at any point in the future. ***Nothing herein shall be deemed to preclude a bona fide representative from securing a plumbing permit for the plumbing contractor he represents.***

(c) (No change.)

13:32-1.10 Return of pressure seal

A licensee who has failed to renew the State license in accordance with N.J.S.A. 45:14C-18 or who has had his license suspended or revoked for any reason shall immediately return the pressure seal to the Board.

13:32-1.11 Supervision

Any and all plumbing work supervised by a licensed master plumber shall be performed only by the licensee's or plumbing contractor's employees.

13:32-1.12 Professional ***[fees]* *prices***

(a) A licensee of the Board of Examiners of Master Plumbers shall not charge an excessive ***[fee]* *price*** for services. A ***[fee]* *price*** is excessive when, after review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the ***[fee]* *price*** is so high as to be manifestly unconscionable or overreaching under the circumstances.

(b) Factors which may be considered in determining whether a ***[fee]* *price*** is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty or difficulty of the job;
3. The skill required to perform the job properly;
4. Any special conditions placed upon the performance of the job by the person or entity for which the work is being performed; ***[and]***

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5. The experience, reputation and ability of the licensee to perform the services*[,] * *; and*

6. The price customarily charged in the locality for similar services.

(c) Charging an excessive *[fee]* *price* shall constitute occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) and may subject the licensee to disciplinary action.

(a)

DIVISION OF CONSUMER AFFAIRS

**Board of Physical Therapy
Educational Requirements for Applicants for
Licensure as Physical Therapists**

Adopted Amendment: N.J.A.C. 13:39A-5.1

Proposed: August 6, 1990 at 22 N.J.R. 2259(a).

Adopted: October 23, 1990, by the Board of Physical Therapy,

Stanley Mendelson, Chairperson.

Filed: March 8, 1991 as R.1991 d.185, **without change**.

Authority: N.J.S.A. 45:9-37.18(f); 45:9-37.23.

Effective Date: April 1, 1991.

Expiration Date: July 7, 1991.

The Board of Physical Therapy afforded all interested parties an opportunity to comment on the proposed amendment, N.J.A.C. 13:39A-5.1, relating to educational requirements for applicants for licensure as physical therapists. The official comment period ended on September 5, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on August 6, 1990 at 22 N.J.R. 2259(a). Announcements were also forwarded to the Camden Courier Post, the New Jersey Society of Physical Therapy, the New Jersey Chapter of the American Physical Therapy Association, the Department of Health, the Medical Society of New Jersey, the New Jersey Association of Osteopathic Physicians and Surgeons, the University of Medicine and Dentistry of New Jersey, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Physical Therapy, P.O. Box 45014, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, five comments opposing the amendment were received. These responses were received from Health Professionals International (HPI), the New Jersey Hospital Association, the Medical Center at Princeton, and two licensees, Richard Kathrins, P.T., and Catherine Kibane-Dunn, P.T. A summary of the comments received and the Board's responses follows.

COMMENT: HPI and the Medical Center at Princeton stated that the re-proposed amendment establishes a discriminatory standard aimed at physical therapists educated outside the U.S. because it delineates general education courses not required of U.S. therapists or specified in the American Physical Therapy Association's (APTA's) Evaluative Criteria for Accreditation of Education Programs for the Preparation of Physical Therapists (adopted April 3, 1990, effective January, 1992).

RESPONSE: The general education courses required of foreign-trained applicants are, in fact, required of U.S. trained therapists in order to obtain a bachelor's degree—a prerequisite for licensure. Based upon a number of factors, including a survey of the United States college and university physical therapy programs which have been accredited by the APTA and a random study of transcripts submitted by applicants from colleges in the United States and the general curriculum criteria which form the basis for APTA accreditation, the Board developed a list of core requirements which are included in and must be completed by graduates of the great majority of physical therapy programs in the United States.

In setting similar requirements for foreign-trained applicants, the rule does not establish a discriminatory standard. Rather, the rule assures the Board that foreign-trained applicants have received an education substantially similar to that received by applicants who have obtained a bachelor's degree from an approved physical therapy program in the United States. Furthermore, the amended rule is more specific than the APTA guidelines in stating general education requirements for foreign-trained applicants in order to address a deficiency in the current rules.

The Board found that, specifically in the general education area, the education of a number of foreign-trained applicants qualifying under the present rules was not, as required by N.J.S.A. 45:9-37.23, substantially equivalent to the education required of applicants graduating from U.S. physical therapy programs. As stated, these general education requirements are not discriminatory since they are based upon the requirements for obtaining a bachelor's degree, which individuals trained in the United States must obtain in order to be eligible for licensure.

COMMENT: All of the commenters expressed the opinion that skilled professionals educated outside New Jersey will not be eligible for New Jersey licensure because they will not meet the general education course requirements. HPI provided statistics in support of its assertion, including the statement that 95 percent of its foreign-trained therapists currently eligible for New Jersey licensure would not be eligible under the proposed rule.

RESPONSE: In the Board's experience the majority of foreign-trained applicants are qualified. Furthermore, where a foreign-trained individual does not meet the Board's general education requirements, one or two additional courses usually will qualify the individual for licensure.

COMMENT: The New Jersey Hospital Association stated that hospitals maintain that their foreign-trained physical therapists currently on staff could not meet the general education course requirements. The Medical Center at Princeton stated that although several of its staff members have satisfied the general education prerequisites for acceptance into graduate level programs, all but one would have failed to meet the general education prerequisites now proposed by the Board.

RESPONSE: This amendment was initiated because, absent a more specific educational standard for foreign-trained applicants, the Board could not be assured that the "substantially equivalent" statutory requirement was being met. The general education requirements are, in fact, consistent with APTA guidelines for accredited programs on the bachelor's level.

COMMENT: These commenters also expressed opinions about the effect of the loss of foreign-trained applicants, who they assert will no longer meet the general education requirements. They stated that the loss of foreign-trained applicants will exacerbate an already critical shortage of physical therapists, to the detriment of the citizens of New Jersey. The Medical Center at Princeton stated that the loss of foreign-trained applicants will also have a detrimental effect on its clinical faculty, which is comprised, in part, of foreign-trained physical therapists; the loss of these physical therapists will seriously curtail the hospital's contributions to the academic and clinical preparation of future physical therapists. Finally, a licensee stated that the shortage of physical therapists will create an adverse economic impact on hospitals, which will be required to recruit physical therapists from out-of-State.

RESPONSE: The Board disagrees with these comments. While applicants whose transcripts have been found to be deficient under the new rules may experience some delay in qualifying for licensure, the Board believes the delay would be only for the short period of time needed to make up the missed courses. In any event, as stated, the Board has found that the majority of foreign-trained applicants are qualified and it does not expect the amended rule to significantly affect the number of qualified foreign-trained applicants.

COMMENT: HPI stated that the proposed amendment contains nothing advantageous to foreign-trained applicants or to the transcript evaluator, as stated in the Social Impact statement.

RESPONSE: When evaluating transcripts of foreign-trained applicants, credentialing agencies look for completion of course work in the general education core areas stated in the re-proposed amendment. Because a foreign-trained applicant will now be required, by regulation, to complete credits in these core areas, the credentialing agency's determination of comparable education will be facilitated. Moreover, the rule as amended, provides the foreign-trained student with the precise knowledge necessary to avoid remedial work upon application for licensure.

COMMENT: One licensee suggested, presumably as an alternative to the proposed amendment, that the licensure examination and application verification process be revised if it does not ensure adequate professional preparation.

RESPONSE: The test for licensure is a test for professional preparation only. As such, it does not establish an individual's overall qualifications to practice physical therapy. As stated in the current APTA guidelines, professional preparation is based upon a foundation of liberal arts appropriate in depth and breadth to develop in students the ability to think independently, to weigh values, to understand fundamental theory and to develop skills of critical thinking and communication. Therefore, while

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the examination process is sufficient to ensure adequate professional preparation, it must be considered in conjunction with an applicant's liberal arts education in order to ensure overall competence to practice physical therapy.

COMMENT: One licensee stated that the required general education courses, particularly mathematics and humanities, are frequently taken at a secondary level in foreign countries and therefore college credit is not earned although an equivalent level of mastery may be achieved.

RESPONSE: When evaluating transcripts of foreign-trained applicants, credentialing agencies take into account the applicant's secondary as well as college education.

COMMENT: A public hearing was requested.

RESPONSE: The Board is satisfied that the amendment to its educational requirements is appropriate and in accordance with the intent of N.J.S.A. 45:9-37.23; that is, to ensure that foreign-trained applicants have received an education substantially similar to that received by applicants who graduated from an approved physical therapy program in the United States. The Board believes it has adequately addressed the concerns raised by the commenters and that no issues have been raised which would warrant a public hearing. Therefore, the request for a public hearing is denied.

COMMENT: The Medical Center at Princeton stated that the proposal defeats its initial purpose; that is, to allow for variation in preparation of highly skilled professionals. Furthermore, it is in recognition of the fact that educational systems differ worldwide that the APTA confines evaluation of credentials to the area of professional preparation when foreign applications for membership are assessed.

RESPONSE: The Board wishes to stress that the amended rule requires completion of course work in general categories only; it does not require a specific number of credits in each general category. This will allow for variances in the credit system of foreign training programs while assuring the Board that the applicant has received a substantially similar education. The Board reiterates that credentialing agencies look for course work in these same general categories and that adoption of this rule and subsequent compliance with the requirements by foreign-trained students will help foreign-trained students avoid remedial work.

Full text of the adoption follows:

13:39A-5.1 Educational credentials for applicants for licensure as physical therapists

(a) Applicants for examination shall submit to the Board satisfactory proof of:

1. Graduation from a program in physical therapy which has been approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post-secondary Accreditation and the United States Department of Education; or

2. With respect to foreign trained applicants for licensure as physical therapists, the applicant shall demonstrate satisfactory evidence of graduation from a physical therapy program that is substantially equivalent to a physical therapy program approved for the education and training of physical therapists by an accrediting agency recognized by the Council on Post-secondary Accreditation and the United States Department of Education. The applicant shall show successful completion of course work with a minimum of 45 credits of general education and 60 credits of professional education. General education courses shall include, but not be limited to, mathematics, physical science, biological science, humanities, social science and behavioral science. The professional component of the program shall include, but not be limited to, human anatomy, pathology, physiology, neurologic science and clinical practice.

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BOARD OF PUBLIC UTILITIES

Water and Sewer

Adopted New Rules: N.J.A.C. 14:9

Proposed: March 19, 1990 at 22 N.J.R. 907(a).

Adopted: March 6, 1991 by the Board of Public Utilities, George H. Barbour, Commissioner.

Filed: March 7, 1991 as R.1991 d.179, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with the proposed recodification not adopted.

Authority: N.J.S.A. 48:2-13, 48:2-17, 48:2-20, 48:2-24, 48:2-27, 48:3-3, 48:3-7.8, 48:3-12, 48:13A-1 et seq., and 48:19-17.

BPU Docket Number: AX90020146.

Effective Date: April 1, 1991.

Expiration Date: April 1, 1996.

Summary of Public Comments and Agency Responses:

List of Commenters:

Howard J. Woods, Jr., P.E.
American Water Works Service Co., Inc.
(New Jersey-American Water Company)

500 Grove Street
Haddon Heights, New Jersey 08035

Michael P. Walsh, P.E.
National Association of Water Companies—
New Jersey Chapter

c/o Shorelands Water Co., Inc.
1709 Union Avenue

Hazlet, New Jersey 07730

COMMENT: With regard to the periodic testing of water meters, the New Jersey Chapter of the National Association of Water Companies (NAWC) believes that both the timeframe and volumetric schedule as set forth in N.J.A.C. 14:9-3.2 are overly conservative. NAWC states that studies by its members and the American Water Works Association reflect that much of the expense in testing meters on a too frequent basis is wasted and indicate that this rule should be modified in order to establish a more appropriate timeframe and volumetric basis.

RESPONSE: After analyzing all 1989 quarterly reports submitted by New Jersey members of NAWC, Board staff has found that of the 102,095 water meters tested in calendar year 1989, 15,496 meters, or 15.2 percent, were determined to have been slow, 1,260 meters, or 1.2 percent, were determined to have been fast, and 7,454 meters, or 7.3 percent, were determined to have been non-registering. Accordingly, since nearly 25 percent of the water meters tested in 1989 were found to be inaccurate, the Board does not believe that there is any reason to relax the requirements set out in N.J.A.C. 14:9-3.2.

COMMENT: New Jersey-American Water Company (NJ-American) requests that comments previously provided on proposed amendments to N.J.A.C. 14:3-4.7 and 14:9-3.3 (BPU Docket Number AX88081015U; Proposal Number PRN 1990-93) appearing at 22 N.J.R. 618(a), be considered in light of the proposed readoption of N.J.A.C. 14:9.

RESPONSE: The Board considered the previously submitted comments of NJ-American referred to above at its open public meeting held on February 13, 1991, and will rely on the responses given in Docket Number AX88081015U.

COMMENT: NJ-American states that the criteria for water quality established in N.J.A.C. 14:9-2.3 are vague and that it would be appropriate to set the requirements of the New Jersey Safe Drinking Water Act as the standard for quality in the Board's regulations.

RESPONSE: While of the opinion that this section is presently adequate for purposes of allowing the effectuation of the rule, the Board believes that the comment of NJ-American has merit. Accordingly, the Board's staff will review this section and the Board will subsequently propose any amendments that are deemed appropriate.

COMMENT: With regard to N.J.A.C. 14:9-6, which contains those rules pertaining to the Small Water Company Takeover Act, N.J.S.A. 58:11-59, et seq., NJ-American makes the following comments:

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1. The definition of "actual or imminent public health problems" contained in N.J.A.C. 14:9-6.2 is too broad and does not accurately reflect the practice of the Board and the New Jersey Department of Environmental Protection. Accordingly, said definition should be modified by adding the words "recurring and persistent" in the first line as such: "'Actual or imminent public health problems' means any recurring and persistent violations by a small water company . . .";

2. The definition of "small water company", although consistent with the Act, should include governmental agencies;

3. The notices to units of local government described in N.J.A.C. 14:9-6.8(b)3(iv), 14:9-6.8(k)1(i) and 14:9-6.9(d)4 were intended to assure that notice was provided to the municipality served by the troubled water company, not to entities which could later be considered "capable and proximate public and private water companies" for the purposes of the Act. Therefore, NJ-American suggests that these sections be revised to indicate that notice is to be provided to the municipalities served by the small water company and to delete therefrom any reference to municipal utilities authorities or any other suitable governmental entities;

4. N.J.A.C. 14:9-6.8(d), which describes the content of a technical presentation to be made by DEP at joint public hearings with the Board, should be revised to require DEP to describe in as much detail as is possible the types of environmental permits needed to upgrade the small water company; and

5. N.J.A.C. 14:9-6.10(c), which describes the treatment of certain customer provided improvements, should be amended to properly reflect the Board's policy concerning the treatment of taxes on contributed property.

RESPONSE: In light of its joint responsibilities under the Small Water Company Takeover Act, the Department of Environmental Protection (DEP) has adopted rules which mirror those adopted by the Board. These rules, set out at N.J.A.C. 7:19-5, were readopted by DEP without change on February 26, 1990 (see 22 N.J.R. 932(a)). Because of the joint responsibilities of the Board and DEP, the Board is of the opinion that any proposed modification to the pertinent rules must be jointly considered by both agencies. Accordingly, the Board believes that it is better to readopt N.J.A.C. 14:9-6 at this time without change. The Board will consider the comments of NJ-American to be a joint filing to the Board and DEP recommending the amendment of the rules pertaining to the Small Water Company Takeover Act. Therefore, the Board will forward said comments to DEP and instruct its staff to work with DEP to fully analyze said recommendations.

Summary of Agency-Initiated Changes:

Since N.J.A.C. 14:9 expired April 15, 1990, pursuant to Executive Order No. 66(1978), the rules proposed for readoption are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

Additionally, the rules, N.J.A.C. 14:9-4, proposed for recodification in the original proposal at 22 N.J.R. 907(a) are not being recodified at this time because the chapter, N.J.A.C. 14:3, to which they were to be moved has expired and is awaiting readoption as new rules. When N.J.A.C. 14:3 is readopted the rules will be recodified as part of that rulemaking. Until then they remain in effect as part of the current adoption, and can be found at N.J.A.C. 14:9.

The Board notes the need for technical changes to N.J.A.C. 14:9-5.1 in order to reflect the appropriate name and address of the Board.

Full text of the adopted new rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 14:9.

Full text of the changes upon adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

SUBCHAPTER 4. ***SOLID WASTE INDUSTRIES***

[(Reserved)]

[14:3-10.20]**14:9-4.1 Certificates for solid waste disposal

(a) No person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a solid waste collector or solid waste disposal operator authorizing operation for the collection or disposal of solid waste, if such person, or any such controlling person, controlled person, or person under common control, holds another certificate to operate as a solid waste collector or solid waste disposal operator.

(b) For the purpose of this regulation, where reference is made to control (in referring to a relationship between any persons), such reference shall be construed to include actual as well as legal control,

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whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

(c) The Board may, for good cause shown consistent with the public interest, find that multiple certificates shall be issued, notwithstanding the provisions set forth in subsections (a) and (b) of this Section.

(d) This rule does not prohibit a person, or any person controlling, controlled by or under common control with such person from holding one certificate as a solid waste collector and one certificate as a solid waste disposal operator.

[14:3-10.21]**14:9-4.2 Property, equipment and facilities

(a) All public utilities engaged in the business of solid waste collection or solid waste disposal shall own and have title to all property, equipment and facilities used and useful in providing safe, adequate and proper service.

(b) The solid waste utility may use property, equipment and facilities to which it does not have title provided it enters into an agreement (lease) and said agreement is filed with the Board. Such filing shall contain a statement therein whereby the lessor of the property, equipment and facilities to be used for utility purposes agrees that his interest in such property, equipment and facilities becomes subject to the jurisdiction and regulation of the Board for term of said agreement.

(c) The Board may for good cause shown determine the extent of the property, equipment and facilities which may be used by the solid waste utility not having title thereto.

14:9-5.1 Adoption by reference of rules concerning preservation of records; water utilities

(a) On September 14, 1972, the Board of Public ***[Utility Commissioners in the Department of Public]*** Utilities, pursuant to authority of N.J.S.A. 48:2-1 et seq. and in accordance with applicable provisions of the Administrative Procedure Act of 1968, adopted by reference the "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities" originally proposed to various states for adoption by the National Association of Regulatory Utility Commissioners as promulgated and published in April, 1972, for use by the electric, gas and water utilities.

(b) The Board of Public ***[Utility Commissioners]*** ***Utilities*** adopts these rules as its modified regulations governing the preservation and destruction of records for all classes of electric, gas and water utilities subject to its jurisdiction and as a supplement to its uniform system of accounts for all classes of electric, gas and water utilities.

(c) Copies of the full text of these rules are available for examination in the Board's offices ***[in Room 208, 101 Commerce Street]*** ***at Two Gateway Center***, Newark, New Jersey ***07102***, and are included in the Case Files in these dockets. Additional copies may be purchased from the National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, D.C. 20044.

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BOARD OF PUBLIC UTILITIES

Home Energy Savings Program (HESP)

Adopted New Rules: N.J.A.C. 14A:21 (recodified as N.J.A.C. 14:38)

Adopted Repeal: N.J.A.C. 14A:21-9 and 14A:21-10.3

Proposed: September 17, 1990 at 22 N.J.R. 2956(a).

Adopted: February 6, 1991 by the Board of Public Utilities,

Scott A. Weiner, President.

Filed: February 27, 1991 as R.1991 d.165 with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27F-11(g).

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Effective Date: April 1, 1991.
Expiration Date: April 1, 1996.

Summary of Public Comments and Board Responses:

The New Jersey Board of Public Utilities is adopting as new rules the expired HESP rules at N.J.A.C. 14A:21, recodified as N.J.A.C. 14:38, with modifications and amendments. The purpose of these rules is to encourage the installation of residential conservation measures in new and existing housing by residential customers of investor-owned electric and gas utilities and home heating suppliers. The rules expand upon the Residential Conservation Service State Plan that the former Department of Energy submitted to the U.S. Department of Energy.

A public hearing was held by the Board on October 11, 1990 to provide interested parties the opportunity to present testimony. The comment period closed on October 17, 1990. The summary includes the issues raised and heard by the Board at the public hearing. The Board did not utilize a hearing officer at this hearing.

List of Commenters:

The following is a list of those commenters who either submitted written comments in the above cited matter, or gave oral testimony at the public hearing conducted by the Board on October 11, 1990.

W. Kenneth Cavender
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John Aleli, Esq. Megargee, Younglood, Franklin & Corcoran
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Pleasantville, New Jersey 08232

(For Atlantic City Electric Company)

Judith Lankau, Manager
Conservation Services and Consumers Affairs
Rockland Electric Company One Blue Hill Plaza
Pearl River, New York 10965

John L. Carley, Esq.
Rockland Electric Company
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Eugene J. McCarthy
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Janet T. Nickels
Ass't Vice-President, Commercial Operations
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Cindy Nan Vogelmann, Esq.
Chasan, Leyner, Tarrant & Lamparello
549 Summit Avenue
Jersey City, New Jersey 07036
(For the Coalition Against Unfair Utility Practices)

COMMENT: The present program is not cost beneficial to participants, non-participants, or the utilities as demonstrated by the recently completed New Jersey Conservation Analysis Team (CAT) benefit/cost study.

RESPONSE: Certain benefits, such as environmental and societal, as well as increased comfort and home value, are difficult to quantify and are not captured in a straight cost-benefit analysis. This difficulty was noted in the CAT Study, but the study did attempt to loosely quantify some of the benefits. Probably the most significant external benefit of all conservation programs is the reduction in environmental degradation associated with reduced utility production. In addition, quantifying the benefits of informational programs is difficult and was not directly dealt with in the CAT study.

The HESP audit is in many instances the first stop for customers seeking conservation information. It must also be recognized that HESP is the cornerstone of other utility programs by providing information on the programs in addition to providing the costs and expected savings of conservation measures.

The Department of Community Affairs supports HESP as the basis for their continuing low-income weatherization efforts.

The CAT study based its findings on economic conditions as they existed during the study period from 1986 through early 1990. Although several factors influenced the lower than expected benefit-cost ratios in the study, a factor of significant impact was that fuel prices did not increase at the expected rate. At the time of program design in 1982/1983, expectations were for oil prices of \$35.00-\$40.00 per barrel, but in 1990 prices as low as \$16.00 per barrel were experienced. However, reflection of the recent fuel price increases would likely increase the benefit-cost ratio from that found in the CAT study. This points up a further benefit of a program such as HESP which is designed to heighten consumer awareness of energy efficiency measures, namely that increased energy efficiency provides a buffer, both for the consumer and the utility system, from energy price spikes.

The CAT study also recommended certain program modifications such as target marketing and pre-screening which, if implemented, would likely improve the cost effectiveness of the program.

For all the above reasons, the Board believes the HESP program is beneficial and should remain intact.

COMMENT: HESP could sunset November 21, 1990 and still not be immediately eliminated. Board approved conservation plans mandate residential audits to continue as is, until conservation plans are revised.

RESPONSE: The HESP rules expired as of November 21, 1990, and the utility programs do continue as part of their overall Board-approved plans. Nonetheless, the HESP rules provide for Board approved algorithms and a fair, standardized energy survey for utility customers. The proposed rules also provide for additional protections against unfair or inappropriate practices by utility-sponsored auditors, as well as a number of other worthwhile modifications to existing programs. While it is true that residential audits would continue under the conservation plans, the Board believes the standardized methodology for calculating costs and savings provided by the HESP rules, as well as the guidelines described previously, is beneficial.

COMMENT: HESP marketing requirements are too rigid and stifle creativity in developing new conservation programs.

RESPONSE: The Board believes although the rules are voluminous, there is currently sufficient flexibility. The only specific marketing requirement under the rules is that each utility send a program announcement to each customer annually and that the form of the program announcement be approved in advance by the Board. The Board must review the literature for compliance with guidelines such as the requirement that audit promotional literature does not propose alternative fuels. The program announcements do not have to be identical, as suggested by some utilities, but they do have to meet basic criteria established within the rules. The Board's primary concern in reviewing the program announcements is for an accurate, non-biased portrayal of the program.

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Utilities do have flexibility, and the rules do not prohibit individual creativity in marketing techniques or the design of programs to incorporate such features as target marketing and pre-screening as suggested in the CAT study in order to improve cost effectiveness of the program.

The utilities provided no specific suggestions to remove the perceived rigidity.

COMMENT: Prohibiting discussion of alternate fuel options lessens the credibility of the audit.

RESPONSE: The Board feels no audit credibility is lost in prohibiting discussion of fuel switching by auditors.

The spirit of this prohibition is that in administering the heating unit analysis on an oil furnace, the auditor is precluded from providing the customer with information in terms of fuel conversion to gas. There is no inherent equipment efficiency advantage between oil and gas, so any discussion of switching would only be based on the current price of the fuel, the perceived future price of the fuel, and on comfort/convenience issues, not energy efficiency issues. As a result, it is not appropriate that utility-sponsored auditors be permitted to push natural gas conversions to oil heat customers.

There is already a sensitivity to the perception that the utility auditors have access to the customers which may provide them with an unfair advantage over the oil dealers. The Board believes the protection that this prohibition provides outweighs any benefit that may be gained from having information on fuel switching made available. The HESP audit is intended to provide the base of information which will lead the customer to pursue energy savings measures with purveyors of particular appliances, equipment or services.

COMMENT: Home heating supplier participation in the heating unit analysis or Combustion Efficiency Test (CET) should not be discontinued.

RESPONSE: The intent of the original proposed modification to have utility auditors perform all heating unit analyses was to improve efficiency by consolidating all aspects of the audit. However, N.J.A.C. 14A:21-3.2(e) has been added to the proposed rules which provides the customer with an option to choose either a home heating supplier or the audit firm to perform the heating unit analysis. The customer will be informed by the utility prior to the audit of their right to select a home heating supplier if they do not wish to have the auditor perform the heating unit analysis. It is the Board's belief that by providing the customer with the option of having the energy auditor perform the CET as part of the audit, there is a likelihood of greater overall penetration of CET's. This, the Board believes, is in the long-term best interests of the home heating suppliers, as well as the customers and the State, since more customers will be made aware of heating unit inefficiencies and will contact their oil dealers for further maintenance.

COMMENT: Utilities will be subject to increased liability due to its lack of authority to "red-tag" a malfunctioning oil-fired heating unit.

RESPONSE: The rules have been changed upon adoption to include clarification that the purpose and scope of a heating unit analysis is merely to test for unit efficiency and not to conduct a safety or operation inspection (N.J.A.C. 14A:21-3.3(b)). In addition, a clarification of the purpose and scope of a heating unit analysis must now be included in the program announcement (N.J.A.C. 14A:21-2.2(a)).

Beyond the modification to the rules clarifying the purpose of the heating unit analysis, the program literature/promotional materials shall be modified to include clarification that the sole purpose of the heating unit analysis is to test the efficiency, not conduct repairs or evaluate the unit in any other manner.

COMMENT: Audit costs will increase if auditors are required to do heating unit analysis.

RESPONSE: The Board feels auditor training necessary to conduct heating unit analysis is minimal. Auditing firms likely already own the necessary equipment, so additional costs to utilities should be minimal.

The potential benefits of the HESP program increase as well when the heating unit analysis is administered, and the overall program efficiency improvement should increase overall cost-effectiveness.

COMMENT: The rules lack an enforcement structure that would prevent auditors from recommending fuel switching during the course of conducting the audit.

RESPONSE: The rules have been changed upon adoption to address this concern. Specifically, N.J.A.C. 14A:21-3.1(e) was added which requires the BPU staff to conduct a HESP compliance verification. In addition, in response to this concern, the rules have been changed upon adoption to reflect the utility responsibility for ensuring auditors do not

engage in discussions of fuel switching with customers (N.J.A.C. 14A:21-3.8(d)). Further it is the prerogative of the Board to randomly monitor audits in order to ensure fuel switching is not discussed. Auditors can be disqualified from HESP for not adhering to this rule (N.J.A.C. 14A:21-5.4).

The fuel-switching prohibition issue is reinforced as part of auditor training and testing.

The training and monitoring of auditor compliance with the regulations regarding fuel switching and other matters remains important whether the auditors perform the heating unit analysis or not, since the auditor has access to the customer in either event.

COMMENT: Regarding recordkeeping, five years is too long to maintain records; three years is sufficient.

RESPONSE: Utilities are required to provide past audit reports to new customers; therefore, the maintenance of records for five years is not unreasonable.

COMMENT: To protect the consumer, the rules should require the contractor's insurance company to notify the BPU within 30 days of insurance cancellation or termination.

RESPONSE: Current practice requires the contractor to list the BPU as a certificate holder on their insurance. The insurance company is responsible for notifying the certificate holder within 30 days of cancellation or termination of insurance.

COMMENT: The Master Record should be updated every 90 days.

RESPONSE: The proposal in the September 17, 1990 N.J. Register amended the update time from 60 days to 180 days to streamline the process. Sufficient justification to modify this to 90 days has not been demonstrated.

COMMENT: Contractors that must have State licenses should be the only contractors allowed to perform in their given discipline.

RESPONSE: The licensing of contractors in the State and the jurisdiction of what work must be performed only by licensed plumbers or electricians is addressed by a separate State agency's authority.

COMMENT: The BPU has too much discretion in the removal or suspension of contractors from the Master Record.

RESPONSE: Home improvement contractor complaints are second in number only to auto maintenance complaints in the State according to the New Jersey Division of Consumer Affairs. This may well be more reflective of the nature of work than the quality of work provided by the industry. Nonetheless, given this situation, the Board feels that it is appropriate to maintain the right to suspend or remove contractors from the Master Record and that it is adequately unbiased in these matters, such that its discretion should be broad. It is important to note that the Board is unaware of any contractors being removed from the Master Record due to consumer complaints in the last several years.

In addition, the rules have been changed upon adoption to clarify the grounds for removal from the Master Records (N.J.A.C. 14A:21-7.6). The rules have also been changed upon adoption (N.J.A.C. 14A:21-7.9) to clarify the disclosure language.

COMMENT: The Master Record should be developed, distributed, and sorted geographically solely by the BPU.

RESPONSE: This is already the practice except for geographic distribution. The Board sees no reason why the utilities should not be given the responsibility of selecting the sections of the list that cover their own service territories.

In addition, regarding the Master Record, the rules have been changed upon adoption to more clearly state that the Master Record cannot be altered by the utility (N.J.A.C. 14A:21-8.4).

COMMENT: Utilities should be prohibited from the supply and installation of program measures and from subcontracting same.

RESPONSE: The rules currently prohibit utilities from the supply and installation of conservation measures with a few exceptions. Further, the Board has initiated an inquiry into the legality and appropriateness of sales, installation, and service of measures in other proceedings. Depending on the outcome of those proceedings, these rules may need to be modified. However, the Board feels the rules provide sufficient protection from anti-competitive practices by utilities.

COMMENT: Expand definition of home heating supplier to include any installer on the Master Record who offers heating unit maintenance and expand the regulations to include home heating suppliers as administrators of the HESP audit in the same manner as a covered utility.

RESPONSE: The definition already includes any person who offers heating unit maintenance on a contractual or emergency basis. The Board has approved for publication a proposal that the rules be modified to provide heating suppliers with the opportunity to administer HESP audits

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provided they meet all program requirements. However, such change will require republication in the New Jersey Register and further public hearings and comments prior to adoption.

COMMENT: Solar domestic hot water systems should be rated by the Solar Rating Certification Council (SRCC) in order to be an eligible measure.

RESPONSE: This will be considered outside of the rules as a possible material standard.

COMMENT: Auditors are biased because they are paid by the utility; therefore, they should be employed by the BPU, but paid by the utility.

RESPONSE: The Board will be implementing a HESP compliance verification plan which will insure that auditors are delivering unbiased information. In addition, the Board's ability to disqualify auditors for non-compliance with the rules provides strong enforcement.

COMMENT: The customer should be charged the actual cost of the audit.

RESPONSE: The maximum a utility or a home heating supplier can charge for an audit was set at a \$15.00 fee to encourage participation in the program. The charging of full cost would likely have a substantial negative impact on the penetration rate of the program. In practice, the audit is currently offered free by all utilities because \$15.00 was a disincentive to participants.

Summary of Agency Changes Upon Adoption:

N.J.A.C. 14A:21-1.2 has been revised by the Board to include a definition of "appropriate covered utility" to clarify that electric utilities are responsible for performing the HESP audit in non-natural gas heated homes.

N.J.A.C. 14A:21-2.2(a) and 14A:21-3.3(b) have been changed upon adoption by the Board to clarify the scope and purpose of the heating unit analysis.

N.J.A.C. 14A:21-3.1(e) has been added to provide for the adoption and implementation of a HESP compliance verification plan to oversee the accuracy and effectiveness of the HESP audit.

N.J.A.C. 14A:21-3.2(e) has been added to provide the customer at the time of the audit the option to choose either a home heating supplier or the auditor to perform the oil heating unit analysis.

N.J.A.C. 14A:21-3.8(d) has been added to ensure that utility auditors comply with the letter and intent of the rules.

N.J.A.C. 14A:21-7.6 has been revised to clarify the grounds for removal from the Master Record.

N.J.A.C. 14A:21-8.4 has been revised to clearly state that the utility cannot alter the Master Record without the approval of the Board.

Full text of the readoption as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 14A:21.

Full text of the adoption follows (additions indicated by boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*).

CHAPTER *[21]**38*
HOME ENERGY SAVINGS PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

*[14A:21]**14:38*-1.1 Scope and purpose

(a) The following rules implement the Home Energy Savings Program (HESP) that expands upon the former Residential Conservation Service (RCS) State Plan which the former New Jersey Department of Energy submitted to the U.S. Department of Energy.

(b) (No change.)

*[14A:21]**14:38*-1.2 Definitions

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

"Appropriate covered utility" means the electric covered utility if the customer heats with electric or a fuel other than natural gas and the gas covered utility if the customer heats with natural gas.

"Department" means the former New Jersey Department of Energy, which has since been abolished. The majority of its former

functions have been transferred to other State agencies, including the BPU.

"EIL" means the Energy Information Line.

"Eligible customer" means a person who:

1. (No change.)
2. Receives a fuel bill from a covered utility or a home heating supplier for fuel used in such residential building.

"Energy conservation measures" means the following measures in a residential building:

- 1.-19. (No change.)
20. Any other energy conservation measure designated by the BPU, that has a payback less than or equal to its expected useful life.

"Energy conserving practices" or "program practices" means:

- 1.-11. (No change.)
12. Any other low or no-cost practice designated by the BPU which:
 - i. Saves energy; and
 - ii. Does not require the installation of any energy conservation measure.

"Flue opening modification" means an automatically operated damper installed in a gas-fired heating unit (often called a vent damper) which:

1. (No change.)
2. Conserves energy by substantially reducing the flow of heated air through the unit when the unit is not in operation.

"Furnace efficiency modifications" means:

1. (No change.)
2. Replacement burner (oil-fired unit).
- 3.-4. (No change.)

"Manufacturer's warranty" means the written warranty by the manufacturer of a program measure offered under the HESP Program. The eligible customer for whom the measure is installed, at a minimum, shall be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials for those measures found within one year from the date of installation to be defective due to materials, manufacture or design.

"Master Record" means the record of qualified installers and suppliers compiled by the BPU pursuant to N.J.A.C. *[14A:21-7.]* *14:38-7.*

"Night time temperature setback" means manually lowering the thermostat control setting for the heating unit during the heating season to a maximum of 60 degrees F. during sleeping hours.

"Program announcement" means the information and offer of services required to be sent by each covered utility to every eligible customer in its service area pursuant to N.J.A.C. *[14A:21-2.]* *14:38-2.*

"Program auditor" means any individual employed by the BPU or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the BPU who meets all of the qualifications contained in N.J.A.C. *[14A:21]**14:38*-5.2 and has successfully passed a BPU auditor test.

"Program inspector" means any individual employed by the BPU or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the BPU who meets all of the qualifications contained in N.J.A.C. *[14A:21]**14:38*-5.3 and has successfully passed a BPU inspector test.

"Program measures" mean energy conservation measures and energy conserving practices.

"Reducing energy use when a home is unoccupied" means reducing the thermostat setting to between 55 and 60 degrees F. when a home is unoccupied for four hours or longer in the heating season, turning an air conditioner off in the cooling season when the home is unoccupied, and turning a water heater off when a home is vacant for two days or longer.

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"Reducing thermostat settings in winter" means limiting the maximum daytime thermostat control setting for the heating unit to 68 degrees F. during the heating season.

"Replacement burner (oil-fired unit)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

"Thermal window or door" means a window or door unit with improved thermal performance either through the use of two or more sheets of glazing material affixed to a window or door frame to create one or more insulated air spaces or the use of insulating material within a door.

"Wall insulation" means a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

"Water heater insulation" means a material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

"Weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

"Window heat gain and loss retardant materials" means those materials which significantly reduce summer heat gain through windows and/or which significantly reduce heat loss through windows in winter by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens and films, or movable rigid insulation.

SUBCHAPTER 2. PROGRAM ANNOUNCEMENT

***[14A:21]**14:38*-2.1. Scope**

(a) Beginning January 26, 1991, each covered utility shall send a program announcement to its eligible customers in the State. All program announcements shall be sent to all eligible customers at least once a year until January 1, 1996. Such program announcements may be cycled by the covered utilities by route service areas. The program announcements shall be in a form provided, or approved in advance, by the BPU. The BPU shall have 30 calendar days from the date of proposed form submittal by the covered utility to approve, reject or otherwise modify the form of the proposed program announcement. The BPU's failure to act within the 30-day period shall constitute automatic approval.

(b) A program announcement shall be sent with either the customer's utility bill or mailed independently to each customer. The program announcement shall be reinforced with a promotional campaign approved in advance by the BPU. The BPU shall have 30 calendar days from the date of the proposed promotional campaign submittal by the covered utility to approve or reject the proposed promotional campaign. The BPU failure to act within the 30-day period shall constitute automatic approval. If an energy conservation plan, including the promotional efforts related to HESP program services, has been separately approved by the BPU, no separate submittal of a promotional campaign is necessary under this subchapter.

***[14A:21]**14:38*-2.2 Contents and prohibitions**

(a) The program announcement may include all the following for a typical New Jersey residential building, as specified from time to time by the BPU:

1. (No change.)
2. Estimated saving expressed in ranges of dollars that result from taking advantage of individual program measures over one year's time. Such estimated savings shall be calculated by the BPU from time to time and shall be made available for use by the covered utilities.
3. (No change.)

4. A description of the heating unit analysis as required in N.J.A.C. 14:38-3.2(e) and 3.3(b).

(b) The program announcement shall not include:

1. (No change.)
2. Any information on products which are not program measures; or
3. Any solicitation, recommendation, suggestion or advice to switch from one type of fuel to another type of fuel, either in the program announcement itself nor in any printed matter included with the program announcement.

***[14A:21]**14:38*-2.3**

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

SUBCHAPTER 3. PROGRAM SERVICES AND PROGRAM AUDITS

***[14A:21]**14:38*-3.1 Program services**

(a) All covered utilities shall offer and provide, upon request, the following program services to all eligible customers:

1. A program audit for all applicable program measures in a form to be prescribed or approved by the BPU;
2. Lists of participating installers and suppliers who install or sell program measures, and in a form specified or approved by the BPU;
3. (No change.)
4. Conciliation procedures; and
5. Conservation literature in a form specified or approved by the BPU.

(b) (No change.)

(c) All covered utilities receiving requests for program services from eligible customers shall record the requests and the arrangements made by the covered utility for the audit in a form to be prescribed by the BPU. All such records shall contain the following information, if available, from the customer:

1.-11. (No change.)

(d) The BPU shall also receive requests from eligible customers for program services and shall record the same information required by *[N.J.A.C. 14A:21-3.1]*(c) *above*.

*** (e) The BPU staff shall randomly perform on-site monitoring of utility audits and/or shall randomly perform post-audit interviews or administer questionnaires in order to ensure compliance with this chapter. In order to facilitate this review, each utility shall maintain at its offices or cause to be made available at the offices of its HESP subcontractors, the following information and upon the Board's request shall provide the same:**

1. A schedule of upcoming auditor visits, including address, date and time of each; and
2. A list of all audits performed, with the address, date and time of each.*

***[14A:21]**14:38*-3.2 Arrangement of program audit**

(a) If an eligible customer who heats with electricity or gas contacts the BPU and requests a program audit, the BPU shall refer that request to an appropriate covered utility.

(b) If an eligible customer who heats with a fuel other than natural gas contacts the BPU and requests a program audit, the BPU shall refer that request, including that part which requires a hearing unit analysis, to an appropriate covered utility.

(c) Upon receiving a referral from the BPU, each covered utility shall promptly contact the eligible customer to arrange for an appointment to provide the applicable program audit and services or heating unit analysis.

(d) If a covered utility receives a request for a program audit from a customer who heats with fuel purchased from a home heating supplier the utility shall record the same information required by N.J.A.C. *[14A:21]**14:38*-3.1(c).

*** (e) The utility shall make an oil heat customer aware that he or she has the option to select either a home heating supplier to perform the heating unit analysis or the auditor may perform it at the time of the audit. The customer shall be informed of the purpose and scope of the test and of the potential fee involved. If the customer has had a heating unit analysis within the preceding six months, these Combustion**

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tion Efficiency Test (CET) results may be used in the audit calculations.*

*[14A:21]**14:38*-3.3 Timing and preconditions

(a) All covered utilities shall provide a program audit, including an analysis of any oil-fired heating unit, to determine applicable program measures and their estimated costs, savings and paybacks within 30 working days of receipt of a request or referral. If the demand for such services becomes too great, that utility must so notify the BPU, in writing, and contact each eligible customer requesting the services within 30 working days of the request or referral to set up an appointment and complete the program audit within 60 working days of the date of the request or referral.

(b) The covered utility shall not directly perform the analysis of any oil-fired heating unit. The utility may utilize their audit subcontractor to perform all required program services. ***The purpose of the analysis is solely to test the efficiency of the heating unit. The purpose of the analysis is not to identify and/or repair malfunctions in the heating unit.***

(c) No covered utility or company under contract with a covered utility shall require any eligible customer to purchase or perform any other audit, service, product or measure as a precondition to receiving any program service. Nor shall such utility or company under contract with a covered utility counsel, advise, suggest or recommend one fuel type over another type of fuel.

(d) No covered utility or company under contract with covered utility shall discriminate unfairly among eligible customers participating in the program.

*[14A:21]**14:38*-3.4 Applicability of program measures

(a) (No change.)

(b) A program measure is applicable in a residence if:

1.-3. (No change.)

4. With respect to solar domestic hot water systems, a site exists on or near the residence which is free of major obstructions to solar radiation;

5.-6. (No change.)

7. With respect to replacement furnaces or boilers, the existing unit is approximately five years old or older or is inoperable;

8.-14. (No change.)

*[14A:21]**14:38*-3.5 Cost, savings and payback estimates

(a) The auditor shall calculate costs, savings and payback estimates for all applicable program measures. These shall:

1. Be based upon calculation procedures, and estimates of cost of installation and materials, prepared and provided by the BPU; and

2. (No change.)

(b) All costs, savings and payback estimates for a gas-fired heating unit shall be based upon an evaluation of the unit's seasonal efficiency. This evaluation shall be based upon steady state efficiency corrected for cycling losses, pursuant to a procedure provided to the auditor by the BPU.

(c) All costs, savings and payback estimates for an oil-fired heating unit shall be based upon an evaluation of the unit's seasonal efficiency. This evaluation shall be based upon steady state efficiency conducted pursuant to N.J.A.C. 14A:3-3 and corrected for cycling losses, pursuant to a procedure provided or approved by the BPU.

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

*[14A:21]**14:38*-3.6 Results of the program audit

(a) As part of every program audit, each auditor shall provide a written list on a form provided or approved by the BPU of energy conserving practices at the time of onsite evaluation. The auditor shall:

1.-3. (No change.)

(b) Upon completion of the program audit, every auditor shall provide the program audit results in writing within ten working days to each eligible customer who receives a program audit. The program audit results shall be in a form prescribed or approved by the BPU. The auditor shall provide a telephone number which the eligible customer may call to review the audit results.

(c) Program audit results shall include the following:

1. Home characteristics to include:

i.-ix. (No change.)

x. Approximate annual heating cost based on billing history, where feasible.

2.-5. (No change.)

6. The following disclosure, conspicuously placed and highlighted: "THE PROCEDURES USED TO MAKE THESE ESTIMATES ARE CONSISTENT WITH NEW JERSEY BOARD OF PUBLIC UTILITIES CRITERIA FOR RESIDENTIAL PROGRAM AUDITS. HOWEVER, ACTUAL INSTALLATION COSTS AND ENERGY SAVINGS YOU REALIZE FROM INSTALLING THESE MEASURES MAY DIFFER FROM THE ESTIMATES CONTAINED IN THIS AUDIT REPORT. TOTAL SAVINGS FROM THE INSTALLATION OF MORE THAN ONE PROGRAM MEASURE WILL PROBABLY BE LESS THAN THE SUM OF SAVINGS OF EACH MEASURE INSTALLED INDIVIDUALLY."

7. An example of the effect that the installation of one energy conservation measure has on the energy savings of a related energy conservation measure, which example shall be in a form provided or approved by the BPU.

8. If any tax credits are available, the possible economic benefits to the customer of existing Federal or State tax incentives, with one sample calculation of the effect of the tax benefit on the cost to the customer of installing an applicable energy conservation measure.

*[14A:21]**14:38*-3.7 Additional information

(a) Every auditor shall present the following to an eligible customer upon the completion of the program audit:

1. Lists of participating installers and suppliers who install or sell program measures, in a form specified or approved by the BPU;

2. (No change.)

3. Information on participation in utility/customer conciliation procedures; and

4. Conservation literature in a form specified or approved by the BPU.

*[14A:21]**14:38*-3.8 Prohibitions

(a) No program auditor shall provide costs, savings or payback estimates resulting from the installation of any product or measure which is not a program measure.

(b) (No change.)

(c) No program auditor shall recommend one fuel type over another.

(d) Utilities are responsible for insuring that program auditors employed by or under contract with covered utility do not provide information regarding fuel switching.

SUBCHAPTER 4. CUSTOMER BILLING, TERMINATION OF SERVICE AND PAYMENTS

*[14A:21]**14:38*-4.1 Services required

(a) When billing a customer for a program audit, each covered utility shall identify the charge and list it separately on the first bill rendered for the charge.

(b) Each covered utility shall allow eligible customers to include payments for those charges along with payments for their utility bill. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any program service, the utility shall credit the portion of the payment that exceeds the charge for utility service or fuel to program charges, unless the customer specifies otherwise.

*[14A:21]**14:38*-4.2 Prohibitions

No covered utility or home heating supplier shall terminate or otherwise restrict service or fuel to any eligible customer upon customer default for program services.

*[14A:21]**14:38*-4.3 Payments

(a) (No change.)

(b) No eligible customer shall be charged more than \$15.00 for a program audit including a heating unit analysis. Any eligible customer who is either eligible for a "lifeline credit" pursuant to

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N.J.S.A. 48:2-29.16 et seq. or lives in a household where the gross annual income is less than or equal to 150 percent of the poverty level income for that household as defined by the U.S. Department of Health and Human Services guidelines shall receive a program audit at no cost.

SUBCHAPTER 5. AUDITORS, INSPECTORS, AND INSTALLERS: QUALIFICATIONS AND TESTING

*[14A:21]**14:38*-5.1 General

(a) All auditors and inspectors of program measures shall be qualified by the BPU as to basic skills necessary to perform such tasks. Each auditor and inspector shall take a written test, prepared and administered by the BPU, prior to being qualified to conduct audits and/or inspections. The BPU may require that evidence of successful completion of energy auditor or inspector training be presented prior to testing. The BPU may retest any or all auditors and/or inspectors upon notice as audit procedures or installation standards change, or for good cause as determined by the BPU.

(b) Any auditor, inspector or home heating supplier who has previously passed a State of New Jersey approved test and has been qualified by the BPU may apply for and receive a waiver of testing and qualification standards as set forth herein. Any auditor, inspector, or home heating supplier may apply for and receive a waiver of testing and qualification standards if such person submits written proof which, in the opinion of the BPU, establishes that the person has sufficient training in conducting testing and analysis of program measures applicable to heating units.

(c) All existing inspectors who are properly designated by the Commissioner of Community Affairs shall be exempt from the BPU's requirement of testing and qualification of inspectors.

*[14A:21]**14:38*-5.2 Qualifications of auditors

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

*[14A:21]**14:38*-5.3 Qualifications for inspectors

(a) (No change.)

(b) Inspectors may be qualified to conduct inspections of one or more types of program measure installations, and shall be tested and qualified accordingly by the BPU.

*[14A:21]**14:38*-5.4 Disqualification of auditors and inspectors

(a) The BPU may disqualify any auditor or inspector from participating in the program.

(b) (No change.)

*[14A:21]**14:38*-5.5 Procedures for disqualification

(a) Any auditor or inspector whom the BPU plans to disqualify from participating in the program shall receive written notice from the BPU of the disqualification and the grounds therefor at least 30 days before such disqualification.

(b) The BPU shall allow the auditor or inspector to respond in writing to the allegations contained in the notice. All such responses must be received by the BPU no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.

(c) An auditor or inspector who has been disqualified by the BPU may file a request for reconsideration after one year. The request for reconsideration shall be accompanied by a statement, under oath, setting forth substantial and appropriate grounds for reconsideration which shall be supported by documentary evidence. Substantial and appropriate grounds include, but are not limited to:

1. Newly discovered material evidence that the BPU erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgment which formed the basis of the BPU's previous decision, on material grounds;

3.-4. (No change.)

(d) The BPU shall review the request for reconsideration and shall, within 45 days of its receipt, notify the auditor or inspector of its decision whether to allow the auditor or inspector to continue to participate in the HESP Program.

*[14A:21]**14:38*-5.6 Audit subcontractors

Covered utilities may subcontract HESP program audits. In developing bid specifications, advertising for bids and awarding contracts and subcontracts, covered utilities shall give consideration to participation by small businesses and minority-owned businesses. The covered utilities shall furnish the BPU evidence of compliance with the above requirement upon request.

SUBCHAPTER 6. INSPECTION OF INSTALLATIONS

*[14A:21]**14:38*-6.1 Mandatory inspections

(a) (No change.)

(b) If a violation of the requirements of the Uniform Construction Code is found, a report shall be issued promptly by the *[building inspector]* ***appropriate code official*** to both the customer and the installer, detailing the violation and the requirements to bring the installation into compliance. Upon correction of the violation, another inspection shall be made and a report shall be issued stating whether the violation has been corrected. A copy of any such inspection report shall be made available to the BPU upon its request.

*[14A:21]**14:38*-6.2 Random inspections

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

(c) Each audit recipient may submit to the appropriate covered utility a work order in a form prescribed by the BPU for each installation at the time of the entry of the contract for installation. The covered utility shall review all submitted work orders and choose which installations shall be inspected on a random basis.

(d) The covered utility shall promptly contact the audit recipient and inform him or her of the proposed inspection, and arrange an appointment within two weeks. The covered utility shall provide an inspector, qualified by the BPU to inspect that type of installation, to make an inspection report of the site to determine compliance with applicable installation standards. In no case may an inspector inspect his or her own work or the work performed directly by the inspector's employer.

(e) Upon completion of the inspection, the inspector shall make a written report stating the following (copies of such report shall be provided to the audit recipient and the installer no later than one week from the date of the inspection. A copy shall be supplied to the BPU upon request.):

1.-5. (No change.)

(f) Upon receipt of an inspection report stating that the installation is not in compliance, the installer shall, within 30 days, return to the site and correct any and all violations found by the inspector. Upon completion of the corrections, the installer shall notify the covered utility in writing of the corrections.

(g) Upon receipt of such notification of corrections, the covered utility which conducted the inspection must make a reinspection within two weeks.

(h) Upon receipt of a notice of reinspection, the utility shall contact the audit recipient to arrange for a reinspection. The reinspection report shall contain the same information as in (d) above. Copies of the report shall be provided to the customer and the installer no later than one week from the date of reinspection. A copy of the report shall be provided to the BPU upon request.

(i) Failure by an installer to correct in a timely fashion an installation which has been determined not to be in compliance is grounds for removal from the BPU's Master Record of participating installers. The BPU may refer instances of faulty installation to any other state or federal agency which may have jurisdiction over such matters.

(j) The BPU may review complaints made by audit recipients of faulty or improper installations by participating installers, and may, in its discretion, notify a covered utility to provide an inspection of the customer's residence by a qualified inspector. Upon receipt of such a notice, the covered utility shall comply and conduct an inspection and report the results in compliance with the requirements in this subchapter.

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SUBCHAPTER 7. MASTER RECORD OF INSTALLERS AND SUPPLIERS

*[14A:21]**14:38*-7.1 General requirements

(a) The BPU shall compile and maintain a Master Record of Installers and suppliers of program measures who participate in the HESP Program. The BPU shall provide an application to any installer or supplier of program measures who notifies the BPU that they wish to become a participant.

(b) The BPU shall review all applications for completeness and shall, at its discretion, verify the information contained therein. The BPU shall return applications which contain incomplete or incorrect information.

(c) The BPU shall update the Master Record at least every 180 days and shall promptly notify the covered utilities of any changes in its content.

(d) The BPU shall notify the applicant in writing whether or not the applicant shall be included on the Master Record by the BPU as a participant.

(e) Each application must be accompanied by a nonrefundable application fee of \$25.00 payable to the Treasurer State of New Jersey—HESP, by check or money order. The BPU at its discretion may waive all or part of the application fee.

*[14A:21]**14:38*-7.2 Installers: requirements for participation

(a) To be eligible for inclusion on the Master Record, an installer must submit a certified application to the BPU which shall include the following:

1.-5. (No change.)

6. Verification that the installer carries comprehensive public liability insurance adequately protecting the installer from liability for bodily injury, including death, and/or property damage arising out of the installer's performance. Such insurance shall be in amount not less than \$300,000 for bodily injury for each occurrence plus \$250,000 for property damage for each occurrence or in an amount not less than \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain an endorsement for contractual liability. Every year thereafter the installer shall provide the BPU with a certification of insurance;

7.-11. (No change.)

(b) The installer shall agree to provide the following to any audit recipient who selects that installer from a program list:

1.-4. (No change.)

5. Written assurance that all program measures installed by the installer carry a manufacturer's and/or installer's warranty pursuant to *[N.J.A.C. 14A:21-7.2](a)10 ***above***; and

6. Agreement to participate in customer conciliation procedures if a complaint is made by an eligible customer, the BPU, a covered utility, or any other state or Federal agency.

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

(e) Installers of vent dampers and solar systems shall provide proof that they have successfully completed the following:

1.-2. (No change.)

3. Any other BPU-approved training program.

*[14A:21]**14:38*-7.3 Suppliers: requirements for participation

(a) To be eligible for inclusion on the Master Record, a supplier shall complete a certified application to the BPU which shall include the following:

1.-4. (No change.)

5. Agree to participate in conciliation procedures if a complaint is made by an eligible customer, the BPU, a covered utility, or any other State or Federal agency;

6. (No change.)

*[14A:21]**14:38*-7.4 Withdrawal from the HESP Program

Any supplier or installer may voluntarily withdraw from the program and may be removed from the Master Record upon 30 days written notice to the BPU. However, any supplier or installer who so notifies the BPU of withdrawal must continue to abide by all requirements for participation and extend all benefits due for all eligible customers who contracted with the supplier or installer while the participant was included on the Master Record.

*[14A:21]**14:38*-7.5 Exclusion

(a) The BPU shall have the power to exclude from participating and from being included on the Master Record of installers or suppliers.

(b) Grounds for exclusion include, but are not limited to, the following:

1.-5. (No change.)

6. Any other cause affecting the responsibility of an installer, or supplier of such a serious and compelling nature as may be determined by the BPU to warrant exclusion, including, but not limited to unresolved claims, liens or stop notices or such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation;

7. (No change.)

8. Falsification or willful omission of any information required by the BPU of any applicant and/or participant.

*[14A:21]**14:38*-7.6 Removal

(a) Any person may be removed by the BPU from the Master Record of installers or suppliers.

(b) Grounds for removal may include, but are not limited to, the following:

1. Any ground which is ground for exclusion pursuant to N.J.A.C.

*[14A:21]**14:38*-7.5;

2. Refusal to participate in good faith in any conciliation or redress proceeding conducted by the BPU, a covered utility, or at the BPU's request;

3. Failure to supply eligible customers with any and all program services and benefits by this chapter;

4. Financial insolvency;

5. Unresolved customer complaints*[.]**; and*

6. Failure to meet the requirements of participation in N.J.A.C. 14:38-7.2.

*[14A:21]**14:38*-7.7 Procedures for removal or exclusion

(a) The BPU shall notify in writing any person whom the BPU plans to exclude or remove from the Master Record of the exclusion or removal and the grounds at least 30 days before such exclusion or removal. (See N.J.A.C. *[14A:21-12]**14:38-11*.)

(b) A person who has been excluded or removed from the Master Record by the BPU may reapply after one year.

*[14A:21]**14:38*-7.8 Temporary suspension

The BPU may, in its discretion, temporarily suspend any listed installer or supplier pending removal from the Master Record, if the BPU determines that retaining that person on the Master Record would immediately harm present or potential eligible customers. The BPU shall, within five days of such decision to suspend, notify the person in writing of the suspension and the grounds. The person shall have five days within which to respond to the allegations in writing to the BPU.

*[14A:21]**14:38*-7.9 Disclosure

If, at the time an eligible customer requests services pursuant to this chapter, a supplier or installer has withdrawn, has been removed or ***[has been]* *is*** temporarily suspended from the Master Record, the supplier or installer shall disclose such fact in writing to the eligible customer.

SUBCHAPTER 8. LISTS OF INSTALLERS AND SUPPLIERS

*[14A:21]**14:38*-8.1 General contents

(a) All lists of installers and suppliers of program measures shall contain the name, address and telephone number of each supplier and installer on the Master Record who is in or contiguous to the covered utility's service territory and an indication of which types of program measures a supplier or installer sells or installs and in which geographical areas. Identification of program measures shall not include brand names.

(b) All lists shall contain an effective date and expiration date on the first page. The expiration date shall be no more than 195 days after the effective date, and shall be plainly stated on the first page.

ADOPTIONS

*[14A:21]**14:38*-8.2 Installer lists

(a) All lists of installers may contain information that any eligible customer who receives an installer list, and has program measures installed by an installer chosen from that list, is entitled to the following program benefits:

- 1.-5. (No change.)
6. That in order to ensure program benefits, appropriate forms should be returned to the BPU;
7. (No change.)
8. That inclusion of any installer on this list does not imply that the installer is recommended or selected by the BPU or the covered utility nor does the covered utility in providing this list guarantee or warranty the type of work or quality of the work to be performed.

*[14A:21]**14:38*-8.3 Supplier lists

(a) All lists of suppliers may contain the following information that any eligible customer who purchases any program measure from a listed supplier who indicates that the program measure meets applicable material standards or carries program measures warranty is entitled to the following benefits:

- 1.-3. (No change.)
4. That inclusion of a supplier on this list does not imply that the supplier is recommended or selected by the BPU or the covered utility.

*[14A:21]**14:38*-8.4 Updating lists

All covered utilities shall keep all lists of installers and suppliers current, and shall promptly place in service revised lists received from the BPU without any alterations, ***additions or deletions, unless approved by the BPU***.

SUBCHAPTER 9. REPORTING AND RECORD KEEPING

*[14A:21]**14:38*-9.1 Reporting: covered utilities

(a) Each covered utility shall submit the following information in writing to the BPU on May 30, 1986 and annually thereafter through May 30, 1995 for the 12-month period ending the preceding April 1:

- 1.-9. (No change.)
10. Utility's annual budget for the HESP Program including:
 - i.-v. (No change.)
 - vi. Other budget information the BPU may require.
11. (No change.)
12. Such other information as the BPU may require for program evaluation.

(b) Each covered utility shall submit the following information in writing and in a form provided or approved by the BPU on the 15th of each month for the preceding month:

1. The number of eligible customers who have requested each program service and the number of requests the utility has fulfilled that may include:
 - i. (No change.)
 - ii. The number of eligible customers requesting or receiving each one of the following:
 - (1) Workbook II;
 - (2) Financing Guide;
 - (3) Home Energy Survey Reference Guide; and
 - (4) Program Lists.
 - iii. (No change.)
- 2.-5. (No change from proposal.)
6. The total number of service requests is completed pursuant to N.J.A.C. *[14A:21]**14:38*-3.1;
- 7.-9. (No change from proposal.)
10. Such other information as the BPU may require.

*[14A:21]**14:38*-9.2 Record-keeping covered utilities

(a) Each covered utility shall keep the following records for the periods indicated and shall make them available to the BPU upon request:

- 1.-4. (No change.)

PUBLIC UTILITIES

SUBCHAPTER 10. UTILITY SUPPLY AND INSTALLATION OF PROGRAM MEASURES

*[14A:21]**14:38*-10.1 (No change in text.)

*[14A:21]**14:38*-10.2 General exception

(a) The prohibition contained in N.J.A.C. *[14A:21]**14:38*-10.1 shall not apply to any program measure supplied or installed by a covered utility through contracts between such utility and independent suppliers or installers where the customer requests such supply or installation and each such supplier or installer:

1. Is on the Master Record of suppliers and installers referred to in N.J.A.C. *[14A:21]**14:38*-7;

2.-3. (No change from proposal.)

(b) Activities of a covered utility under (a) above:

1. May not involve unfair methods of competition:

i. (No change.)

ii. Covered utilities cannot by way of advertising or other marketing inducements indicate that work performed by their contractor is superior to comparable work performed by any other contractor listed on the Master Record.

2. (No change from proposal.)

3. Shall be undertaken in a manner which provides, subject to reasonable conditions the utility may establish to insure the quality of supply and installation of program measures, that any financing by the utility of such measures shall be available for the supply or installation by any supplier or installer on the Master Record referred to in N.J.A.C. *[14A:21]**14:38*-7 or for the purchase of such measures to be installed by the customer;

*[14A:21]**14:38*-10.3 Exception for certain measures

(a) The prohibition contained in N.J.A.C. *[14A:21]**14:38*-10.1 shall not apply to the supply or installation of:

1.-3. (No change.)

*[14A:21]**14:38*-10.4 Exception for existing supply and installation

(a) Any supply or installation of any program measure that the covered utility was engaged in on November 9, 1978, shall not be subject to the prohibition contained in N.J.A.C. *[14A:21]**14:38*-10.1:

1.-2. (No change.)

(b) Any supply or installation of any program measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing shall not be subject to the prohibition contained in N.J.A.C. *[14A:21]**14:38*-10.1:

1.-2. (No change.)

SUBCHAPTER 11. DISQUALIFICATION FROM MASTER RECORD

*[14A:21]**14:38*-11.1 Hearing

No person shall be excluded, disqualified or removed from the Master Record without the opportunity for 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.

TREASURY-GENERAL

(a)

CAPITAL CITY REDEVELOPMENT CORPORATION Project Review Procedures

Adopted New Rules: N.J.A.C. 17:41

Proposed: November 19, 1990 at 22 N.J.R. 3475(a).

Adopted: March 4, 1991 by the Capital City Redevelopment Corporation, Robert M. Litke, Executive Director.

Filed: March 6, 1991 as R.1991 d.176, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:9Q-13 and 52:9Q-17.

Effective Date: April 1, 1991.

Expiration Date: April 1, 1996.

Summary of Public Comments and Agency Responses:

The proposed new rules were published on November 19, 1990. The comment period was extended to December 28, 1990. During the comment period **no comments were received.**

Summary of Agency-Initiated Changes:

The following technical change has been made to correct an oversight. In the proposed Appendix to N.J.A.C. 17:41-2.2, Exhibit B is revised with the addition of the footnote: **"*Terms are defined in the Capital City Renaissance Plan Urban Code"**.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***).

CHAPTER 41

CAPITAL CITY REDEVELOPMENT CORPORATION

SUBCHAPTER 1. PROJECT REVIEW PROCEDURE RULES

17:41-1.1 Purpose and scope

This chapter shall constitute the rules of the Capital City Redevelopment Corporation (the Corporation) governing the filing and processing of Impact Statements during the development review process. As required by N.J.S.A. 52:9Q-18, government entities (or instrumentalities thereof) which undertake any development project or which have the authority to grant final approval of plans for private development projects in the Capital City District of the City of Trenton must file Impact Statements with the Corporation.

17:41-1.2 Definitions

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

"Capital City District" means that portion of the City of Trenton delineated under N.J.S.A. 52:9Q-14.

"Capital City Renaissance Plan" (the Plan) means the plan adopted by the Corporation on October 30, 1989, in accordance with N.J.S.A. 52:9Q-17. The Plan may be reviewed at a copy obtained from the Capital City Redevelopment Corporation, 4 North Broad Street, CN 203, Trenton, New Jersey 08625-0203.

"Corporation" means the Capital City Redevelopment Corporation.

"Project" means (1) the acquisition, construction, reconstruction, redevelopment, historic restoration, repair, alteration, improvement or extension of any building, structure or facility, or public area or (2) the acquisition and improvement of real estate and the extension or provision of utilities, access roads and other appurtenant facilities in connection therewith, provided that the work undertaken is consistent with the Capital City Renaissance Plan; a project may also include planning, designing, acquiring, constructing, reconstructing or otherwise improving a building, structure or facility and extension or provision of utilities, access roads and other appurtenant facilities in connection therewith, or any redevelopment undertaken by any person pursuant to section 12 of the Capital City Redevelopment Corporation Act.

SUBCHAPTER 2. IMPACT STATEMENT

17:41-2.1 Impact Statement requirement

(a) Pursuant to N.J.S.A. 52:9Q-18:

1. Any department, board, agency, division or commission of the State and any county or municipal government entity, or instrumentality thereof, which undertakes any construction, reconstruction or extension of any building, structure or facility or other improvement within the district shall, prior to undertaking such action, file with the corporation a Capital District Impact Statement which describes the ways in which the proposed construction, reconstruction or extension is consistent with the Plan in its various elements.

2. Whenever a governmental entity is granted final authority to review and approve plans for private development proposed for the district, the appropriate governmental entity with authority to grant final approval of an action shall file an impact statement for each development which is granted final approval explaining the ways in which the proposed development is consistent with the Plan.

i. The approving authority is empowered to require the preparation and submission of that impact statement by the developer as part of the application for development.

(b) For projects involving only interior rehabilitation, no Impact Statement is required.

17:41-2.2 Impact Statement format and contents

(a) To simplify their preparation, Impact Statements should include the information described and follow the format substantially in accordance with Exhibits A and B in the Appendix to this subchapter, incorporated herein by reference.

1. Exhibit A should be used for all projects.

2. Exhibit B should be used only if the project involves exterior rehabilitation estimated to cost more than \$5,000 or if the project involves new construction.

17:41-2.3 Deadlines for filing Impact Statements

(a) For a private development or construction project within the Capital City District, the appropriate governmental entity with authority to grant final approval of an action such as the City Planning Board, Zoning Board of Adjustment, Historic Landmarks Commission or Zoning Officer, shall file an Impact Statement with the Corporation not more than 45 days after final project plan approval, but not less than 10 days prior to the issuance of a construction permit by the City.

(b) For any project proposed within the Capital District by a government entity or instrumentality thereof, which requires an Impact Statement, that entity shall file an Impact Statement with the Corporation at least 60 days prior to advertising bids for construction of a project, and in no event less than 90 days prior to the commencement of construction.

17:41-2.4 Impact Statement review

(a) The Corporation shall review each Impact Statement filed and the plans submitted by the project applicant. An Impact Statement shall be deemed to be consistent with the Capital City Renaissance Plan if the proposed project described therein meets the requirements of the Plan or if any deviations from the Plan satisfy the requirements for the grant of a variance pursuant to N.J.S.A. 40:55D-70 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. If a proposed project is found not to be consistent with the Plan, the Corporation shall promptly notify, in writing, the City of Trenton, or such other governmental entity that filed the Impact Statement, of its determination and the reasons therefor.

(b) The Corporation may delegate its responsibilities with respect to Impact Statements to its Executive Director, subject to review by the Corporation's Board of Directors.

ADOPTIONS

TREASURY-GENERAL

APPENDIX

**EXHIBIT A—ALL PROJECTS*
CAPITAL DISTRICT IMPACT STATEMENT**

I. Applicant Information

Name: _____
Company: _____
Address: _____
Phone number: _____

II. Project Information

Location: (street address or block and lot number) _____

Zone: Type I Pedestrian Continuity Frontage:
Type II Yes No
Type III (See Map 7 in the Renaissance Plan)
Type IV

(See Map 3a in the Renaissance Plan)

Land Use: Residential Does the project involve demolition?
Retail Yes No
Office Does the site involve surface parking?
Parking Yes No
Mixed Use Is it existing? proposed?
Vacant Lot: Streetwall
Other (explain): _____

Building: New Construction Estimated Value of Improvement
Exterior Rehab. Up to \$5,000
More than \$5,000

List project approvals along with the date granted: _____

III. Consistency with the Renaissance Plan Urban Code

Explain how the project is in compliance with the appropriate requirements:

- a. External signs shall be frontlit only. Signs on the inside of glazed openings may be backlit or neon.
- b. Lots without buildings shall have a Streetwall** along 80% of their Frontage**.
- c. Surface parking lots shall have a Streetwall** on all Frontages**. Surface parking lots shall not be permitted on corner lots or along Pedestrian Continuity Frontages**.
- d. The exterior finish materials on all Facades** shall be limited to brick, stone, terra cotta, cast stone, and clear or lightly tinted glass. For Type III buildings, stucco may be added as an exterior finish material on all Facades**. For Type IV buildings, wood clapboards and/or wooden shingles may be added as an exterior finish material on all Facades**.

*Projects involving only interior rehabilitation do not require an Impact Statement.

**Terms are defined in the Capital City Renaissance Plan Urban Code.

IV. Drawings and Related Materials

List drawings and related materials submitted with this Impact Statement, if any, that define, clarify and support the descriptions required to demonstrate consistency.

This Impact Statement was prepared and submitted by:

Name: _____
Date: _____
Phone number: _____

Continue on to Exhibit B if the project involves exterior rehabilitation estimated to cost more than \$5,000 or if it involves new construction.

**EXHIBIT B—REHABILITATION OR NEW CONSTRUCTION
CAPITAL DISTRICT IMPACT STATEMENT**

Exhibit B is to be completed only if the project involves exterior rehabilitation estimated to cost more than \$5,000 or if the project involves new construction.

Complete only those sections that are applicable.

I. Consistency with the Renaissance Plan Urban Code

a. Parking

Explain how the project is in compliance with these requirements:

Buildings with 5,000 sq. ft. or more of Gross Floor Area* shall provide a minimum of one parking space for each 500 sq. ft. of Commercial Use*, and one parking space for each Residential* Unit. These parking requirements shall be calculated from the first square foot.

Unless the required Parking Spaces are provided within 1,000 ft. of the lot they serve, adequate shuttle service must be available.

Note: Parking is not required for Independent Buildings* with less than 5,000 sq. ft. of Gross Floor Area*.

b. Building Use

Explain how the project is in compliance with these requirements:

In Type I, II and III zones, if the project is on a Primary Frontage*, Commercial* or Residential* Uses are required to a minimum depth from a Primary Frontage* of not less than 15 ft. The remaining depth may also be used for Parking. The only parking exposure allowed on a Primary Frontage* is an entrance or an exit not greater than 30 ft. in width across the Frontage*.

Note: Parking may be exposed on all Frontages* designated as Non-Primary*.

In Type I, II and III zones, if the project is on a Pedestrian Continuity Frontage* 70% of the Frontage* at the sidewalk level shall be for Commercial Use* to a minimum depth of not less than 15 ft.

In Type I, II and III zones, on other Frontages*, Stories* may be used for Commercial*, Residential* or Parking Use.

In Type IV zones, if the project is on a Pedestrian Continuity Frontage* 70% of the Frontage* at the sidewalk level shall be for Commercial Use* to a minimum depth of not less than 15 ft.

In Type IV zones, on other Frontages*, all Stories* may be used for Commercial* and/or Residential* Use.

In Type IV zones, at lots with Frontage* on Stockton Street, all Stories* may be for Commercial*, Residential* or Parking Use.

c. Building Height

Explain how the project is consistent with these requirements:

In Type I zones, building height shall be a maximum of 10 Stories*. Buildings shall have an Expression Line* at the top of the second Story* and a Recess Line* at the top of the sixth Story*.

Note: In Type I zones, a building may be built to the height of an existing building provided both buildings are integrated and all Facades* are complete.

In Type II zones, building height shall be a maximum of 6 Stories*. Buildings shall have an Expression Line* at the top of the second Story*.

In Type III zones, building height shall be a maximum of 4½ Stories*, including a half basement. Buildings shall have an Expression Line* at the top of the second Story*.

In Type IV zones, building height shall be a maximum of 3½ Stories*, including a half basement.

Note: No building shall be less than two Stories* in height, or 16 ft. from the sidewalk to the top of the parapet.

Note: The height limit shall not apply to a church, spire, radio mast, belfry, clock tower, chimney flue, water tank, elevator bulkhead, stage tower, scenery loft or similar structure.

Note: For Type I and Type II, the building height limitations shall be suspended for two years from the date of adoption of the Capital City Renaissance Plan for any building for which final site plan approval has been obtained from the Trenton Planning Board prior to the adoption of the Renaissance Plan.

On Pedestrian Continuity Frontages* in Type I, II and IV zones, Stories* at sidewalk level shall be a minimum of 12 ft. in height from finished floor to finished ceiling.

TREASURY-GENERAL

ADOPTIONS

d. Building Placement

Explain how the project is consistent with these requirements:

In Type I and II zones, Facades* shall be built on the Frontages* along 80% of their Length without any Setback* to a minimum height of two Stories*.

In Type III and IV zones, Facades* shall be built on the Frontages* along 80% of their length without any Setback*. Alternatively, the Facades* may be Setback* exactly 8 ft. from the Frontage* to provide a front Yard*.

Note: In the event of pre-existing Setbacks*, special adjustments may be allowed/required.

e. Architectural Standards

1. Exterior finish materials

Explain how the project is in compliance with these requirements:

The exterior finish materials on all Facades* shall be limited to brick, stone, terra cotta, cast stone, and clear or lightly tinted glass.

For Type III buildings, stucco may be added as an exterior finish material on all Facades*.

For Type IV buildings, wooden clapboards and/or wooden shingles may be added as an exterior finish material on all Facades*.

2. Facade* Design

Explain how the project is in compliance with these requirements:

The glazed area and all other openings of a Facade* shall not exceed 55% of the total area of such Facade*, with each Facade* being calculated independently.

On Pedestrian Continuity Frontages*, the Facade* of the Story* at sidewalk level shall not be less than 70% glazed.

For glazed areas and all other openings in a Facade*, height must be equal to or greater than the width.

f. General Requirements

Explain how the project is in compliance with these requirements:

Loading docks are not permitted on Pedestrian Continuity Frontages*.

All buildings shall have the main entrance on a Frontage*.

II. Consistency with the Renaissance Plan Land Use Element

a. Demonstrate how the project is consistent with the proposals described in the Land Use Element and depicted in the Illustrative Site Plan (Map 4) of the Renaissance Plan:

III. Consistency with the Renaissance Plan Transportation Element

a. Will the project generate any traffic? Yes No

If so, describe how much traffic is expected and at what times. Describe any transportation improvements and other measures that will be made to accommodate the increased traffic. Describe what impact, if any, the traffic will have on the pedestrian environment around the project.

b. Will the project generate any truck traffic? Yes No

If so, describe how much truck traffic is expected at what times and how it will be accommodated.

c. Does the project involve road construction or reconstruction?

Yes No

If so, describe how the project is consistent with the proposals described in the Transportation Element, Design Element and Land Use Element and depicted on the Illustrative Site Plan (Map 4) of the Renaissance Plan.

IV. Drawings and Related Materials

List drawings and related materials submitted with this Impact Statement that define, clarify and support the descriptions required to demonstrate consistency.

***Terms are defined in the Capital City Renaissance Plan Urban Code.*

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

**Notice of Administrative Correction
Corporation Business Tax Act Rules
Entire Net Income**

**Net Operating Loss Carryover; Limitations to the
Right of a Net Operating Loss Carryover
N.J.A.C. 18:7-5.13 and 5.14**

Take notice that the Division of Taxation has discovered errors in the text of N.J.A.C. 18:7-5.13 and 5.14 as currently appearing in the New Jersey Administrative Code. The second set of Examples 1 and 2 which follow N.J.A.C. 18:7-5.13(c) (on Code page 7-42.2) were proposed as coming after N.J.A.C. 18:7-5.14(b) (see 17 N.J.R. 2096(a)). Upon adoption, these examples followed N.J.A.C. 18:7-5.14(c) (see 18 N.J.R. 309(c)). However, in the production of the 2-18-86 Code update, these two examples were mispositioned as part of N.J.A.C. 18:7-5.13(c). This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

18:7-5.13 New operating loss carryover

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

(c) Corporations acquired under Internal Revenue Code Section 338 do not lose their net operating loss carryover because the corporate franchise remains unchanged to the extent it does not fall within the provisions of N.J.A.C. 18:7-5.14.

Examples 1 and 2. (No change.)

[Example 1: B Corporation was wholly owned by a single stockholder. It operated a notably unsuccessful restaurant and built up significant net operating loss carryovers. The stockholder transferred 49 percent of his stock to an investor who has access to a recognized and uniformly profitable fast food franchise. B Corporation releases substantially all of its existing employees, disposes of its equipment and undertakes the fast food franchise business at a new location. Notwithstanding that B Corporation's sole stockholder sold less than 50 percent of his stock and the corporation still sells food in a heated state, the net operating loss carryovers to B Corporation become zero. The disposition of land, labor and capital until nothing remains except an empty corporate shell whose principal attributes are the apparent existence of an unused net operating loss carryover and some liquid capital in quest of an entirely new business is deemed to support the premise that the corporation was acquired for the primary purpose of the use of its net operating loss carryover. The economic substance of the transaction would have been to transfer the loss carryovers to a new business which is precluded by the rule.

Example 2: C Corporation was a manufacturer of buggy whips and button hooks. Due to a declining demand for its products it has built up significant net operating loss carryovers. C Corporation has only one stockholder who sells 50 percent of his capital stock to a woman who has invented a cheap and well-styled perpetual motion machine for which there is a clamorous demand. C Corporation changes its name to D Corporation, retools and hires additional employees. It expands its plants, closes out its old product lines and realizes huge profits in its rejuvenation. D Corporation's net operating loss carryovers from its buggy whip days are unaffected by any of the above circumstances and may be claimed as a net operating loss deduction. The economic substance of the transaction is a mere restructuring of its manufacturing product line. It did not change its business where it only reallocated its economic factors of production.]

(d) (No change.)

18:7-5.14 Limitations to the right of a net operating loss carryover

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

(c) No single factor shall be deemed on its own to be dispositive of the issue.

ADOPTIONS

Example 1: B Corporation was wholly owned by a single stockholder. It operated a notably unsuccessful restaurant and built up significant net operating loss carryovers. The stockholder transferred 49 percent of his stock to an investor who has access to a recognized and uniformly profitable fast food franchise. B Corporation releases substantially all of its existing employees, disposes of its equipment and undertakes the fast food franchise business at a new location. Notwithstanding that B Corporation's sole stockholder sold less than 50 percent of his stock and the corporation still sells food in a heated state, the net operating loss carryovers to B Corporation become zero. The disposition of land, labor and capital until nothing remains except an empty corporate shell whose principal attributes are the apparent existence of an unused net operating loss carryover and some liquid capital in quest of an entirely new business is deemed to support the premise that the corporation was acquired for the primary purpose of the use of its net operating loss carryover. The economic substance of the transaction would have been to transfer the loss carryovers to a new business which is precluded by the rule.

Example 2: C Corporation was a manufacturer of buggy whips and button hooks. Due to a declining demand for its products it has built up significant net operating loss carryovers. C Corporation has only one stockholder who sells 50 percent of his capital stock to a woman who has invented a cheap and well-styled perpetual motion machine for which there is a clamorous demand. C Corporation changes its name to D Corporation, retools and hires additional employees. It expands its plants, closes out its old product lines and realizes huge profits in its rejuvenation. D Corporation's net operating loss carryovers from its buggy whip days are unaffected by any of the above circumstances and may be claimed as a net operating loss deduction. The economic substance of the transaction is a mere restructuring of its manufacturing product line. It did not change its business where it only reallocated its economic factors of production.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

**Internal Controls
Procedures for Transportation Expense
Reimbursements**

Adopted Amendment: N.J.A.C. 19:45-1.9A

Proposed: December 17, 1990 at 22 N.J.R. 3710(a).
Adopted: March 6, 1991, by the Casino Control Commission,
Steven P. Perskie, Chairman.
Filed: March 8, 1991 as R.1991 d.183, **without change**.
Authority: N.J.S.A. 5:12-69 and 102(m).
Effective Date: April 1, 1991.
Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

Comments on the proposed amendment were submitted by the Division of Gaming Enforcement (Division), the Showboat Hotel and Casino (the Showboat) and TropWorld Casino and Entertainment Center (TropWorld).

COMMENT: The Showboat and TropWorld submitted comments in general support of the proposed amendment.

RESPONSE: The Commission agrees with these comments, as evidenced by its adoption of the proposed amendment.

COMMENT: The Division, stating its support of the proposed amendment, commented that such amendment would not compromise the regulatory purposes of ensuring adequate documentation of travel expenses and preventing multiple reimbursements, in accordance with N.J.S.A. 5:12-102m(2).

RESPONSE: The Commission agrees with this comment.

Full text of the adoption follows.

OTHER AGENCIES

19:45-1.9A Procedures for transportation expense reimbursements
(a) (No change.)

(b) Whenever a patron requests a casino licensee to reimburse transportation expenses, a Travel Disbursement Voucher ("Voucher") shall be prepared. Vouchers shall be maintained in a secure location approved by the Commission. Access to Vouchers, prior to use, shall be restricted to those individuals authorized by the licensee to approve such disbursements. Prior to the transportation expense reimbursement, an individual authorized to approve the disbursement shall examine the original tickets, invoices or receipts presented by the patron in support of the request for valid transportation expense reimbursement. Such tickets, invoices or receipts shall:

1.-2. (No change.)

3. Be in the name of the requesting patron, provided, however, that the tickets, invoices or receipts may be in the name of a person accompanying said patron, or contain no name if the amount of reimbursement is \$250.00 or less, as long as an explanation thereof is noted on the Voucher; and

4. (No change.)

(c)-(h) (No change.)

(b)

CASINO CONTROL COMMISSION

**Accounting and Internal Controls
Jackpot Payouts in the Form of an Annuity
Adopted Amendment: N.J.A.C. 19:45-1.40B**

Proposed: November 19, 1990 at 22 N.J.R. 3455(a).
Adopted: March 6, 1991, by the Casino Control Commission,
Steven P. Perskie, Chairman.
Filed: March 8, 1991, as R.1991 d.184, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), **and with portions not adopted at this time**.

Authority: N.J.S.A. 5:12-63(c); 5:12-69; 5:12-70(f), (l) and (m).
Effective Date: April 1, 1991.
Expiration Date: March 24, 1993.

The adopted amendments, which would permit a casino licensee or group of casino licensees to purchase United States Treasury Bonds instead of annuity contracts to assure that deferred annuity jackpot payments are made as promised, were proposed along with a number of other amendments to N.J.A.C. 19:45-1.40A and 1.40B (see 22 N.J.R. 3455(a)). The Casino Control Commission ("Commission") is continuing its review of the other amendments and the comments received concerning them. Some or all of these amendments may be adopted by the Commission at a later time. The Commissioner is not adopting at this time the proposed amendments to N.J.A.C. 19:45-1.40A and 19:45-1.40B(a), (b)4 and 5, (c) (recodified as (e)), part of (f) and (j)2i.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement does not object to the use of the alternative means of funding deferred annuity jackpot payments which is permitted by the amendments.

RESPONSE: This comment is accepted by the Commission.

COMMENT: IGT, a licensed manufacturer of slot machines and gaming equipment, supports the adoption of the amendments because they provide flexibility which may enhance the efficiency of casino licensees offering annuity jackpots without compromising the integrity of casino gaming. Sands Hotel, Casino and Country Club, a casino licensee, also supports the adoption of the amendments.

RESPONSE: The Commission agrees with these comments as evidenced by its adoption of the amendments.

COMMENT: The Atlantic City Megabucks Trust ("Megabucks Trust") supports the amendments because they will permit casinos which offer annuity jackpots to shop for the best available interest rates and to diversify their portfolios. In addition, the Megabucks Trust notes that United States Treasury Bonds may be more secure than annuity contracts purchased from insurance companies. The Megabucks Trust does, however, suggest a minor change in the proposed amendments to permit the Treasury Bonds to be sold or cashed prior to their maturity, provided

OTHER AGENCIES

that the proceeds are used to purchase an annuity contract which satisfies the regulatory requirements to assure that the remaining deferred payments are made as promised.

RESPONSE: The Commission agrees with this comment. The adopted amendments include minor substantive and technical changes at N.J.A.C. 19:45-1.40B(c) and (d) to permit the sale of the bonds prior to their maturity where the proceeds are used to purchase another treasury bond or an annuity contract which complies with the requirements of the section to assure that the remaining deferred payments are made as promised. This change simply allows the casino to exchange one type of permitted financial instrument for another. Thus, it does not significantly enlarge or curtail the scope of the rule or its burden, and need not be published for additional notice and comment.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***). (Note: Those portions of N.J.A.C. 19:45-1.40B for which proposed amendments are not adopted at this time are reproduced below in their current code form.)

19:45-1.40B Jackpot payouts in the form of an annuity

(a) For purposes of this section, the phrase "annuity jackpot" refers to any slot machine jackpot offered by a casino licensee or group of casino licensees pursuant to which a patron wins the right to receive cash payments at specified intervals in the future. No annuity jackpot shall be permitted unless it provides for the payment of fixed amounts at fixed intervals. In addition, no annuity jackpot shall be permitted unless it expressly prohibits the winner from encumbering, assigning, or otherwise transferring in any way his or her right to receive the future cash payments, except for transfer of the payments to the estate of the winner upon his or her death. A casino licensee or group of casino licensees may, with the prior approval of the Commission, terminate all future payments to a winner who attempts to encumber, assign or otherwise transfer the right to receive future payments in violation of this prohibition.

(b) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall establish a trust fund which shall be used to make future cash payments. The trust fund shall be administered in accordance with a written trust agreement which shall be reviewed and approved by the Commission prior to the offering of the jackpot. The trust agreement shall, at a minimum, require that:

1. (No change.)
2. The monies in the trust fund be used to purchase annuity contracts or United States Treasury Bonds in accordance with (c) or (d) below to assure that the trust will have sufficient monies available in each year to make all annuity jackpot payments which are required under the terms of the annuity jackpots which are won;
3. A reserve be established and maintained within the trust fund which is sufficient to purchase the annuity contracts or treasury bonds required under (b)2 above as annuity jackpots are won;
4. The trust fund continue to be maintained until all payments owed to winners of the annuity jackpots have been made; and
5. The trustees obtain an annual audit by an independent certified public accountant licensed to practice in the State of New Jersey attesting to:

i-ii. (No change.)

(c) If the trustee or trustees purchase annuity contracts in satisfaction of (b)2 above, a separate annuity contract shall be purchased for each annuity jackpot won. The annuity contract shall name the trust fund as beneficiary, shall provide for annuity payments which are equal to or greater than the payments required under the annuity jackpot, and shall provide for each annuity contract payment to be made to the trust fund prior to the date the payment is required to be made under the annuity jackpot. The annuity contract shall be purchased within 180 days after the annuity jackpot is won, ***unless it is purchased pursuant to (d) below,*** and a copy of the contract shall be provided to the Commission and Division within 30 days of its purchase. The annuity contract shall be issued by an insurance company which:

1. Has fidelity and fiduciary insurance or bonding coverage for 100 percent of the value of the annuity contract;

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2. Has a combined capital and surplus of at least 100 million dollars, assets of at least one billion dollars, and an A.M. Best Company rating of A plus (superior); and

3. Is authorized to issue annuities in New Jersey by the State's Commissioner of Insurance and is either licensed to sell annuities in this State, or represented by an entity so licensed.

(d) If the trustee or trustees purchase United States Treasury Bonds in satisfaction of (b)2 above, a separate treasury bond shall be purchased for each payment which is required to be made under the terms of the annuity jackpot. Each treasury bond shall have a surrender value at maturity, excluding any interest which is paid before the maturity date, which is equal to or greater than the value of the corresponding annuity jackpot payment, and shall have a maturity date which is prior to the date the annuity jackpot payment is required to be made. All treasury bonds shall be purchased within 180 days after the annuity jackpot is won, and a copy of the bonds will be provided to the Commission and Division within 30 days of the final purchase of the bonds. No treasury bond purchased pursuant to this section shall be ***[cashd or surrendered]* *sold*** prior to its maturity date ***unless the proceeds are used to purchase another treasury bond or an annuity contract in compliance with the requirements of this section to assure that the remaining deferred payments are made as promised, which purchase must be completed within 30 days of the sale of the bonds*.**

(e) Any casino licensee or group of casino licensees which offers an annuity jackpot shall be strictly and immediately liable for any payment which is owed to the winner of such a jackpot in the event that the payment is not made by the trustees when due. Where the annuity jackpot is offered as part of a multi-casino progressive slot system, each casino licensee participating in the system when the jackpot is won shall be jointly and severally liable for each jackpot payment required to be made under this subsection.

(f) All checks received by the trustees under the annuity contracts and all checks received upon ***the sale or*** surrender of the treasury bonds shall be restrictively endorsed "for deposit only" to the bank account of the trust and immediately recorded on an Annuity Deposit Log. The Annuity Deposit Log shall contain, at a minimum, the following:

- 1.-2. (No change.)
3. The source of the payment, including, if applicable, the name of the insurance company issuing the payment; and
4. (No change.)

(g)-(i) (No change from proposal.)

(j) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall first be required to establish to the satisfaction of the Commission either that:

1. A winning patron will not be liable for income tax on the deferred portion of the annuity jackpot in the tax year in which the jackpot is won; or
2. Reasonable accommodations have been made to enable a winning patron to satisfy any income tax liability attributable to the deferred portion of the annuity jackpot which is incurred in the tax year in which the jackpot is won.

COMMUNITY AFFAIRS

(a)

OFFICE OF THE COMMISSIONER

Organization of the Department

Approval of Loan and Grant Agreements

Adopted New Rules: N.J.A.C. 5:2-3.1 through 3.8

Adopted Repeal: N.J.A.C. 5:4-1.1 through 1.15

Adopted: February 21, 1991 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: February 26, 1991 as R.1991 d.164.

Authority: N.J.S.A. 52:27D-3 and 52:14B-3 and 4.

Effective Date: February 26, 1991.

Expiration Date: April 10, 1994, N.J.A.C. 5:2.

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COMMUNITY AFFAIRS

This is an organizational rule and, as such, it may be adopted without public notice or comment, in accordance with N.J.S.A. 52:14B-4(b). Provisions that appear to be of a non-organizational nature are recodified sections of N.J.A.C. 5:4.

Summary

Procedural rules regarding the manner in which the Department of Community Affairs processes and awards grant contracts were originally adopted in 1969 and were most recently readopted in 1987. However, the current rules do not adequately reflect currently operating procedures, particularly those that are the result of more recent efforts to streamline the processing of grants.

The new rules therefore represent an updating of the rules that they replace. The rules have been recodified so that they will be together with the Department's other organizational rules. The major substantive change is that the Department is availing itself of the authority expressed in Treasury Department OMB Circular Letter 89-19, allowing the award of certain grants of less than \$10,000 by means of so-called letter agreements, which are less detailed than full agreements and require reduced approval reviews. This will enhance efficiency and speed the processing of these grants, to the benefit of the Department and the recipients.

The standard agreement format, which is longer and more detailed, will continue to be used for grants of \$10,000 or more, except as otherwise specified. Other changes embodied in this revision merely reflect internal changes in departmental organization and procedures which have evolved over the years, and do not entail any social or economic impact.

Social Impact

The ability of the Department to consummate grant agreements with local governments and nonprofit organizations more quickly will allow these grantees to derive more immediate benefit from available State-aid and grant-in-aid programs. Reduced paperwork will facilitate their participation in these programs and allow greater focusing on the social purposes of the grants.

Economic Impact

As a result of the changes outlined in these rules certain economies can be realized. A letter agreement may typically be three or four pages, while a formal agreement, containing considerably more detailed provisions and requirements, may be four or five times as long. This may reduce the cost of legal review.

In those cases where the more abbreviated form of letter agreement is authorized by these rules, the number of pages will thus be reduced, leading to savings in duplicating, postage and handling. Further, in such simpler and relatively low-dollar level grants, a shorter agreement can be processed more quickly by the Department, executed in fewer steps, and thereby lead to the grantee receiving funding authorization at an earlier date.

Regulatory Flexibility Statement

These rules reduce paperwork requirements for recipients of grants of less than \$10,000. These grantees may be expected to include small nonprofit organizations. No additional burden is placed on any grant recipient by these rules.

Full text of the repealed rules may be found in the New Jersey Administrative Code at N.J.A.C. 5:4-1.1 through 1.15.

Full text of the adopted new rules follows.

SUBCHAPTER 3. GRANT AND LOAN APPROVAL

5:2-3.1 Scope

The rules contained in this subchapter shall govern the issuance of all commitments and agreements pertaining to the awarding of the grants and loans using funds available from State appropriations, or Federal or private grants received by the Department, for State Aid and Grant-in-Aid programs.

5:2-3.2 Authorized signature required

No grant or loan agreement or other commitment of funds for State Aid or Grant-In-Aid purposes is final until it has been approved in writing by the officers of the Department authorized by law or regulation to take such actions.

5:2-3.3 Officers authorized to commit funds

(a) The following officers are authorized, subject to general fiscal controls and requirements set forth in this subchapter or elsewhere,

to execute by their signature grant or loan agreements on behalf of the Department:

1. The Commissioner of Community Affairs;
2. The Deputy Commissioner of Community Affairs;
3. The director of the division, or equivalent-level agency, responsible for administration of the assistance program, provided that the agreement has been authorized by the Commissioner or Deputy Commissioner in accordance with standard grant and loan award approval procedures;
4. The Director of the Division of Housing and Development, for agreements or commitments of funds under the State-Local Cooperative Housing Inspection Program, using funds available in the State budget for that purpose;
5. The Director of the Division of Housing and Development, or his or her designee, for certain payment agreements, including those entered into under the Rental Assistance Program or the Homelessness Prevention Program or any other program determined to be of similar nature by the Director of Administration, that essentially represent transfer payments to, or for the direct benefit of, individuals; and
6. The Director of Administration, to the extent authorized by the Commissioner or Deputy Commissioner.

(b) No agreement or commitment of funds shall be made or considered valid without the countersignature of the Department Grant Approval Officer in the Department's Fiscal Office, attesting to the availability of funds as required by P.L. 1989, c.131. In addition, countersignature by the Department's Grant Control Unit is required, except for the State-Local Cooperative Housing Inspection Program and any other programs exempted by that Unit.

5:2-3.4 Exception

Nothing contained in this subchapter shall be deemed to apply to grant disbursements such as the Municipal Aid program established under N.J.S.A. 52:27D-178, in which payments are made on a statutory formula list basis, and for which departmental agreements are not required. Normal fiscal control procedures shall apply.

5:2-3.5 Authorization to enter into grant and loan agreements

Grant and loan agreements may be prepared and executed by the officers set forth in N.J.A.C. 5:2-3.3 only with the prior approval of the Commissioner or Deputy Commissioner. Any agreement so prepared shall substantially comport with the authorization of the Commissioner. Any amendments to executed agreements shall follow a similar approval mechanism, except that certain minor amendments may be authorized by the Director of Administration, who shall specify the required countersignatures.

5:2-3.6 Approval by Attorney General

(a) The following grant or loan agreements shall not require the written approval of the Deputy Attorney General assigned to the Department:

1. Grants up to but not including \$10,000, provided that the Department's standard letter agreement format is utilized;
2. Loans up to but not including \$10,000, except in those cases where the Deputy Attorney General has not approved a standard loan agreement format for the program or for general Departmental use;
3. Grants made by a letter agreement form authorized by the Director of Administration, such as the statutory formula entitlement Safe and Clean Neighborhoods programs, or grants whose recipients are specified in the State Budget; and
4. Disbursements made pursuant to statutory formula or direction for which no agreements are required, such as the Municipal Aid program.

(b) All grants or loans not exempted above, and those requested by the Department, shall be reviewed and approved by a Deputy Attorney General assigned to the Department;

1. The Deputy Attorney General shall indicate his or her approval by signing the agreement below a statement indicating that the grant or loan agreement has been reviewed and approved as to form, or such other language as shall be specified by the Attorney General.

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2. Such approval by the Deputy Attorney General shall indicate that neither the subject matter nor the form of the agreement violates any provision of the State Constitution or any applicable law or regulation, that the terms of the document will constitute a valid and binding contract when executed by both parties, and that the text and form accurately express the intention of the Department.

5:2-3.7 Suspension and termination of agreements

(a) The director of the division or agency that authorized the agreement may suspend an agreement for not more than 90 days upon the failure of the applicant to comply with any material provision of the agreement. The applicant shall be notified of such suspension in writing, specifying the effective date of the suspension, the reasons therefor, and the conditions upon which the agreement will be reinstated.

(b) Acting upon the advice of the Deputy Attorney General, the Commissioner may terminate any agreement upon the failure of the applicant to comply with any material provision thereof. The applicant shall be notified of such termination in writing, specifying the effective date of the termination and the reasons therefor.

(c) Nothing in this subchapter shall preclude the director or Commissioner from taking any other actions authorized by the terms of the agreement or by any applicable law or rule.

5:2-3.8 Grant and loan procedures

Subject to the direction of the Commissioner, the Director of Administration shall integrate the various requirements of this subchapter and of other State and Federal laws and regulations, including those set forth by the State Treasury Department, into an orderly system of internal processing, controls and records.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

**Continuing Care Retirement Communities
Application for Certification**

Adopted Amendment: N.J.A.C. 5:19-3.1

Proposed: January 7, 1991 at 23 N.J.R. 3(b).
Adopted: March 4, 1991 by Melvin R. Primas, Jr.,
Commissioner, Department of Community Affairs.
Filed: March 8, 1991 as R.1991 d.175, with substantive changes
not requiring additional public notice and comment. (See
N.J.A.C. 1:30-4.3.)

Authority: N.J.S.A. 52:27D-358.
Effective Date: April 1, 1991.
Expiration Date: February 1, 1993.

Summary of Public Comments and Agency Responses:

The organizations whose representatives submitted comments regarding this proposal are Life Care Services Corporation, The Evergreens, the United Methodist Homes of New Jersey, and the New Jersey Association of Non-Profit Homes for the Aging.

COMMENT: A letter submitted by the treasurer of a Continuing Care Retirement Community (CCRC), whose application for a Certificate of Authority (COA) is under review at this time states that a feasibility study required to be submitted in the early stages of the project will be inferior to a study developed during the later stages of the project's planning.

RESPONSE: In response, the Department has included new language that will enable a provider to defer submission of a feasibility study until after it has received 50 percent binding contracts under its conditional Certificate of Authority.

COMMENT: The government affairs liaison of another provider requests clarification, presumably in light of this proposal, of the requirement in N.J.A.C. 5:19-3.1(a)19 that copies of market studies, if any, prepared on behalf of the provider, concerning the feasibility of the project be provided.

RESPONSE: The Department's response is twofold. First, the Department has seen that all newly developed CCRC facilities have completed a market study prior to applying for a COA. Secondly, the Department has received information from experts who prepare financial feasibility studies indicating that there are four sections to every feasibility study. These sections are:

1. A set of future-oriented financial statements which will be comparable to "audit" format, "multiple year budget", income statement, cash flow statement, balance sheet and debt coverage computations;
2. Explanatory notes and assumptions;
3. A description of market size and penetration issues; and
4. An opinion letter.

A market study that is part of the financial feasibility study should satisfy the requirements of paragraph 19.

COMMENT: The commenter also voiced some concern about the requirements of the Department of Health in their Certificate of Need application.

RESPONSE: This concern should be discussed with the Department of Health, Certificate of Need program.

COMMENT: The director of finance of a church-related organization that sponsors several CCRC's, commented that there are two types of financial feasibility studies. The difference between these two types of studies is that one is merely a compilation while the other is a study which indicates the CPA has tested the underlying assumptions and assumes responsibility for their reasonableness.

RESPONSE: The Department is requiring the second form of study.

COMMENT: The counsel for the New Jersey Association of Non-Profit Homes for the Aging recommends an exclusion from the requirement for facilities that have received a COA, or that have been operational for at least five years. He states that a facility that proposes to increase the total number of independent living units by not more than 20 percent within a period of three years should be exempt from this requirement because he believes this change to be minimal.

RESPONSE: All facilities which have a COA do not have to provide a feasibility study at this time, because the rule only concerns applications for a COA. Facilities that are applying for a COA and have been in operation with a population nearing full occupancy are also exempt, because their five year financial history will be examined as to its sufficiency. However, the Department believes that an increase of 20 percent in the number of independent living units is not a minimal change because, in the CCRC's currently operating, it would affect between 70 and 354 units.

Full text of the adopted amendment follows (additions indicated in boldface with asterisks *thus*):

5:19-3.1 Contents of application for certification

(a) The application for certification shall contain the following documents and information:

1.-17. (No change.)

18. A projected annual budget for the facility for the next five years, or such lesser time as the Department allows, together with a financial feasibility study prepared according to Generally Accepted Accounting Principles, as established by the American Institute of Certified Public Accountants, which study shall include an opinion letter as to the financial feasibility of the facility;

i. In the event that the provider of a new facility can establish to the Commissioner's satisfaction that it cannot obtain an acceptable opinion letter at the time of the initial certification, the Commissioner may allow the provider to defer compliance with said requirement until such time as the provider has obtained binding contracts on 50 percent of the units in the facility; provided that, notwithstanding the provisions of N.J.A.C. 5:19-7.4, all entrance fees shall remain in escrow until the Commissioner has received an acceptable feasibility study and opinion letter as aforesaid.

19.-21. (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
Certificate of Occupancy Requirements**

Adopted Amendment: N.J.A.C. 5:23-2.23

Proposed: February 4, 1991 at 23 N.J.R. 257(a).
Adopted: March 7, 1991 by Melvin R. Primas, Jr.,
Commissioner, Department of Community Affairs.
Filed: March 7, 1991 as R.1991 d.180, without change.
Authority: N.J.S.A. 52:27D-124.

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Effective Date: April 1, 1991.
 Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-2.23 Certificate of occupancy requirements

(a)-(h) (No change.)

(i) Limitations: Equipment herein below listed, having been determined to create a significant potential for hazard to public health and safety, shall be granted a certificate of approval by the appropriate subcode official or other approved agency for the duration specified herein. Such equipment shall be periodically reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of such certificate of approval, and any violations corrected before a new certificate may be issued. No such system or assembly shall continue in operation unless a valid certificate of approval has been reissued. It shall be a violation of the regulations for an owner to fail to provide for such periodic inspection and testing.

1.-6. (No change.)

7. Cross-connections and backflow preventers: three months.

(j)-(k) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Fees

Adopted Amendments: N.J.A.C. 5:23-4.19, 4.20, 4.21, 4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18 and 8.19

Proposed: February 4, 1991 at 23 N.J.R. 257(b).

Adopted: March 7, 1991 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: March 7, 1991 as R.1991 d.181, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124.

Effective Date: April 1, 1991.

Operative Date: July 1, 1991 for N.J.A.C. 5:23-4.19 amendment only.

Expiration Date: March 1, 1993.

Summary of Public Comment and Agency Response:

Comments were received from the New Jersey State League of Municipalities (NJSLM), the New Jersey Builders Association (NJBA), Middle Department Inspection Agency, Inc. (MDIA), the Asbestos Safety Control Monitors Association (ASCMA) and the New Jersey Association of Designated Persons (NJADP), the last named being an organization representing more than 150 school districts.

COMMENT: The NJSLM presented information as to the impact of the higher fees that would have to be paid by local enforcing agencies to private enforcing agencies doing subcode enforcement as a result of this amendment.

RESPONSE: The Department does not dispute that such fees will rise as indicated. However, as the Department made clear in its proposal, its advice to municipalities is that they make sure that their ordinances provide for the automatic inclusion of private enforcing agency fees in the construction permit fee, so that they do not have to absorb the increased costs.

COMMENT: The NJBA protests the increased fees and calls for their reduction to 1989 levels, in order to avoid placing a burden on the construction industry.

RESPONSE: The Department's response is that, even at current levels of construction activity, it still has work to do that must be paid for entirely out of fee revenue and that these increased fees are therefore necessary.

COMMENT: Much of the burden on the construction industry is due to the higher fees that, as the NJBA points out, constitute a "windfall" for the private enforcement agencies because their fees are required by statute to be the same as those of the Department.

RESPONSE: In response, the Department can only say that it agrees that the linkage of private enforcement agency fees to its fees is unjustified, but that the remedy lies with the Legislature.

COMMENT: MDIA interprets the increase of the plan review fee where the Department does only plan review from 20 percent of the permit fee to 25 percent as reducing the fees received by private enforcing agencies for the inspection work.

RESPONSE: This is not the case because the plan review fee is paid directly to the Department by the applicant and the credit for plan review set forth in the municipal ordinance is not affected by this amendment. (Even if this were not the case, however, the private agencies would not lose money, because the overall fees that are payable to the Department, and therefore to private agencies, increase by about 30 percent on the average while the Department's plan review percentage increases by only 25 percent. Three-fourths of 130 percent is more than four-fifths of 100 percent.)

COMMENT: MDIA also protests that certain fees for inspection of electrical devices are inadequate.

RESPONSE: The changes that MDIA requests, however, would go beyond the scope of the proposal and therefore cannot be made on adoption.

COMMENT: MDIA further protests the increase in the fees that it is required to charge, due to the statutory linkage of Department and private agency fees, and claims that the higher fees both hurt the construction business and will cause private enforcing agencies to lose business because their fees are too high.

RESPONSE: In response, the Department reiterates that it is not responsible for the linkage and is, in fact, under the impression that it was added to the statute as a result of lobbying by the private agencies. If the private agencies now see the linkage as detrimental to their interests, they should seek relief from the Legislature. Judging by comments received in response to this and previous proposals, any move to eliminate the linkage will be supported by builders and municipalities, as well as by the Department. If the private agencies do not want it, we are quite sure there is no longer any constituency for it at all.

COMMENT: The ASCMA and the NJADP protest that the increases in fees for asbestos safety control monitor authorization are excessive and are unreasonably burdensome both to asbestos monitoring firms and to the clients, including school districts, to whom their costs are passed on.

RESPONSE: The Department has reviewed the costs and revenues of the asbestos program and has determined that the proposed increase of fees from six percent to eight percent of a firm's gross revenue can be rescinded without the program becoming non-self supporting. Accordingly, this change has been made.

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

5:23-4.19 State of New Jersey training fees

(a) In order to provide for the training and certification and technical support programs required by the act an enforcing agency, including the department when acting as the local agency, shall collect a surcharge fee to be based upon the volume of new construction within the municipality. Said fees shall be accounted for and forwarded to the Bureau of Housing Inspection in the manner herein provided.

(b) Amount: This fee shall be in the amount of \$0.0016 per cubic foot volume of new construction. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28.

1. (No change.)

(c) (No change.)

5:23-4.20 Departmental fees

(a) (No change.)

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a Departmental plan review surcharge in the amount of 40 percent of each listed fee. When the Department performs plan review only, the plan review shall be in the amount of 25 percent of the new construction permit fee which would be charged by the Department pursuant to these regulations. The minimum fee shall be \$43.00.

(c) Departmental (enforcing agency) fees ***are as follows***:

1. (No change.)

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2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices, and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein, plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be \$43.00.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.025 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be \$0.014 per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be \$0.0007 per cubic foot for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), with the maximum fee for such structures on farms not to exceed \$1,060.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of \$22.00 per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of \$17.00 per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of \$14.00 per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Department such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Department shall make the final decision regarding estimated cost.

(3)-(4) (No change.)

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) The fee shall be in the amount of \$9.00 per fixture connected to the plumbing system for all fixtures and appliances except as listed in (c)2ii(2) below.

(2) The fee shall be \$60.00 per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, back flow preventers, steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, gas service entrances, active solar systems, sewer pumps, interceptors and fuel oil piping.

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) For from one to 50 receptacles or fixtures, the fee shall be in the amount of \$33.00; for each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of \$5.00; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacles or similar fixtures, and motors or devices of one horsepower or one kilowatt or less.

(2) For each motor or electrical device greater than one horsepower and less than or equal to 10 horsepower, and for transformers and generators greater than one kilowatt and less than or equal to 10 kilowatts, the fees shall be \$9.00.

(3) For each motor or electrical device greater than 10 horsepower and less than or equal to 50 horsepower; for each service panel, service entrance or sub panel less than or equal to 200 amperes; and for all transformers and generators greater than 10 kilowatts and less than or equal to 45 kilowatts, the fee shall be \$43.00.

(4) For each motor or electrical device greater than 50 horsepower and less than or equal to 100 horsepower; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 1,000 amperes; and for each transformer or generator greater than 45 kilowatts and less than or equal to 112.5 kilowatts, the fee shall be \$85.00.

(5) For each motor or electrical device greater than 100 horsepower; for each service panel, service entrance or sub panel greater than 1,000 amperes; and for each transformer or generator greater than 112.5 kilowatts, the fee shall be \$423.00.

(6) (No change.)

iv. Fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums:

(1) The fee for 20 or fewer heads or detectors shall be \$60.00; for 21 to and including 100 heads or detectors, the fee shall be \$111.00; for 101 to and including 200 heads or detectors, the fee shall be \$212.00; for 201 to and including 400 heads or detectors, the fee shall be \$550.00; for 401 to and including 1,000 heads or detectors, the fee shall be \$761.00; for over 1,000 heads or detectors, the fee shall be \$972.00. In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.

(2) The fee for each standpipe shall be \$212.00.

(3) The fee for each independent pre-engineered system shall be \$85.00.

(4) The fee for each gas or oil fired appliance that is not connected to the plumbing system shall be \$43.00.

(5) The fee for each kitchen exhaust system shall be \$43.00.

(6) The fee for each incinerator shall be \$338.00.

(7) The fee for each crematorium shall be \$338.00.

3. (No change.)

4. Certificates and other permits: The fees are as follows:

i. The fee for a demolition or removal permit shall be \$60.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building code), and structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), and \$111.00 for all other use groups.

ii. The fee for a permit to construct a sign shall be in the amount of \$1.11 per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be \$43.00.

iii. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee that would be charged by the Department pursuant to these regulations. The minimum fee shall be \$111.00, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms, including commercial farm buildings subject to N.J.A.C. 5:23-3.2(d), for which the minimum fee shall be \$60.00.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be \$161.00.

v. The fee for a certificate of continued occupancy shall be \$111.00.

vi. (No change.)

vii. The fee for a certificate of approval certifying that work done under a construction permit has been satisfactorily completed shall be \$26.00.

viii. The fee for plan review of a building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode shall be \$254.00 for one and two-family homes (use group R-3 of the building subcode), and for light commercial structures having the indoor temperature controlled from a single point, and \$1,268 for all other structures.

ix. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$550.00 for class I structures and \$111.00 for class II and class III structures. The fee for resubmission of an application for a variation shall be \$212.00 for class I structures and \$60.00 for class II and class III structures.

5. Periodic inspections: Fees for the periodic Departmental re-inspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:

i.-ii. (No change.)

iii. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be \$43.00 for each such device when they are tested (thrice annually) and \$111.00 for each device when they are broken down and tested (once annually).

6. Annual permit requirements are as follows:

i. The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the

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number of maintenance workers who are employed by the facility, and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing.

ii. Fees for annual permits shall be as follows:

(1) One to 25 workers (including foremen) \$618.00/worker; each additional worker over 25, \$215.00/worker.

(2) Prior to the issuance of the annual permit, a training registration fee of \$130.00 per subcode shall be submitted by the applicant to the Department of Community Affairs, Bureau of Technical Assistance, Training Section along with a copy of the construction permit (Form F-170A). Checks shall be made payable to "Treasurer, State of New Jersey."

5:23-4.21 Private enforcing agency authorization and reauthorization fees

(a) Authorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for approval as an inspection agency shall pay a fee of \$2,600 for each subcode for which authorization is sought.

(b) Reauthorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for reapproval as an inspection agency shall pay a fee of \$1,300 for each subcode for which authorization is sought plus an amount equal to five percent of the gross revenue earned from State Uniform Construction Code enforcement activities during the previous 12-month period. This fee shall be paid to the Department in 12 equal installments, beginning with the month immediately following the end of the 12-month period from which the fee is calculated. Payment shall be made prior to the last business day of each month.

5:23-4.22 Building element and manufactured home add-on unit insignia of certification fees

(a) Building element insignia of certification fee: An inplant inspection agency requesting the Department to issue component insignia(s) of certification or building elements shall pay a fee of \$65.00 for each such insignia.

(b) Manufactured (Mobile) Home add-on unit insignia of certification fee: An inplant inspection agency requesting the Department to issue insignia(s) of certification for manufactured (mobile) home add-on units shall pay a fee of \$65.00 for each such insignia.

5:23-4A.12 Fees for labels; labels

(a) Fees for labels shall be as follows:

1. An approved evaluation and inspection agency requesting the Department to issue labels of certification for industrialized/modular buildings shall pay a fee of \$130.00 for each label.

2. An approved evaluation and inspection agency requesting the Department to issue component labels of certification for building components shall pay a fee of \$65.00 for each label.

3. (No change.)

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

5:23-5.21 Renewal of license

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

(d) Continuing education requirements are as follows:

1.-3. (No change.)

(e) Lapsed license renewal requirements are as follows:

1. Where the holder of a license has allowed the license to lapse by failing to renew the license as provided for in (b) above, a new application and license shall be required. If such application is made within two years of the license having lapsed, then application may be made in the same manner as a renewal application.

2. The late renewal application shall be accompanied by the appropriate renewal fee and an additional late fee of \$40.00 per year or fraction thereof.

3. Additionally, the licensee must make up or meet the annual continuing education training requirement for each active and expired year as specified herein.

4. Where a license has lapsed for a period exceeding two years, a new application shall be required in accordance with N.J.A.C.

5:23-5.5, and the applicant must meet all current licensure requirements.

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

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a fee as specified herein.

1. An application fee of \$40.00 shall be charged in each of the following instances:

i. Application for any one given technical license specialty, or for the Inplant Inspector or Facility Fire Protection Supervisor license.

ii. Application for any one given technical license specialty plus the related Subcode Official license, if both are applied for at the same time.

iii. Application for any one given technical license specialty plus the related Subcode Official license, as well as the Construction Official license, if all three are applied for at the same time.

2. An application fee of \$20.00 shall be charged for each administrative license applied for separately from a technical license.

3. (No change.)

4. Renewal fee: The two-year renewal application fee shall be \$40.00.

5. Persons who have become ineligible for an administrative license by reason of failure to remove the provisional status of such license within the prescribed two-year period must submit a fee of \$20.00 for the restoration of each such administrative license.

6. (No change.)

5:23-8.6 Variations

(a) No variations from the requirements of this subchapter shall be made except upon written approval from the administrative authority having jurisdiction, after receiving a recommendation in writing from the asbestos safety control monitor firm. Any variation shall be consistent with N.J.A.C. 5:23-2.

1. Exception: When a building or part of a building is required to be occupied during an asbestos hazard abatement project, a written release shall be requested from the Department, and obtained by the authorized asbestos safety control monitor firm. The Department of Community Affairs shall review the application and approve or deny it within 20 business days of receipt of it. A copy of the plans and specifications must accompany the variation request from the authorized asbestos safety control monitor firm in the Department along with the number of intended occupants and their purpose, location within the building and the time of day the occupants will be in the building. A variation for occupancy shall not be required for maintenance or security personnel. In addition, a variation request for occupancy is not required for a cleared area in a multi-phase project that has received a Temporary Certificate of Occupancy from the administrative authority having jurisdiction when such occupancy applies to contractors or related personnel involved with post-abatement activity.

i. The fee for an application for a variation for occupancy shall be \$432.00 and shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

(b) (No change.)

5:23-8.10 Fees

(a) The administrative authority having jurisdiction who issues the construction permit and the certificate of occupancy for an asbestos hazard abatement project shall establish by regulation or ordinance the following flat fee schedule:

1. An administrative fee of \$65.00 for each construction permit issued for an asbestos hazard abatement project.

2. An administrative fee of \$13.00 for each certificate of occupancy issued following the successful completion of an asbestos hazard abatement project.

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

5:23-8.18 Asbestos safety control monitor

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

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee ***requirements are as follows***:

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i. Any asbestos safety control monitor submitting an application to the Department under this subcode for approval as an asbestos safety control monitor shall pay a fee of \$3,250 for the authorization that is sought, plus an amount equal to ***[eight]* *six*** percent of the gross revenue earned from asbestos safety control monitor activities, payable quarterly.

ii. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

2. Reauthorization fee *requirements are as follows*:

i. Any asbestos safety control monitor submitting an application to the Department under this subcode for reapproval as an asbestos safety control monitor shall pay a fee of \$1,625 plus an amount equal to ***[eight]* *six*** percent of the gross revenue of four consecutive quarters starting with the previous year's last quarter.

ii. The fee shall be paid quarterly with the first quarter due with the application.

iii. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

5:23-8.19 Asbestos safety technician: certification requirements

(a)-(h) (No change.)

(i) No application for certification shall be acted upon unless said application is accompanied by a fee as follows:

1. An application fee shall be \$40.00;
2. A renewal application fee shall be \$40.00.

PUBLIC NOTICES

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Notice of Petition for Rulemaking

Petitioner: Government Finance Officers' Association of New Jersey.

Take notice that on or about January 30, 1991, the Department of Banking received a petition for rulemaking from the Government Finance Officers' Association of New Jersey concerning exclusions from the annual budget cap base under N.J.S.A. 40A:4-45.3(cc).

Petitioner requests that the Department promulgate a regulation specifying that any new expense, program or function required of county or municipal government henceforth by the Department of Banking be deemed a mandated expenditure which should be excluded from the annual budget cap based pursuant to N.J.S.A. 40A:4-45.3(cc), and certified to the Local Finance Board as such.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioners, and file with the Office of Administrative Law, a notice of action on the petition.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for the Florham Park Sewerage Authority. The WMP proposes a new sewage treatment plant (STP), with discharge to the Passaic River, to serve the proposed Sun Valley at Florham Park development and an additional adjacent proposed development. The total projected wastewater flow to the Sun Valley STP is 0.155 million gallons per day. The WMP also delineates the areas of Florham Park and East Hanover which are in the sewer service area of the Florham Park STP and the areas of Florham Park served by the Morris Woodland STP.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for the Pequannock River Basin Regional Sewerage Authority (PRBRSA) dated October 1990, Revised January 1991. The WMP delineates the existing and future sewer service areas within Butler, Bloomingdale, Kinnelon and Riverdale to be served by the Pequannock, Lincoln Park, and Fairfield Sewerage Authority (PLPFSA) sewage treatment plant (STP). Four existing permitted wastewater treatment facilities, Camp Vacamas STP, Kinnelon High School STP, NJDOE Armory Facility; ORG Maintenance Shop #2, and RAlA Industrial Batch Plant, are proposed to be abandoned and/or tied into the PLPFSA STP. Also, notwithstanding N.J.A.C. 7:15-5.11(b), PRBRSA will retain WMP responsibility for the sewer service areas within the PRBRSA district interconnected with the PLPFSA STP. The Borough of Riverdale will be included in the PRBRSA WMP area via this WMP.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan Public Notice

Take notice that on February 26, 1991, 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 Monmouth County Water Quality Management Plan was adopted by the Department. This amendment adopts the inclusion of the site of a seventh and eighth grade school in Manalapan Township in the Sewer Service Area. The proposed school will connect to the Western Monmouth Utilities Authority's Pinebrook Wastewater Treatment Plant. The school population is estimated at 1,494 and will generate an average daily flow of 29,800 gallons per day.

(a)

DIVISION OF WATER RESOURCES**Amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans****Public Notice**

Take notice that an amendment to the Upper Raritan and Upper Delaware Water Quality Management (WQM) Plans has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Mount Olive Township, Morris County. The existing and proposed service areas of 15 existing and proposed wastewater treatment plants are identified including the Musconetcong Sewerage Authority, Hackettstown Municipal Utilities Authority, Clover Hill treatment facility and the proposed Mount Olive Villages Sewer Company treatment plant. Several facilities are proposed, several are to be expanded, and one, the Mount Olive Complex/Eagle Rock treatment facility, is to be abandoned. The WMP also identifies areas of the Township designated for on-site groundwater disposal systems and areas designated for individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan and Upper Delaware WQM Plans. All information dealing with the aforesaid WQM Plans and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Ed Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HUMAN SERVICES

(b)

OFFICE OF LEGAL AND REGULATION LIAISON**Notice of Receipt of and Action on Petition for Rulemaking Exceptions to Local Government Cap Law: Mandated Expenditures**

Authority: N.J.S.A. 40A:4-45(cc).

Petitioner: Government Finance Officers' Association of New Jersey.

Take notice that on January 28, 1991, the Department of Human Services received a petition for rulemaking regarding exceptions to the annual budget cap base pursuant to N.J.S.A. 40A-45(cc). The purpose of the petition for rulemaking is to require the Department of Human Services to certify to the Local Finance Board, as mandated program expenditures, any new expense, program or function required of a county or municipal government, so as to exempt them from the annual budget cap base. The petition alleges that the implementation of regulations is critical to avoid excessive new expenses which, if placed within the cap, would prevent the provision of vital services to the people of this State.

The petition was duly considered pursuant to law. The Department acknowledges the concerns of the local governing bodies with regard to mandated expenditures for costs of services that may adversely impact upon the provision of vital services to the people of this State. The

Department is not prepared to initiate rulemaking on this issue at the present time. Further study and discussion with other affected Departments is necessary and appropriate, due to the fiscal considerations, prior to determining if regulatory action is warranted. This includes a review and analysis of extensive fiscal data and its implications, which the Department must compile.

The Department will conclude deliberations by July 15, 1991, at which time a final notice of action on the petition will be mailed to the petitioner and submitted to the Office of Administrative Law (OAL) for publication in the New Jersey Register. **Interested persons** may obtain a copy of the petition for rulemaking by writing to:

Alan J. Gibbs, Commissioner
New Jersey Department of Human Services
CN 700
Trenton, New Jersey 08625

Interested persons may submit written comments on the petition for rulemaking by May 1, 1991. Address all comments to:

Barbara G. Allen, Esq., Director
Office of Legal and Regulatory Liaison
New Jersey Department of Human Services
CN 700
Trenton, New Jersey _____

LAW AND PUBLIC SAFETY

(c)

OFFICE OF THE ATTORNEY GENERAL**Notice of the Availability of the Quarterly Report of Legislative Agents for the Fourth Quarter of 1990, ending December 31, 1990**

Take notice that Robert J. Del Tufo, Attorney General of the State of New Jersey, in compliance with N.J.S.A. 52:13C-23(h), hereby publishes Notice of Availability of the Quarterly Report of Legislative Agents for the Fourth Quarter of 1990, accompanied by a Summary of the Quarterly Report.

At the conclusion of the Fourth Quarter of 1990, the Notices of Representation filed with this office reflect that 566 individuals are registered as legislative agents. Legislative agents are required by law to submit in writing a quarterly report of their activity in attempting to influence legislation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter for such activity that occurred during the preceding calendar quarter. (N.J.S.A. 52:13C-22(b)).

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all quarterly reports filed by legislative agents for the Fourth Calendar Quarter of 1990, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Attorney General, the Office of Legislative Services (Bill Room), the Office of Administrative Law, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered agents, their registration numbers, their business addresses and whom they represent.
- A list of agents who have filed quarterly reports by statutory and compilation deadlines for this quarter.
- A list of agents whose quarterly reports were not received by the compilation deadline for this quarter.

Following is a listing of all new legislative agents who have filed Notices of Representation during the Fourth Calendar Quarter of 1990:

- No. 26 Richard J. Van Wagner representing Hannotch Weisman.
- No. 173 Eileen Heldman representing Riker, Danzig, Scherer, Hyland and Perretti.
- No. 463 Elizabeth C. O'Donoghue representing Issues Management Inc.
- No. 633 Sharon L. Weiner representing American Society of Interior Designers.
- No. 634 Cindy L. Dinsen representing Jersey A.B.A.T.E.
- No. 635 George T. Van Allen representing Department of the New Jersey Veterans of Foreign Wars.
- No. 636 David Todd Sidor, Esq. representing New Jersey State Bar Association.
- No. 637 David F. Snyder representing State Farm Insurance Co.

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- No. 638 Stanley C. Van Ness representing Picco, Mack, Kennedy, Jaffe, Perrella and Yoskin.
- No. 639 Frank S. Karp representing New Jersey Chiropractic Society.
- No. 640 Dawn E. Perrotta representing New Jersey Business and Industry Association.
- No. 641 Philip Kirschner representing New Jersey Business and Industry Association.
- No. 642 Malcolm J. McPherson, Jr. representing Edwards and Antholis.
- No. 643 Neil J. Carroll representing Blue Cross/Blue Shield of New Jersey.
- No. 644 Kelly McDowell Astarita representing New Jersey Association of Realtors.
- No. 645 Peter G. Sheridan representing Cohen, Shapiro, Polisher, Shiekman and Cohen.
- No. 646 William J. Neely representing General Motors Corp.
- No. 647 Ruthi G. Zinn representing Zinn, Graves & Field Inc.
- No. 648 Andrew R. McDevitt, Jr. representing New Jersey Bell Telephone Co.
- No. 649 Ronald Barry Johnson representing South Jersey Gas Co.

Following is a listing of all legislative agents who have filed Notices of Termination during the Fourth Calendar Quarter of 1990:

| Legislative Agents | Registration Number |
|--------------------------|---------------------|
| Gerald D. Hall | 19 |
| Donald L. McCambridge | 19 |
| Clare Schulzki | 19 |
| Robert C. Forrey | 33 |
| Arthur C. Fried | 34 |
| Edward J. McManimon, Jr. | 41 |
| Terrance C. Liller | 43 |
| Andrew Cattano | 53 |
| Joanne Harkins | 53 |
| Michael McGuinness | 53 |
| Edward O'Hara | 61 |
| Jerry H. Eure, Sr. | 68 |
| Ezra L. Bixby | 71 |
| Robert J. Bloodgood | 76 |
| John Spinale | 84 |
| Joseph Mayers | 86 |
| Melvin Gittleman | 93 |
| Roger W. Johnson | 98 |
| Carl Marggraff | 131 |
| John J. Kirchner | 156 |
| Bruce M. Schragger | 160 |
| Joseph M. Clayton | 168 |
| Jeffrey L. Faue | 170 |
| Brian D. Damant | 187 |
| Richard F. Ober, Jr. | 188 |
| Raymond J. Bittel | 207 |
| Joseph P. Ackourey | 264 |
| Charles G. Smith | 267 |
| Edward Swikart, Jr. | 276 |

| | |
|------------------------|-----|
| Constance M. Butcavage | 305 |
| John J. Horn | 318 |
| Ann E. Levine | 324 |
| Richard Corbett | 347 |
| F. Walton Wanner | 350 |
| Richard C. McIntyre | 362 |
| Brian T. Kennedy | 366 |
| Jack Eisenstein | 394 |
| Andrew Kaplan | 394 |
| Melissa Vance Kirsch | 394 |
| James A. Moran | 394 |
| Margaret C. Murphy | 394 |
| Arlene Brands | 411 |
| Patti Buchanan | 411 |
| Marion DeRitis | 411 |
| Margaret Falduto | 411 |
| Frank Furino | 411 |
| Selma Klein | 411 |
| Blendia Nawrocki | 411 |
| Pat Query | 411 |
| Michael Riccardone | 411 |
| James J. Marino | 412 |
| William Kersey | 425 |
| Kathleen Davis | 431 |
| Richard F. Smith | 433 |
| Helen F. Hoffman | 440 |
| Phillip Alampi | 442 |
| Michael J. Close | 451 |
| Elizabeth Ann Gill | 451 |
| John H. Whitworth, Jr. | 451 |
| Charles C. Carella | 452 |
| Marla B. Korchmar | 454 |
| Angela E. Kessel | 455 |
| David Hergert | 462 |
| Walter Bagdon | 470 |
| John B. Zatti | 471 |
| Vincent L. Brinkerhoff | 475 |
| Anton C. Marek | 490 |
| Kenneth M. Marchi | 500 |
| Joseph R. Gordon | 501 |
| Jerome C. Harris, Jr. | 509 |
| Mary T. Nilson | 516 |
| Dawn E. Perrotta | 534 |
| James A. Calderwood | 559 |
| Cynthia L. Povich | 562 |
| Alfred L. Ferguson | 564 |
| Rosanne C. Kemmet | 564 |
| Nancy E. Blethen | 568 |
| Matthew Burns | 581 |
| Judith Shaw Berry | 583 |
| Sidney Ytkin | 583 |
| Hans H. Nord | 586 |

For further information contact the Legislative Agents Unit at (609) 984-9371.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the February 4, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JANUARY 22, 1991

NEXT UPDATE: SUPPLEMENT FEBRUARY 19, 1991

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 |
|------------------------------------|--|------------------------------------|--|
| 22 N.J.R. 1011 and 1182 | April 2, 1990 | 22 N.J.R. 3183 and 3274 | October 15, 1990 |
| 22 N.J.R. 1183 and 1290 | April 16, 1990 | 22 N.J.R. 3275 and 3420 | November 5, 1990 |
| 22 N.J.R. 1291 and 1408 | May 7, 1990 | 22 N.J.R. 3421 and 3606 | November 19, 1990 |
| 22 N.J.R. 1409 and 1648 | May 21, 1990 | 22 N.J.R. 3607 and 3666 | December 3, 1990 |
| 22 N.J.R. 1649 and 1806 | June 4, 1990 | 22 N.J.R. 3667 and 3896 | December 17, 1990 |
| 22 N.J.R. 1807 and 1964 | June 18, 1990 | 23 N.J.R. 1 and 144 | January 7, 1991 |
| 22 N.J.R. 1965 and 2062 | July 2, 1990 | 23 N.J.R. 145 and 248 | January 22, 1991 |
| 22 N.J.R. 2063 and 2202 | July 16, 1990 | 23 N.J.R. 249 and 332 | February 4, 1991 |
| 22 N.J.R. 2203 and 2386 | August 6, 1990 | 23 N.J.R. 333 and 636 | February 19, 1991 |
| 22 N.J.R. 2387 and 2622 | August 20, 1990 | 23 N.J.R. 637 and 798 | March 4, 1991 |
| 22 N.J.R. 2623 and 2860 | September 4, 1990 | 23 N.J.R. 799 and 924 | March 18, 1991 |
| 22 N.J.R. 2861 and 3072 | September 17, 1990 | 23 N.J.R. 925 and 1048 | April 1, 1991 |
| 22 N.J.R. 3073 and 3182 | October 1, 1990 | | |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
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| ADMINISTRATIVE LAW—TITLE 1 | | | | |
| 1:1-3.3, 9.6, 12.1, 14.4, 14.7, 14.14, 18.4, 19.2 | Scheduling, processing, and conclusion of contested cases | 22 N.J.R. 3278(b) | R.1991 d.44 | 23 N.J.R. 293(a) |
| 1:1-3.3, 14.4, 14.14 | Return of cases; failure to appear; sanctions | 23 N.J.R. 639(a) | | |
| 1:1-9.5 | OAL Notice of Filing: preproposal regarding notification of parties to contested case | 22 N.J.R. 2066(b) | | |
| 1:1-9.6 | Adjournments: administrative correction | | | 23 N.J.R. 687(a) |
| 1:1-15.4 | Privileges: administrative correction | | | 23 N.J.R. 847(a) |
| 1:10-8.1 | Transmission of Economic Assistance cases | 23 N.J.R. 3(a) | | |
| 1:10-18.2 | Economic Assistance hearings: exception to initial decision | 22 N.J.R. 3278(b) | R.1991 d.44 | 23 N.J.R. 293(a) |
| 1:10B-18.2 | Medical Assistance hearings: exception to initial decision | 22 N.J.R. 3278(b) | R.1991 d.44 | 23 N.J.R. 293(a) |
| 1:13-14.4 | Motor Vehicle cases: failure to appear | 22 N.J.R. 3278(b) | R.1991 d.44 | 23 N.J.R. 293(a) |
| 1:13-14.4 | Motor Vehicle cases: failure to appear | 23 N.J.R. 639(a) | | |
| 1:13A-14.1 | Lemon Law hearings: failure to appear | 22 N.J.R. 3278(b) | R.1991 d.44 | 23 N.J.R. 293(a) |
| 1:13A-14.1 | Lemon Law hearings: failure to appear | 23 N.J.R. 639(a) | | |
| 1:14 | Board of Public Utility hearings | 23 N.J.R. 640(a) | | |
| 1:30 | Agency rulemaking | 22 N.J.R. 3281(a) | R.1991 d.85 | 23 N.J.R. 399(a) |
| 1:30-3.3A | Public hearings: administrative correction | | | 23 N.J.R. 847(b) |

Most recent update to Title 1: TRANSMITTAL 1991-1 (supplement January 22, 1991)

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| AGRICULTURE—TITLE 2 | | | | |
| 2:6-1 | Distribution and use of veterinary biologics | 22 N.J.R. 2068(a) | | |
| 2:32-2.3, 2.11, 2.22, 2.27 | Sire Stakes Programs | 23 N.J.R. 252(a) | | |
| 2:53 | Retail milk stores | 22 N.J.R. 3609(a) | R.1991 d.51 | 23 N.J.R. 294(a) |

Most recent update to Title 2: TRANSMITTAL 1991-1 (supplement January 22, 1991)

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| BANKING—TITLE 3 | | | | |
| 3:1 | General provisions of Department | 22 N.J.R. 3425(a) | R.1991 d.48 | 23 N.J.R. 294(b) |
| 3:1-2.17 | Closing of branch offices | 23 N.J.R. 801(a) | | |
| 3:1-2.25, 2.26, 17 | Automated teller machines | 23 N.J.R. 642(a) | | |
| 3:1-4.2, 4.7, 4.9, 4.10 | Protection of governmental unit deposits | 22 N.J.R. 1809(a) | R.1991 d.186 | 23 N.J.R. 997(a) |
| 3:1-6.1, 6.2, 6.6, 7.4, 7.6 | License fees, assessments, examination charges | 23 N.J.R. 254(a) | | |
| 3:3-2 | Nonpublic records | 23 N.J.R. 253(a) | | |
| 3:6 | General rules for banks | 23 N.J.R. 147(a) | R.1991 d.171 | 23 N.J.R. 998(a) |
| 3:6-13 | Repeal (see 3:1-2.25, 2.26, 17) | 23 N.J.R. 642(a) | | |
| 3:6-14.2 | License fees, assessments, examination charges | 23 N.J.R. 254(a) | | |
| 3:13-3.2 | License fees, assessments, examination charges | 23 N.J.R. 254(a) | | |
| 3:17-1.1, 1.4 | Consumer loan advertisements | 22 N.J.R. 2626(a) | | |
| 3:17-3.4 | Location of consumer loan records | 23 N.J.R. 803(a) | | |
| 3:18-2.1 | Location of secondary mortgage loan records | 23 N.J.R. 803(a) | | |
| 3:18-10.1 | License fees, assessments, examination charges | 23 N.J.R. 254(a) | | |
| 3:18-10.5 | Surety bonding of secondary mortgage loan licensees | 23 N.J.R. 802(a) | | |
| 3:19-1 | Home repair financing | 23 N.J.R. 256(a) | | |
| 3:23-2.1 | License fees, assessments, examination charges | 23 N.J.R. 254(a) | | |

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| 3:29-1.1-1.4, 1.6, 1.7, 1.8 | Savings and loan associations: audit requirements | 22 N.J.R. 1968(a) | | |
| 3:38-1.1 | License fees, assessments, examination charges | 23 N.J.R. 254(a) | | |
| 3:38-1.2, 1.4, 1.9 | Mortgage banker and broker net worth standards | 23 N.J.R. 643(a) | | |
| 3:38-1.5 | Surety bonding of mortgage loan licensees | 23 N.J.R. 802(a) | | |
| 3:38-2.1 | Location of mortgage loan records | 23 N.J.R. 803(a) | | |

Most recent update to Title 3: TRANSMITTAL 1991-1 (supplement January 22, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

Most recent update to Title 4A: TRANSMITTAL 1990-5 (supplement November 19, 1990)

COMMUNITY AFFAIRS—TITLE 5

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| 5:4-1 | Contract approval (repealed) | Exempt | R.1991 d.164 | 23 N.J.R. 1026(a) |
| 5:10-1.6, 1.10, 1.11 | Hotels and multiple dwellings: classification of dormitories | 22 N.J.R. 1870(a) | | |
| 5:10-22.5 | Ceiling heights in multiple dwellings | 22 N.J.R. 3430(a) | R.1991 d.59 | 23 N.J.R. 405(a) |
| 5:19-3.1 | Continuing care retirement communities: financial feasibility study for proposed facility | 23 N.J.R. 3(b) | R.1991 d.175 | 23 N.J.R. 1028(a) |
| 5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.19, 5.20, 5.23, 12 | Elevator Safety Subcode | 23 N.J.R. 805(a) | | |
| 5:23-2.14 | Uniform Construction Code: gas utility meters | 22 N.J.R. 3609(b) | R.1991 d.60 | 23 N.J.R. 405(b) |
| 5:23-2.23 | Uniform Construction Code: certificate of occupancy requirements | 23 N.J.R. 257(a) | R.1991 d.180 | 23 N.J.R. 1028(b) |
| 5:23-3.15, 3.18 | Uniform Construction Code: plumbing and energy subcodes | 23 N.J.R. 804(a) | | |
| 5:23-4.19-4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19 | Uniform Construction Code fees | 23 N.J.R. 257(b) | R.1991 d.181 | 23 N.J.R. 1029(a) |
| 5:23-7.13, 7.18 | Barrier-Free Subcode: parking spaces; platform lifts | 22 N.J.R. 2869(a) | R.1991 d.36 | 23 N.J.R. 296(a) |
| 5:23-7.18 | Barrier-Free Subcode: platform lifts | 23 N.J.R. 260(a) | | |
| 5:23-9.6 | UCC interpretation: casino stools | 22 N.J.R. 3610(a) | R.1991 d.61 | 23 N.J.R. 406(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) | R.1991 d.108 | 23 N.J.R. 687(b) |
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| 5:25 | New home warranties and builders' registration | 22 N.J.R. 1701(a) | R.1991 d.140 | 23 N.J.R. 847(c) |
| 5:26 | Planned real estate development full disclosure | 22 N.J.R. 1702(a) | R.1991 d.123 | 23 N.J.R. 687(c) |
| 5:29 | Landlord-tenant relations | 22 N.J.R. 2070(b) | R.1991 d.141 | 23 N.J.R. 848(a) |
| 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) | | |
| 5:80-9.9 | Housing and Mortgage Finance Agency: JUMPP project net increases | 23 N.J.R. 646(a) | | |
| 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) | R.1991 d.119 | 23 N.J.R. 688(a) |
| 5:92 | Council on Affordable Housing: substantive rules | 22 N.J.R. 3671(a) | R.1991 d.120 | 23 N.J.R. 688(b) |
| 5:92 | Council on Affordable Housing: preproposal regarding mandatory developers' fees | 23 N.J.R. 646(b) | | |

Most recent update to Title 5: TRANSMITTAL 1991-1 (supplement January 22, 1991)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

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| 6:11-4.5 | County substitute certificate: administrative correction | | | 23 N.J.R. 713(a) |
| 6:11-11.9 | Speech language specialist endorsement | 23 N.J.R. 336(a) | | |
| 6:12 | Governor's Teaching Scholars Program | 22 N.J.R. 3672(a) | R.1991 d.182 | 23 N.J.R. 999(a) |

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| 6:24 | Controversies and disputes | 22 N.J.R. 2841(a) | R.1991 d.57 | 23 N.J.R. 297(b) |
| 6:29-7.3, 7.4 | School employee physical examinations | 23 N.J.R. 336(b) | | |
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| 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) | | |
| 7:5C-1.4, 3.1, 5.1 | Endangered Plant Species Program | 23 N.J.R. 812(a) | | |
| 7:6-1.31, 1.37, 1.42, 6.2, 6.3, 6.4 | Boating rules | 23 N.J.R. 392(a) | | |
| 7:7-2.3(a)2 | Waterfront development: rule invalidation | | | 23 N.J.R. 406(b) |
| 7:7A | Freshwater Wetlands Protection Act rules: water quality certification | 23 N.J.R. 338(a) | | |
| 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) | R.1991 d.68 | 23 N.J.R. 406(c) |
| 7:9 | Water pollution control: extension of comment period | 23 N.J.R. 29(a) | | |
| 7:9-4.6 | Water quality based effluent limitations: administrative correction | | | 23 N.J.R. 302(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) | | |
| 7:13-7.1 | Redelineation of Coles Brook in Hackensack and River Edge | 23 N.J.R. 647(a) | | |
| 7:13-7.1 | Redelineation of South Branch Raritan River in Hunterdon County | 23 N.J.R. 647(b) | | |
| 7:13-7.1 | Redelineation of Passaic River in Florham Park | 23 N.J.R. 648(a) | | |
| 7:13-7.1 | Redelineation of Lawrence and Heathcote Brooks in South Brunswick | 23 N.J.R. 649(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) | | |
| 7:14A-15 | Industrial wastewater pretreatment: preproposed rules | 23 N.J.R. 149(a) | | |
| 7:18-1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.15, 5.2-5.5, 5.7, 5.8 | Radon laboratory certification program | 23 N.J.R. 29(b) | | |
| 7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App. | Water Pollution Control Act | 22 N.J.R. 2870(a) | | |
| 7:24 | Dam Restoration Grant Program | 23 N.J.R. 650(a) | | |
| 7:25 | Division of Fish, Game, and Wildlife | 23 N.J.R. 37(a) | R.1991 d.132 | 23 N.J.R. 848(b) |
| 7:25-4.13, 4.17 | Endangered and nongame wildlife species | 22 N.J.R. 1308(a) | | |
| 7:25-12 | Surf clam management | 23 N.J.R. 223(a) | R.1991 d.173 | 23 N.J.R. 1001(a) |
| 7:25-18.1 | Winter flounder and red drum: size and possession limits | 23 N.J.R. 43(a) | | |
| 7:25-18.5 | Bait net and gill net regulation | 22 N.J.R. 3685(a) | | |
| 7:25-18.5-18.11 | Gill netting in Delaware Bay | 22 N.J.R. 1311(a) | | |
| 7:25-22.3 | Fishing for Atlantic menhaden | 22 N.J.R. 3611(a) | | |
| 7:26-4.3, 4.4, 4.6, 15.6 | Fee schedule for solid waste facilities | 22 N.J.R. 3079(a) | | |
| 7:26-4A.3, 4A.5 | Fee schedule for hazardous waste generators, facilities, and transporters | 23 N.J.R. 814(a) | | |
| 7:26-6.5 | Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties | 22 N.J.R. 284(a) | R.1991 d.113 | 23 N.J.R. 719(a) |
| 7:26-7.2, 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) | R.1991 d.110 | 23 N.J.R. 715(a) |
| 7:26-8.2, 8.8, 8.12 | Hazardous waste management: Toxicity characteristic | 23 N.J.R. 151(a) | | |
| 7:26-8.13 | Hazardous waste from non-specific sources: F019 exclusion | 23 N.J.R. 153(a) | | |
| 7:26-8.14 | Hazardous waste management: methyl bromide production wastes | 23 N.J.R. 154(a) | | |
| 7:26-8.15, 8.16 | Hazardous waste management: ferric dextran and strontium sulfide | 23 N.J.R. 44(a) | | |
| 7:26-8.17, App. I | Delisting of hazardous waste at Beecham Laboratories | 22 N.J.R. 3430(b) | R.1991 d.172 | 23 N.J.R. 1004(a) |
| 7:26-8.19 | Listing of hazardous wastes | 22 N.J.R. 3299(a) | R.1991 d.156 | 23 N.J.R. 852(a) |
| 7:26-8.19 | Listing of hazardous waste: extension of comment period | 23 N.J.R. 45(a) | | |
| 7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4 | Hazardous waste management | 22 N.J.R. 3186(a) | | |

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| 7:26-9.2, 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) | | |
| 7:26A | Solid waste recycling | 22 N.J.R. 3088(a) | | |
| 7:27-8 | Air pollution control permit and certificate process | 22 N.J.R. 292(a) | R.1991 d.109 | 23 N.J.R. 723(a) |
| 7:27-8.2 | Air pollution control permit and certificate process: correction to proposed amendment | 22 N.J.R. 593(a) | | |
| 7:27-23.5 | Volatile organic substances: administrative correction and revised operative date regarding labeling of architectural coatings | _____ | _____ | 23 N.J.R. 303(a) |
| 7:27-25.1, 25.2, 25.5, 25.7, 25.8 | Air pollution by vehicular fuels | 23 N.J.R. 45(b) | | |
| 7:27-25.1, 25.2, 25.5, 25.7, 25.8 | Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules | 23 N.J.R. 261(a) | | |
| 7:28-3.5, 3.13, 4.19 | Fee schedules for possession and use of radioactive materials | 22 N.J.R. 3300(a) | | |
| 7:28-16.2 | Dental radiographic installations: qualified individual | 22 N.J.R. 3303(a) | | |
| 7:31-2.16 | Toxic Catastrophe Prevention Act Program: annual registration fees | 23 N.J.R. 818(a) | | |
| 7:36-8 | Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water | 22 N.J.R. 593(b) | R.1991 d.151 | 23 N.J.R. 852(b) |
| 7:36-8 | 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) | | |
| 7:50-2.11, 4.66, 6.13 | Pinelands Comprehensive Management Plan: preproposed amendments | 22 N.J.R. 3432(a) | | |

Most recent update to Title 7: TRANSMITTAL 1991-1 (supplement January 22, 1991)

HEALTH—TITLE 8

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| 8:9 | Handling of human remains | 22 N.J.R. 3458(a) | R.1991 d.130 | 23 N.J.R. 888(a) |
| 8:20-1.2 | Birth Defects Registry: reporting requirements | 23 N.J.R. 820(a) | | |
| 8:21A | Good drug manufacturing practices | 22 N.J.R. 3189(a) | | |
| 8:24 | Retail food establishments | 23 N.J.R. 168(b) | | |
| 8:25 | Youth Camp Safety Act standards | 23 N.J.R. 651(a) | | |
| 8:26 | Public recreational bathing | 23 N.J.R. 376(a) | | |
| 8:31A-1, 2, 5, 7, 9, 10 | Standard Hospital Accounting and Rate Evaluation (SHARE) Manual | 22 N.J.R. 3460(a) | | |
| 8:31B | Hospital reimbursement | 22 N.J.R. 3724(a) | R.1991 d.158 | 23 N.J.R. 898(a) |
| 8:31B-3 | Hospital rate setting | 23 N.J.R. 227(a) | R.1991 d.157 | 23 N.J.R. 889(a) |
| 8:31C-1.15, 1.18 | Residential alcoholism treatment facilities: reimbursement methodology | 22 N.J.R. 3468(a) | R.1991 d.88 | 23 N.J.R. 412(a) |
| 8:33H-3.3 | Long-term care beds for AIDS and HIV-infected patients | 23 N.J.R. 124(a) | R.1991 d.159 | 23 N.J.R. 905(a) |
| 8:33L-2.4 | Home health services for AIDS and HIV-infected patients | 23 N.J.R. 124(a) | R.1991 d.159 | 23 N.J.R. 905(a) |
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| 10:54 | Physician's Services Manual | 22 N.J.R. 3711(a) | R.1991 d.136 | 23 N.J.R. 858(a) |
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| 10:57 | Podiatry Services Manual | 22 N.J.R. 3439(b) | R.1991 d.129 | 23 N.J.R. 858(b) |
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| 10:59 | Medical Supplier Manual | 22 N.J.R. 3712(a) | R.1991 d.137 | 23 N.J.R. 858(d) |
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| 10:64 | Hearing Aid Services Manual | 22 N.J.R. 3614(a) | R.1991 d.154 | 23 N.J.R. 859(a) |
| 10:65 | Medical Day Care Services Manual | 22 N.J.R. 3327(b) | R.1991 d.87 | 23 N.J.R. 448(a) |
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| 10:67 | Psychologist's Services Manual | 22 N.J.R. 3615(a) | R.1991 d.142 | 23 N.J.R. 859(b) |
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| 13:71-9.2 | Harness racing: association of veterinarians | 23 N.J.R. 675(a) | | |
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