NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 24 NUMBER 11

June 1, 1992 Indexed 24 N.J.R. 1933-2102

(Includes adopted rules filed through May 8, 1992)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 16, 1992
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT APRIL 20, 1992

RULEMAKING IN THIS ISSUE

REORGANIZATION PLAN

RULE PROPOSALS

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **July 1, 1992.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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.

RULEMAKING IN THIS ISSUE—Continued

RULE ADOPTIONS

PUBLIC NOTICES

(Continued on page 2102)

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.

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $125 ($215 by First Class Mail); back issues when available, $15 each. Make checks payable to OAL Publications.

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

REORGANIZATION PLAN

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio

Notice of a Reorganization Plan to Redenominate the Department of Human Services' Division of Economic Assistance as the Division of Family Development, and the Board of Economic Assistance as the Board of Family Development

Take notice that on May 7, 1992, Governor James J. Florio hereby issues the following Reorganization Plan (No. 001-1992) to rename the Division of Economic Assistance as the Division of Family Development, and the Board of Economic Assistance as the Board of Family Development.

GENERAL STATEMENT OF PURPOSE

On January 21, 1992, I signed into law a package of bills which together will establish the Family Development Program. This legislation represents the most comprehensive reform of welfare in the history of the State. One of the goals of the Family Development Program is to provide a new and more comprehensive approach to addressing the needs and responsibilities of public assistance recipients. Another goal of the program is to provide opportunities for all families and individuals receiving public assistance to become self-sufficient by creating productive, comprehensive workers who can secure permanent full-time jobs at wages that are adequate to support themselves and their families.

The Family Development Program greatly expands current education, training, and employment opportunities for recipients of both the Aid to Families with Dependent Children (AFDC) and the General Assistance (GA) programs. Moreover, it moves beyond the national Job Opportunities and Basic Skills (JOBS) legislation by setting a new direction of individual responsibility, family stability, and self-sufficiency.

The Family Development Program is based on values, especially the importance of marriage and family stability. The goal of the program is to build and support the family unit and to encourage families to stay together by removing the financial barriers that have, in the past, discouraged marriage while simultaneously reducing the multi-generational and long-term aspects of welfare dependency. This Reorganization Plan to redenominate the Division of Economic Assistance as the Division of Family Development and the Board of Economic Assistance as the Board of Family Development will promote to the public the true purposes and goals of the Family Development Program and end the stigma that may have been associated with the characterization of aid as economic assistance. These changes also reflect the enhanced responsibilities of the Division and the Board to implement these reforms to benefit the family.

THEREFORE, in accordance with the provisions of the "Executive Reorganization Act of 1969," L. 1969, c.203 (C.52:14c-1 et seq.), I find that each redenomination included in this Reorganization Plan better promotes and reflects the purposes and goals of the Family Development Program and also satisfies the standards set forth in N.J.S.A. 52:14C-2.

THE PROVISIONS OF THE REORGANIZATION ARE AS FOLLOWS:

1.a. The Division of Economic Assistance, amended by L. 1989, c.88, (C.30:4A-4), is redenominated the Division of Family Development. I find that this name change, authorized by N.J.S.A. 52:14C-5(a), will better reflect the responsibilities of the Division and the primary focus of the Family Development Program which is to reunite and strengthen the family.

b. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise, reference is made to the Division of Economic Assistance, the same shall mean and refer to the Division of Family Development.

2.a. The Board of Economic Assistance, amended by L. 1988, c.173, (C.30:4B-3), is denominated the Board of Family Development. I find that this name change, authorized by N.J.S.A. 52:14C-5(a), will better reflect the responsibilities of the Board and its allocation within a renamed Division of Family Development.

b. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise, reference is made to the Board of Economic Assistance, the same shall mean and refer to the Board of Family Development.

3. All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies. A copy of this Reorganization Plan was filed on May 7, 1992, with the Secretary of State and the Office of Administrative Law (for publication in the New Jersey Register). This Plan shall become effective in 60 days on July 6, 1992, unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than July 6, 1992, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

Take notice that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the public laws and in the New Jersey Register under a heading of "Reorganization Plans."

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules
Special Education Program
Proposed New Rules: N.J.A.C. 1:6A-9.2 and 14.4
Proposed Amendments: N.J.A.C. 1:6A-14.1, 18.1 and 18.3
Proposed Repeal: 1:6A-18.5

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1992-218.

Submit comments by July 1, 1992 to:
Jeff S. Masin, Deputy Director
Office of Administrative Law
9 Quakerbridge Plaza
Quakerbridge Road, CN049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules and amendments were developed in coordination with the State Department of Education in response to comments received from the United States Department of Education. The intent of the proposed new rules and amendments is to make clear that these special rules for the conduct of special education hearings conform with the Federal rules for special education due process hearings, 34 C.F.R. 300 et seq. The current rules state that they are established in implementation of Federal law and that the Federal rules shall apply in case of any potential conflict between these rules and the Federal rules. N.J.A.C. 1:6A-1.1(b). The proposed new rules, amendments and repeal clarify that there is in fact no conflict between these rules and the Federal rules.

The current procedures for hearing provide that the judge may adjourn the hearing for good cause and for a specified period of time thus extending the deadline for a decision. N.J.A.C. 1:6A-14.1. Since there have been a series of questions raised concerning adjournments, OAL has decided to set out the adjournment policy separately at proposed new rule N.J.A.C. 1:6A-9.2. Therefore, N.J.A.C. 1:6A-14.1(c) will be deleted.

The proposed new rule at N.J.A.C. 1:6A-9.2 provides that the judge may grant an adjournment at the request of either party which must be for a specified period of time. An adjournment also extends the deadline for a decision by an equivalent amount of time. Adjournments may not occur unless requested by a party. See 34 C.F.R. 300.512(c).

The proposed new rule at N.J.A.C. 1:6A-14.4 provides that every hearing will be sound recorded by tape, whether or not a court stenographer is present. A parent may receive a copy of the tape at no cost by making a request to the Clerk. This has been the OAL policy, but has not been set forth in the rules.

The OAL is proposing to exempt parents from the requirement that the requesting party bear the cost of reproduction of a copy of the hearing record, N.J.A.C. 1:6A-18.3(b), since 34 C.F.R. 300.508(a)(4) requires the availability of the record at no cost to a parent.

N.J.A.C. 1:6A-18.1 provides that an administrative law judge shall issue a written decision no later than 45 days from the date of hearing request. The proposed amendment provides that the decision shall be issued by the judge and mailed by the OAL within that time frame. See 34 C.F.R. 300.512(b)(2).

N.J.A.C. 1:6A-18.5 permits a party to file a motion to reopen a hearing based upon a mistake, newly discovered evidence, fraud or misrepresentation. The proposed repeal deletes this provision since the Federal rules provide that a due process hearing decision is final unless appealed pursuant to 34 C.F.R. 300.511.

Social Impact

The proposed amendments make more clear the lack of conflict between these special rules and the Federal rules governing due process hearings. The amendments do not alter the hearing procedures, but they should make it easier for parties to these hearings to understand the procedures.

Economic Impact

Since the proposed amendments do not change the procedures which have been used, it is not anticipated that there will be any economic impact to the regulated public. The only economic impact will be to the State of New Jersey, Office of Administrative Law, to the extent that the proposed amendments clarify for the public the existence of free copies of sound recorded proceedings and copies of the record for purposes of appeal, as these are required to be provided by Federal law.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments set forth the procedures for special education hearings.

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

1:6A-9.2 Adjournments

(a) The judge may grant an adjournment at the request of either party. Any adjournment shall be for a specific period of time. When an adjournment is granted, the deadline for a decision will be extended by an amount of time equal to the adjournment.

(b) No adjournment or delay in the scheduling of the hearing shall occur except at the request of a party.

1:6A-14.1 Procedures for Hearing

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

[(c) For good cause shown on the record, the judge may adjourn the hearing for a specified time, and the deadline for decision, as established in N.J.A.C. 1:6A-18.8 Deadline for decision, will be extended by an amount of time equal to the adjournment.]

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

1:6A-14.4 Transcripts

(a) In addition to any stenographic recording, each hearing shall be sound recorded by tape recording. A parent may receive a copy of the tape recording at no cost by making a request to the Clerk.

(b) Transcripts of any hearing may be obtained pursuant to the procedures in N.J.A.C. 1:1-14.11.

1:6A-18.1 Deadline for decision

Subject to any adjournments [for specified period of time] **pursuant to N.J.A.C. 1:6A-9.2,** [the judge shall issue] a written decision **shall be issued by the judge and mailed by the Office of Administrative Law** no later than 45 days from the date of the hearing request.

1:6A-18.3 Appeal, use of hearing record, obtaining copy of record, and contents of record

(a) (No change.)

(b) A party intending to appeal the administrative law judge's decision or an authorized representative is permitted to use, or may request a certified copy of, any portion or all of the original record of the administrative proceeding, provided a copy remains on file at the Office of Administrative Law. The requesting party shall bear the cost of any necessary reproduction **provided, however, that requesting parents shall not be charged or assessed costs.** Written requests for this material should be directed to [Decision Control] **the Clerk,** Office of Administrative Law, 185 Washington Street, Newark, New Jersey 07102.

(c) (No change.)

[1:6A-18.5 Motion to reopen hearing

(a) Any party may file with the presiding judge, and serve on each other party, a motion to reopen a hearing no later than 10 days following the issuance of the decision.

(b) The judge may reopen the hearing for reasons:

1. Mistake, inadvertence, surprise or excusable neglect;

2. Newly discovered evidence which would probably alter the decision and which, by due diligence, could not have been discovered in time for the hearing; or

3. Fraud, misrepresentation or misconduct of another party.]

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Mortgage Banking Licensing Branch Offices; Licensing Exemptions

Proposed Amendments: N.J.A.C. 3:38-1.9, 5.2 and 5.3

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

Authority: N.J.S.A. 17:1-8; 17:11B-13, *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Comm'n, et al.*, 102 *N.J.* 176 (1986) (on remand—OAL Docket No. BRE-228-87).

Proposal Number: PRN 1992-237.

Submit comments by July 1, 1992 to:

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

The agency proposal follows:

Summary

The Department of Banking, in an adoption filed concurrent with this proposal and published elsewhere in this issue of the New Jersey Register, revised its licensing procedures for licensees under the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq. (the "Act"). The Department had proposed to require licensure of real estate licensees who receive separate or additional compensation in any amount for originating or brokering a mortgage loan, in addition to the real estate sales commission. The Department pursuant to that proposal deemed a real estate licensee who received such compensation to be engaged in the business of a mortgage banker or broker. Upon review of the comments to that proposal, the Department now proposes to redefine what it means to be engaged in the business of a mortgage banker or broker.

The comments and testimony pointed to the costs that a real estate licensee incurred in providing mortgage brokerage services. In particular, innovations in the industry permit computerized networks to link individual real estate broker's offices with lenders. The cost to the real estate licensee for such services can be considerable.

However, allowing real estate licensees to recover expenses without limit might impose an unacceptable cost on consumers. Further, allowing unlimited reimbursement through computerized networks may encourage those facilitating such access, such as the computer companies, to increase the costs which may be passed on to consumers. Finally, the Department is concerned that some real estate licensees may use this exemption to recover costs which arguably accrue from real estate operations, and not from mortgage referral activities.

Accordingly, pursuant to the proposal, a person licensed as a real estate broker or salesman who, in addition to the real estate commission, only receives up to $250.00 at the closing of the mortgage loan for reimbursement of expenses incurred in providing mortgage related services in conjunction with a particular real estate sales or real estate brokerage service shall not be deemed to be engaged in the business of a mortgage broker. Therefore, such a real estate licensee will not need to obtain a license as a mortgage broker.

Permitting real estate licensees to recover costs for mortgage related services up to $250.00 without also obtaining a license under the Act will allow many real estate licensees to offer consumers access to computerized networks, and to recover all or some of the costs of these networks. Real estate licensees that want to charge more than $250.00 may become licensed under the Act, and may, subject to other legal constraints, charge the same fees as other licensed mortgage brokers are permitted to charge.

Real estate licensees conducting mortgage related services who will not need to be licensed under the Act will remain subject to supervision by the Real Estate Commission. That agency has proposed rules which, for example, require disclosure by licensees providing mortgage financing services, and prohibit licensees with in-house mortgage services from excluding all outside solicitors (see 23 N.J.R. 3424(b), November 18, 1991) and the notice of adoption published elsewhere in this issue of the New Jersey Register).

In addition, the comments to the aforementioned Department of Banking proposal revealed that the definition of "branch office" was too broad. The Department therefore proposes to exclude from the definition (1) locations that are already licensed by another licensee; (2) branches of depositories in this State; and (3) certain real estate offices.

One important reason why a branch office is required to be licensed under the Act is to assure that there will be adequate supervision of the activities conducted there. Once a branch office is licensed and thereby supervised by a licensed individual and the Department, it is not necessary to have branch office licenses for other licensees whose applications are distributed or received at that location, so long as it is done by employees of the person licensed at that location and not employees of the various other lenders.

Similarly, a principal or branch office of a bank, savings bank, savings and loan association or credit union is adequately supervised. Should the employees of such a depository distribute and/or receive mortgage loan applications of a licensee at the principal office or branch office of such a depository, it is not necessary for such a location to be licensed as a branch under the Act.

Finally, the Department recognizes that real estate offices are locations where, for convenience, licensees meet with consumers on a regular basis. At such meetings, mortgage loan applications are distributed or received by a solicitor or licensee, and fees are received. Through these rules, the Department does not want to limit such meetings to real estate offices licensed under the Act. Accordingly, the Department proposes to exempt from the licensing requirements real estate offices which would need to be licensed merely because the real estate broker or salesman distributes or receives an application of an unaffiliated licensee at that office, or because an unaffiliated licensee under the Act who does not hold himself out to the public as performing mortgage banking or brokering there and does not maintain an office or desk there occasionally meets at the office of the real estate broker as a convenience to the borrower and distributes or receives applications or fees there.

In addition, the Department proposes an amendment to N.J.A.C. 3:38-5.3 to clarify that the solicitor registration is effective for two years, beginning January 1, 1993. The $25.00 registration fee is payable upon registration and upon renewal.

Social Impact

By exempting certain real estate licensees from the licensing requirements of the Act, computerized loan origination systems will be made available to a greater number of consumers at a modest cost. The Department views this as a beneficial social impact.

Economic Impact

Because the proposed amendments exempt certain real estate licensees and specified offices of real estate licensees from the licensing requirements of the act, they will, in general, have a beneficial economic impact on these licensees, since they will avoid licensing costs. To the extent that the licensing provisions alert real estate brokers and salesmen that they must obtain a license from the Department of Banking to engage in mortgage banking or brokering activities, and such persons become licensed for the first time, the proposed amendments will impose licensing costs on such persons. Mortgage bankers and brokers are required to pay the Department a biennial license fee of $1,000. N.J.A.C. 3:38-1.1(c). In addition, licensees must reimburse the Department for the cost of examinations at the cost of $325.00 per diem per person. N.J.A.C. 3:1-6.6(b).

Requiring licensees to register solicitors every two years at a registration cost of $25.00 per solicitor will have a marginal negative economic

impact on most licensees. The Department is currently surveying the industry to confirm that this $25.00 fee is the amount necessary to reimburse the Department for the costs of producing the registration certificates and maintaining the appropriate files.

Regulatory Flexibility Analysis

Most of the institutions affected by these proposed amendments are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The provision regarding the exemption for real estate licensees clarifies that these persons must be licensed if they accept more than $250.00 of separate or additional compensation for originating or brokering a mortgage loan. These persons, to become licensed, will need to file mortgage banker or broker applications every other year, and will be subject to examination by the Department. No differentiation is made in these licensing requirements based on business size because the Legislature has directed the Department in the Act to license all mortgage bankers and brokers regardless of the size. Since the biennial solicitor registration and fee is necessary to maintain current information and reimburse Department costs, respectively, no differentiation in requirements based upon licensee size is proposed.

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

3:38-1.9 Office requirements

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

(g) A branch office of a licensee under the Act does not also constitute a branch office of another licensee merely because the first licensee distributes or receives applications of that other licensee at the branch office.

(h) A principal or branch office of a bank, savings bank, savings and loan association or credit union shall not also constitute a branch office of a licensee merely because the bank, savings bank, savings and loan association or credit union distributes or receives applications of the licensee at the principal or branch office.

(i) A licensed real estate office of a person licensed as a real estate broker or salesman pursuant to Chapter 15 of Title 45 of the Revised Statutes does not constitute a branch of an unaffiliated licensee under the Act merely because the real estate broker or salesman distributes or receives an application of the licensee at that office, or because an unaffiliated licensee under the Act who does not hold himself out to the public as performing mortgage banking or brokering there and does not maintain an office or desk there occasionally meets at the office of the real estate broker as a convenience to the borrower and distributes or receives applications or fees there. For purposes of this section, the term "unaffiliated" shall mean a licensee under the Act not affiliated with a real estate licensee, as defined in N.J.A.C. 11:5-1.41.

3:38-5.2 Exemptions

(a) The following persons are exempt from the licensing requirements of the Act.

1.-3. (No change.)

4. A person licensed as a real estate broker or salesman pursuant to Chapter 15 of Title 45 of the Revised Statutes, and not engaged in the business of a mortgage banker or broker. **A real estate broker or salesman receiving separate or additional compensation in any amount for originating or brokering a mortgage loan, in addition to the real estate sales commission, shall be deemed to be engaged in the business of a mortgage banker or broker and must be licensed or employed and registered as a solicitor for a licensed mortgage banker or broker; except that a person licensed as a real estate broker or salesman who, in addition to the real estate commission, only receives up to $250.00 at the closing of the mortgage loan for reimbursement of expenses incurred in providing mortgage related services in conjunction with a particular real estate sales or real estate brokerage service shall not be deemed to be engaged in the business of a mortgage broker. Expenses are deemed to be incurred in providing mortgage related services only if the expenses are specifically allocated to those services and are not a percentage of the general overhead or costs of the real estate office.**

5.-6. (No change.)

3:38-5.3 Registration of solicitors

(a) (No change.)

(b) To register a solicitor, the prospective employing licensee shall send the following to the Department of Banking:

1. (No change.)

2. A $25.00 registration fee **which is payable every two years upon renewal.**

(c) The Department shall provide all licensees with a solicitor registration certificate **which shall be renewable every two years. The registration shall run from January 1, 1993 to December 31, 1994, and for two-year intervals thereafter.**

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

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Use Group Definitions; Fire Suppression Systems

Reproposed Amendments: N.J.A.C. 5:18-1.5 and 4.7

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198.

Proposal Number: PRN 1992-221.

Submit comments by July 1, 1992 to:

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

The agency proposal follows:

Summary

The definition of Use Group A-2 is expanded to include eating and drinking establishments, and similar occupancies, in which the established maximum permitted occupant load exceeds the number of seats provided by more than 30 percent. Exemption from fire suppression system requirements is provided for buildings with a permitted occupancy under 200 in which the entire required means of egress is on the same level as the use and no exit is more than five feet above, or two feet below, the adjacent grade and for buildings with a permitted occupancy under 100 in which no portion of the required means of egress is either more than one level above, or more than two feet below, the adjacent grade.

A proposal similar to this, but with occupancy limits for the exemptions set at 300 and 200 respectively, appeared on March 2, 1992 at 24 N.J.R. 677(a). It was not adopted because the Fire Safety Commission considered these numbers to be too high. Since a proposal cannot be made more restrictive upon adoption, issuance of a revised proposal was necessary. The proposal which appeared at 24 N.J.R. 677(a) is hereby withdrawn.

Social Impact

The amendment to the definition of Use Group A-2 will render moot any dispute as to whether or not an establishment meeting the new definition is a "night club." Persons in occupancies in which there are over 30 percent more people than there are seats require the same protection against fire hazards regardless of whether and when entertainment is being provided. The amendments to the fire suppression system requirement will allow smaller facilities in Use Group A-2 to operate without installing fire suppression systems if there are adequate exitways. The Department is satisfied that this exemption can be allowed under these circumstances without compromising public safety.

Economic Impact

Owners of properties for which Use Group A-2 classification was previously questionable will now have to comply with all fire safety requirements applicable to that use group, including those concerning exitways and fire suppression systems, the cost of which will vary depending on the size and configuration of the area in which the use is located. However, as a result of the amendment to N.J.A.C. 5:18-4.7, smaller facilities with adequate exitways will be spared this additional expense.

Regulatory Flexibility Analysis

The reproposed amendments add an exemption from fire suppression system requirements for those A-2 Use Group businesses with a permitted occupancy of fewer than 200 people, if certain exit requirements are met, and businesses with a permitted occupancy of fewer than 100 people, if the egress is no more than one level above or two feet below the adjacent grade. Occupancies in which the maximum permitted load exceeds the number of seats provided by more than 30 percent are included in the A-2 requirements. Some of the businesses affected by the amendments may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, neither the number of such businesses, nor their distribution among businesses with a permitted occupancy of less than 300, is known. Similarly, the costs of complying with the amendments are not known, as individual site situations and the costs of construction vary. The protection of lives and property from fire is a matter that directly affects the health and welfare of the public. While the size of a building or a use area is relevant to the level of protection required, the form and nature of the business that owns or operates it is not. For that reason, the Department has provided no exemption in these amendments for small businesses.

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

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L.1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. When a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

"Use" or "Use Group" means the use to which a building, portion of a building, or premises, is put as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, which is used for human purpose or occupancy, which use would subject it to the provisions of this Code if it were a building or premises.

1.-2. (No change.)

3. "Use Group A-2": This Use Group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs [as defined in N.J.A.C. 5:18-1.5, and for similar purposes, including], **and eating and/or drinking establishments, and similar occupancies, in which the established maximum permitted occupant load exceeds the number of seats provided by more than 30 percent, and shall include** all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance.

4.-19. (No change.)

5:18-4.7 Fire suppression systems

(a) All buildings of Use Group A-2, or portions thereof when separated in accordance with (k) below, with a permitted occupant load of 50 or more, shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. The following are exceptions to paragraph (a) above:

i. Buildings with a permitted occupancy of fewer than 200 having all components of the required means of egress on the same level as the use and having all such exits discharging not more than five feet above, nor more than two feet below, the adjacent grade;

ii. Buildings with a permitted occupancy of fewer than 100 having no portion of the required means of egress located more than one level above, or more than two feet below, the adjacent grade.

(b)-(k) (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Inter-Jurisdictional Agreements and Statutes

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

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 30:7C-1 et seq. and P.L.1986 c.141.

Proposal Number: PRN 1992-216.

Submit comments by July 1, 1992 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:10, Inter-Jurisdictional Agreement and Statutes, expires August 17, 1992. The Department of Corrections has reviewed these rules and, with the amendments in subchapter 6, has determined these rules to be necessary, reasonable and proper for the purpose for which these rules were originally promulgated, and is, therefore, proposing them for readoption at this time.

Subchapters 1, 2, 4 and 5 are currently in reserved status.

Subchapter 3 establishes the procedures by which states that are members of the Interstate Corrections Compact (N.J.S.A. 30:7C-1 et seq.), may transfer inmates for confinement in correctional facilities of other states that are members of the Compact or Federal facilities.

Subchapter 6 establishes the procedures whereby the New Jersey Department of Corrections may transfer correctional offenders who are citizens of foreign countries to their country of citizenship. In order to be in agreement with the definition, the words, "his or her country" have been changed to "the receiving state" at N.J.A.C. 10A:10-6.3.

Social Impact

The readoption of N.J.A.C. 10A:10 will continue to facilitate the processing and transfer of inmates to correctional facilities of other states, to the Federal government or to the inmates' native country and will also reduce the number of administrative difficulties experienced as a result of the incarceration of foreign nationals. The consensual transfer process enables inmates to transfer to correctional facilities closer to the inmate's home, thus enhancing family and social ties and reducing the language and cultural difficulties that are experienced by inmates of foreign descent. Successful reintegration into the inmates' home communities is hereby encouraged through maintenance of continuity with family and social groups. The non-consensual transfer process enables the New Jersey Department of Corrections to neutralize the adverse effects of certain disruptive criminal activities by transferring designated individuals to out-of-State locations, thus helping to provide a safe and orderly environment for both inmates and staff.

Economic Impact

Whenever possible, inmates are exchanged for bed space days rather than payment so as to avoid direct economic cost. However, there are occasionally emergency cases, such as natural disaster, fires, or riots which may require transfer of a substantial number of inmates. In these cases, payment may be necessary.

Presently, $200,000 is budgeted for transfer of inmates between states. These financial resources are obtained by the Department of Corrections through the established State budgetary process. This cost varies depending on the contractual agreements, the custody status of the inmates, distance of transfer and other related factors.

With regard to transfer of inmates into the Federal prison system, $250,000 is budgeted yearly, but the actual cost varies depending on the number of inmates being held, their custody status and other factors.

An indirect economic benefit to the State of New Jersey occurs as a result of transfer, in that certain troublesome inmates are relocated

in order to reduce the potential for expensive disruptive events such as riots, fires or such incidents.

Regulatory Flexibility Statement

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

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

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

10A:10-6.3 Eligibility criteria for international transfer

(a) Offenders must meet all of the following criteria before they may be considered for an international transfer.

1. (No change.)

2. The offender must consent to transfer to [his or her country of citizenship] **the receiving state;**

3.-8. (No change.)

9. The offender must meet all of the eligibility requirements of the treaty with [his or her country] **the receiving state.**

INSURANCE

(a)

DIVISION OF FINANCIAL EVALUATIONS AND LIQUIDATIONS

Annual Audited Financial Reports

Proposed Amendments: N.J.A.C. 11:2-26
Proposed Repeal and New Rule: N.J.A.C. 11:2-26.11
Proposed New Rule: N.J.A.C. 11:2-26.12
Proposed Repeals: N.J.A.C. 11:2-26.14 and 26.15

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

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:23-1 et seq. and 17B:21-1 et seq.

Proposal Number: PRN 1992-231.

Submit comments by July 1, 1992 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The proposed new rules, repeals and amendments to N.J.A.C. 11:2-26 reflect recent amendments adopted by the National Association of Insurance Commissioners ("NAIC") to its model rule requiring insurers to conduct annual financial audits and to submit reports to the Department of Insurance ("Department"). The proposed new rules and amendments will further enhance the Department's surveillance of the financial condition of insurers in order to curtail the incidence of insurer insolvencies. In order to accomplish this, the proposed new rule and amendments place stricter controls on the certified public accountants (CPA's) conducting the financial audits for the insurers.

The proposed amendment at N.J.A.C. 11:2-26.4 changes the annual due date for the filing of audited financial reports with the Department from June 30 to June 1 in order for the Department to receive important financial information concerning insurers as soon as possible following the end of the previous calendar year.

The proposed amendments to N.J.A.C. 11:2-26.6 will permit the Department to conclude that the CPA conducting the audit is fully qualified. Additionally, proposed new rule N.J.A.C. 11:2-26.12 will require that the CPA provide certain information in the financial report, including that the CPA is independent of the insurer for whom the audit is being performed; the CPA's background and experience; that the CPA understands the annual audited financial report; that the CPA consents to make available for review by the Commissioner all workpapers prepared for the audit; and that the CPA is properly licensed by a state licensing authority and is a member in good standing of the American Institute of Certified Public Accountants.

The proposed amendment to N.J.A.C. 11:2-26.10 additionally will require the CPA to report in writing to an insurer within five business days any reasonable belief that the insurer either materially misstated its financial condition to the Commissioner or does not meet minimum capital and surplus requirements of New Jersey. The insurer must then forward a copy of the CPA's report to the Commissioner within five business days. Furthermore, the proposed amendment at N.J.A.C. 11:2-26.11 will require the CPA to furnish the Commissioner with a written report of any significant deficiencies in an insurer's internal control structure.

The proposed amendment at N.J.A.C. 11:2-26.13 will further require the CPA to make available for review by the Commissioner all workpapers prepared for the audit, as well as all communications relating to the audit between the CPA and the insurer. These documents are further to be afforded the same level of confidentiality as other examination workpapers generated by the Department (that is, they are not considered public documents readily available to the general public).

The proposed amendment to N.J.A.C. 11:2-26.8 will allow consolidated or combined audits only if the insurer is part of a group utilizing a pooling or 100 percent reinsurance agreement affecting the solvency and integrity of the insurer's reserves and the insurer assigns all of its direct and assumed business to the pool.

The proposed amendment at N.J.A.C. 11:2-26.14 adds a further exemption from compliance with these rules for those insurers having direct written premiums in this State of less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written premiums nationwide at the end of such calendar year. The Commissioner has granted such exemptions to further reduce the likelihood of placing additional financial burdens on small businesses.

Social Impact

The primary impact of these proposed new rules and amendments is to place more stringent audit and filing requirements on both the insurer undergoing the annual financial examination and the CPA conducting the audit.

The public will benefit from these enhanced requirements insofar as the incidence and magnitude of insurer insolvency will decrease, thereby increasing protection of the public. The Department will also benefit from these increased financial audit requirements in that it will be able to more effectively monitor the financial condition of insurers, resulting in an increased ability to identify financially troubled insurers earlier and before those insurers actually become insolvent. Insurers themselves will benefit from these heightened financial examination requirements insofar as independent audits may apprise the insurers of certain aspects of their finances and their reinsurers of which they might normally be unaware until sometime in the future.

Economic Impact

The New Jersey Property and Liability Insurance Guaranty Association (NJPLIGA), the New Jersey Surplus Lines Insurance Guaranty Fund (NJSLIGF), the New Jersey Life and Health Guaranty Fund (NJHGF), and Workers Compensation Stock and Mutual Security Funds will experience a positive economic impact to the extent that the reduction in insurer insolvencies that will result from these amendments will reduce the liabilities of these entities.

Insurers will necessarily be responsible for bearing any additional costs resulting from the additional workload placed on the CPA's in complying with the requirements of these amendments. Furthermore, insurers will bear the cost of any additional reports or data that they will be required to file with the Commissioner. However, any additional costs that either insurers or CPA's will incur are significantly outweighed by the long-term benefits to the public in preventing further insurer insolvencies. The Department will experience an increase in costs as a result of the additional paperwork in the financial reports to be reviewed by Department staff.

Regulatory Flexibility Analysis

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

These amendments will apply to "small businesses" only insofar as any insurers required to comply with the current rules at N.J.A.C. 11:2-26 may fall within that definition. Those insurers considered "small businesses" will be required to bear the same increase in costs that other insurers will be required to bear as a result of the adoption of these proposed amendments. In fact, "small businesses" may bear a proportionately greater economic burden than larger insurers because they may have to devote more financial resources and staff to the filing of the financial reports.

The current rules provide certain mechanisms to minimize their impact on "small businesses." These amendments provide an additional mechanism that any insurer having less than $1,000,000 in direct written premiums in any year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such year is exempt from the requirements of this subchapter for that year. The Department believes that this additional exemption adequately reduces any additional burden that may be imposed on small businesses. Therefore, no further exemption or differentiation in compliance requirements is specifically provided based on insurer size.

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

SUBCHAPTER 26. ANNUAL AUDITED FINANCIAL REPORTS

11:2-26.1 Purpose

The purpose of this subchapter is to improve the Department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accounts of the financial statements reporting the financial [condition] **position** and the results of operations of insurers.

11:2-26.2 Scope

This subchapter shall apply to all insurers transacting business in the State of New Jersey except as provided at N.J.A.C. 11:2-[26.13] **26.14**.

11:2-26.3 Definitions

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

. . .

"Accountant" and "independent **certified** public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for alien insurers, it means a chartered or similarly certified accountant.

. . .

"Workpapers" means the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his or her examination of the financial statements of an insurer. Workpapers may include **audit planning documentation,** work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her examination of the financial statements of an insurer and which support his or her opinion thereof.

11:2-26.4 Filing of annual audited financial reports; extensions

(a) All insurers (unless exempted pursuant to N.J.A.C. 11:2-[26.13]**26.14**) shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June [30]**1** for the year ended December 31 immediately preceding. **The Commissioner may require an insurer to file an audited financial report earlier than June 1 upon 90 days advance written notice to the insurer.**

(b) Extensions of the June [30]**1** filing date may be granted by the Commissioner for 30 day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for an extension must be submitted in writing not less than 10 days prior to the due date of the financial report in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

11:2-26.5 Contents of annual audited financial report

(a) The annual audited financial report shall reflect the financial [condition] **position** of the insurer as of the end of the most recent calendar year and the results of its operations, [changes in] cash flows and changes in capital and surplus for such calendar year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department.

(b) The annual audited financial report shall include:

1. A report of an independent certified public accountant;
2. A balance sheet reporting admitted assets, liabilities, capital and surplus;
3. A statement of [gain or loss from] operations;
4. A statement of [changes in] cash flows;
5. A statement of changes in capital and surplus; and
6. Notes to financial statements. These notes shall be those required by **the appropriate NAIC Annual Statement Instructions and any other notes required by** generally accepted accounting principles and shall **also** include:

i. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-1 with a written description of the nature of these differences; [and]

ii. [A narrative explanation of all significant intercompany transactions and balances.] **A summary of ownership and relationships of the insurer and all affiliated companies; and**

iii. Such other information as may be specifically requested.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement filed with the Commissioner:

1. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted)[;].

[2. Amounts may be rounded to the nearest thousand dollars; and
3. Insignificant amounts may be combined.]

11:2-26.6 Qualifications of independent certified public accountant

(a) The Commissioner shall not recognize any person or firm as [an] **a qualified** independent certified public accountant unless they are in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice or, for alien insurers, that is not a chartered similarly certified accountant.

(b) Except as otherwise provided herein, [a] **an independent** certified public accountant shall be recognized as [independent] **qualified** as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations, Code of Ethics and Rules of Professional Conduct of the New Jersey Board of Public Accountancy or similar code.

(c) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:

1. The number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
2. The premium volume of the insurer; or
3. The number of jurisdictions in which the insurer transacts business.

(d) The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under Federal or state law, or similar conduct under any foreign law;

2. Has been found to have violated the insurance laws of this State with respect to any previous reports submitted under this rule; or

3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this subchapter.

(e) Whenever it appears that the certified public accountant or accounting firm retained by the insurer to conduct the annual audit is not a qualified independent certified public accountant as provided under these rules, the Department shall notify the insurer that it does not recognize the certified public accountant or accounting firm as qualified, and the Department will not accept any annual audited Financial Report prepared by that accountant or accounting firm.

1. Upon receipt of such notice from the Department, the insurer may, within 20 days, request an administrative review on the issue of the qualifications of the independent certified public accountant or accounting firm retained by the insurer.

11:2-26.7 Certification by independent certified public accountant

(a) Each insurer required by this subchapter to file an annual audited financial report shall [file with each such report a letter obtained from the] **within 60 days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public** accountant **or accounting firm** retained to conduct the annual audit set forth in this subchapter. **Insurers not retaining an independent certified public accountant on the effective date of this rule as amended shall register the name and address of their retained certified public accountant not less than six months before the date when the audited financial report is to be filed.**

(b) The [letter shall contain the name and address of such accountant and shall] **insurer shall also obtain a letter from the accountant, and file a copy with the Commissioner,** containing a certification by such accountant that he or she is aware of the provisions of the [Insurance Code and the rules and regulations] **insurance statutes and administrative rules** of this State that relate to accounting and financial matters. The accountant shall also certify that he or she will express his or her opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department and specify such exceptions as he or she may believe appropriate.

[(b)] **(c)** In addition to the requirements in (a) **and (b)** above, if [an accountant who was not] the accountant for the immediately preceding filed audited financial report is [engaged to audit the insurer's financial statements] **dismissed or resigns,** the letter shall clearly state that the accountant currently retained to conduct the annual audit set forth in this subchapter is not the same accountant retained to conduct the immediately preceding annual audit.

11:2-26.8 Consolidated or combined audits

(a) An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements **if the insurer is part of a group of insurance companies which utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool.** In such cases, a columnar consolidating or combining worksheet shall be filed with the report as follows:

1.-5. (No change.)

11:2-26.9 Scope of examination and report

Financial statements furnished pursuant to N.J.A.C. 11:2-26.5 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards [and consideration]**. Consideration** should **also** be given to such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

11:2-26.10 Notification of adverse financial condition

(a) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to [immediately notify] **report** in writing [an executive officer and all directors of the insurer of the final determination] **within five business days to the board of directors or its audit committee any reasonable belief** by [that] **the** independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements as of that date. [The insurer shall furnish such notification to the Commissioner within five days of receipt thereof.] **An insurer who has received a report pursuant to this section shall forward a copy of the report to the Commissioner within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive such evidence within the required five business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five business days. No independent public accountant shall be liable in any manner to any person for any statement made in connection with this subsection if such statement is made in good faith in compliance with this subsection.**

(b) (No change.)

11:2-26.11 [Evaluation of accounting procedures and system of internal control] **Report on significant deficiencies in internal controls**

[(a) In addition to the annual audited financial report, each insurer shall file with the Commissioner a report of evaluation performed by the accountant, in connection with his or her examination, of the accounting procedures of the insurer and its system of internal control.

(b) A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the Commissioner within 60 days after the filing of the annual audited financial report.

(c) This report shall generally follow the form for reports on internal control based on audits described in Volume 1, Section AU 640 of the Professional Standards of the American Institute of Certified Public Accountants, incorporated herein by reference.]

(a) In addition to the annual audited financial report, each insurer shall file with the Commissioner a written report prepared by the accountant describing any significant deficiencies known as "reportable conditions" in the insurer's internal control structure noted by the accountant during the audit which an accountant is required to report to appropriate parties within an entity pursuant to SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants).

(b) No report should be issued if the accountant does not identify one or more significant deficiencies.

(c) If one or more significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within 60 days after the filing of the annual audited financial report. The insurer shall provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

11:2-26.12 Accountant's letter of qualifications

(a) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. That the accountant is independent with respect to the insurer and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the New Jersey Board of Public Accountancy, or similar code;

2. The background and experience in general, and the experience in insurance audits of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this rule shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards;

3. That the accountant understands the annual audited financial report and the accountant's opinion thereon will be filed in compliance with this subchapter, and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

4. That the accountant consents to the requirements of N.J.A.C. 11:2-26.13 and that the accountant consents and agrees to make available for review by the Commissioner, his or her designee or his or her appointed agent, the workpapers, as defined in N.J.A.C. 11:2-26.3;

5. A representation that the accountant is properly licensed by an appropriate state licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants; and

6. A representation that the accountant is in compliance with the requirements of N.J.A.C. 11:2-26.6.

11:2-[26.12]**26.13** Availability and maintenance of workpapers

(a) Every insurer required to file an audited financial report pursuant to this subchapter shall require the accountant [(through the insurer)] to make available for review by the Commissioner, **all** the workpapers prepared in the conduct of his or her examination **and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Department or at any other reasonable place designated by the Commissioner.** The insurer shall require that the accountant retain the audit workpapers [for a period of not less than five years after the period reported thereon] **and communications until the Department has filed a Report on Examination covering the period of the audit and determined that the audit workpapers and communications need no longer be retained.**

(b) In the conduct of the periodic review by the Commissioner, photocopies of pertinent audit workpapers may be made and retained by the Commissioner. Such reviews by the Commissioner shall be considered investigations and all working papers **and communications** obtained during the course of such investigations shall be [confidential and not public documents pursuant to the Public Records Acts, N.J.S.A. 47:1A-1 et seq.] **afforded the same confidentiality as other examination workpapers generated by the Department.**

11:2-[26.13]**26.14** Exemptions

(a) Insurers having direct premiums written in this State of less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year shall be exempt from this subchapter for such year (unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of $1,000,000 or more will not be so exempt.

[(a)](**b**) [This subchapter shall apply to all insurers except that foreign] **Foreign** or alien insurers having direct premiums written in this State of less than $250,000 in any year and having less than 500 policyholders in this State at the end of any year are exempt from compliance with this subchapter for such year (unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities).

[(b)](**c**) Insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports which have been found by the Commissioner to be substantially similar to the requirements herein, are exempt from compliance with this subchapter if:

1. A copy of the audited financial report [and the evaluation of accounting procedures and systems of internal control report] **on any significant deficiencies in internal controls, and the accountant's letter of qualifications** which are filed with such other state are filed with the Commissioner in accordance with the filing dates specified in N.J.A.C. 11:2-26.4 [and], 26.11 **and 26.12** respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and

2. A copy of any notification of adverse financial condition report filed with such other state is filed with the Commissioner within the time specified in N.J.A.C. 11:2-26.10.

[(c)](**d**) [In addition to the exemption in (a) above, upon] **Upon** written application of any insurer, the Commissioner may grant an exemption from compliance with this subchapter if the Commissioner finds, upon review of the application, that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specific period or periods.

[(d) Upon written application of any insurer, the Commissioner may, for a specific period or periods, permit an insurer to file annual audited financial reports on some basis other than a calendar year basis.]

[11:2-26.14 Compliance dates

(a) Domestic insurers retaining a certified public accountant on the effective date of this subchapter (December 18, 1989) who qualifies as independent shall comply with this subchapter for the year ending December 31, 1989 and each year thereafter unless the Commissioner permits otherwise.

(b) Domestic insurers not retaining a certified public accountant on the effective date of this subchapter (December 18, 1989) who qualifies as independent shall meet the following schedule for compliance unless the Commissioner permits otherwise:

1. For the year ending December 31, 1989, file with the Commissioner:

i. A report of an independent certified public accountant;

ii. An audited balance sheet; and

iii. Notes to the audited balance sheet;

2. For the year ending December 31, 1990 and each year thereafter, such insurers shall file with the Commissioner all reports required by this subchapter.

(c) Foreign and alien insurers shall comply with this subchapter for the year ending December 31, 1989 and each year thereafter, unless the Commissioner permits otherwise.

11:2-26.15 Reports prepared in accordance with generally accepted accounting principles

With the Commissioner's approval, an insurer may file the required reports prepared in accordance with generally accepted accounting principles, provided that the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-1 and comparable totals on the audited financial statements, with a written description of the nature of these differences.]

Recodify existing 11:2-26.16 through 26.19 as **26.15 through 26.18** (No change in text.)

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Workers' Compensation Self-Insurance

Proposed New Rules: N.J.A.C. 11:2-33

Proposed Amendment: N.J.A.C. 11:1-32.4

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

Authority: N.J.S.A. 17:1C-6(e), 17:1-8, 17:1-8.1 and 34:15-77.

Proposal Number: PRN 1992-213.

Submit comments by July 1, 1992 to:

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

The agency proposal follows:

Summary

N.J.S.A. 34:15-77 provides that an employer desiring to self-insure its workers' compensation liability may make application to the Commissioner of Insurance (Commissioner) showing its financial ability to pay compensation. The Commissioner, if satisfied of the employer's financial ability and the permanence of its business, may exempt the employer from purchasing workers' compensation liability insurance and permit the employer to self-insure such liability.

Pursuant to this statute, the Department of Insurance (Department) developed informal filing requirements providing for the submission of specified information by an employer seeking to self-insure its workers' compensation liability. This information must be reviewed and approved before the Commissioner will permit the applicant to self-insure its workers' compensation liability as evidenced by the issuance of a Certificate of Order Granting Exemption From Insuring Liability For Compensation (Certificate).

The Department has now determined to codify and clarify these requirements by proposing these new rules. This will ensure that the filing requirements for the issuance or renewal of a Certificate will be clearly and consistently set forth, thus streamlining the application process by ensuring that all applicants will be fully apprised of these requirements.

The proposed rules differ from the existing guidelines in several respects. First, the proposed new rules provide for the issuance of new Certificate each year. Currently, although information is required on an annual basis, the initial Certificate remains in effect continuously. Second, the proposed new rules provide that any certificate holder seeking to cancel its exemption and purchase its compensation liability insurance may be required to provide additional security if no surety bond is then in effect. Third, the proposed new rules set the minimum penal sum of any surety bond for initial applicants at $500,000. Fourth, the proposed new rules provide that a $1,000 fee be included with initial application and application for renewal to cover the costs of Department review of the documents submitted. Fifth, the proposed new rules provide that initial applicants and certificate holders shall pay a fee in an amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the applicant or certificate holder. Sixth, the proposed new rules provide that the Commissioner may require a certificate holder to provide a new or additional surety bond if deemed necessary to ensure that the certificate holder complies with the statutory requirements for the issuance of a certificate. Seventh, the proposed new rules require that the supplementary statement of outstanding claims be certified by an actuary. Finally, the proposed new rules provide that if the applicant is a corporation, the Commissioner may also include the name of any subsidiary corporation under the control of the applicant in the certificate, provided specified conditions are met.

In the interests of consistency and uniformity, N.J.A.C. 11:1-32, which sets forth fees for services provided by the Department, is amended to incorporate the $1,000 application/renewal fee for a certificate.

Proposed N.J.A.C. 11:2-33.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:2-33.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:2-33.3 provides the filing requirements for the issuance of a certificate.

Proposed N.J.A.C. 11:2-33.4 sets forth the filing requirements for the renewal of a certificate.

Proposed N.J.A.C. 11:2-33.5 provides for the cancellation of the exemption from insuring workers' compensation liability.

Proposed N.J.A.C. 11:2-33.6 provides that failure to submit any information required by this subchapter may result in the denial or refusal to renew an exemption from insuring workers' compensation liability.

Proposed N.J.A.C. 11:2-33.7 provides that the provisions of this subchapter are severable.

Social Impact

The proposed new rules will ensure that the filing requirements for the issuance or renewal of a certificate are clearly and fully set forth. This will benefit employers seeking to self-insure worker's compensation liability. The Department will also benefit in that applicants or certificate holders will more likely submit complete and accurate filings. Further, the filing requirements will provide data from which the Department may assess an applicant's financial condition. This will benefit claimants by ensuring that the applicant will have the ability to pay claims arising out of its workers' compensation liability.

Economic Impact

Employers seeking to self-insure workers' compensation liability will be required to pay a $1,000 filing fee with the submission of an initial application or application for renewal to cover the costs of the Department's review of the documents submitted. Applicants will also be required to pay a fee to reimburse the Department for expenses in obtaining a risk assessment report on the applicant. Finally, certificate holders will be required to bear the costs of obtaining required certifications and surety bonds. While these fees impose an additional burden, the Department believes this burden to be minimal.

The filing requirements will also enable the Department to assess the financial condition of an applicant or certificate holder. This will benefit claimants by helping to ensure that a self-insurer will be able to satisfy its present and future obligations to pay workers' compensation claims.

No additional economic impact is imposed by the proposed new rules. Most of the data to be filed is required by the current Department guidelines. Therefore, no significant additional costs to the Department are imposed by these proposed new rules.

Regulatory Flexibility Analysis

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

To the extent the proposed new rules apply to small businesses they will be businesses seeking to self-insure worker's compensation liability. The initial and annual compliance costs would be those associated with compiling and filing the data required and submitting the $1,000 filing/renewal fee. In addition, there may be an additional fee to cover the costs of a risk assessment report. To the extent that the proposed new rules apply to small businesses they may impose a greater economic burden on small businesses in that they may be required to devote proportionately more time and more staff to obtaining and filing the data required. Similarly, the $1,000 application/renewal fee and the risk assessment report fee may impose an additional burden on small businesses. The Department believes, however, that any additional burden would be minimal. Most of the data required by these proposed new rules is required under current Department guidelines. Further, any employer whose financial condition is such that it is able to pay its workers' compensation liability claims should not be unduly burdened by these additional fees.

The proposed new rules provide no different compliance requirements based on business size. The proposed new rules codify and clarify existing requirements for the Commissioner's approval of an employer self-insuring its worker's compensation liability. In the interest of consistency and uniformity and since these rules protect claimants by ensuring that a prospective self-insurer is able to pay its workers' compensation claims, no differentiation in compliance requirements is proposed based on business size.

Full text of the proposed new rules follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

11:1-32.4 Fees; general

(a) (No change.)

(b) The following fees shall be paid for services provided by the Commissioner in addition to those set forth in (a) above as follows:

1.-9. (No change.)

10. Filing each annual statement of a dental service corporation—$100.00; [and]

11. Filing an application for a certificate of authority to transact business as a dental service corporation—$25.00[.]; and

12. Processing an application for issuance or renewal of a Certificate of Order Granting Exemption from Insuring Liability for Compensation pursuant to N.J.A.C. 11:2-33—$1,000.

SUBCHAPTER 33. WORKERS' COMPENSATION SELF-INSURANCE

11:2-33.1 Purpose and scope

(a) This subchapter sets forth the filing requirements for an employer seeking to self-insure its workers' compensation liability pursuant to N.J.S.A. 34:15-77.

(b) This subchapter applies to all employers seeking to self-insure workers' compensation liability in this State.

11:2-33.2 Definitions

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

"Applicants" means an employer applying for an exemption from insuring its compensation liability.

"Certificate of Order Granting Exemption from Insuring Liability for Compensation" or "certificate" means the written order of the Commissioner that exempts the applicant from insuring its workers' compensation liability pursuant to N.J.S.A. 34:15-77.

"Certificate holder" means an employer who currently possesses a valid certificate.

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

"Compensation liability" means loss or damage from liability as established by N.J.S.A. 34:15-1 et seq.

"Employer" is as defined at N.J.S.A. 34:15-36.

11:2-33.3 Exemption from insuring compensation liability; filing requirements

(a) Any employer which applies for an exemption from insuring all or part of its compensation liability shall submit the following to the Commissioner:

1. A copy of its most recent annual financial report certified to be correct by an independent certified public accountant;

2. A copy of its Form 10K filing;

3. A brief description of the following, inclusive of all operations in all jurisdictions, for every separate applicant seeking an exemption:

i. The nature and location of the applicant's business operations;

ii. The applicant's number of employees; and

iii. The estimated average annual payroll; and

4. For corporate applicants domiciled in a state other than this State, a copy of the applicant's registration with the New Jersey Secretary of State.

(b) Upon the Commissioner's review and acceptance of the information submitted pursuant to (a) above, the applicant shall submit the following information to the Commissioner:

1. A completed application form in the format of Exhibit A in the Appendix incorporated herein by reference;

2. Evidence that excess insurance will be obtained in a form and amount acceptable to the Commissioner;

3. A loss history on open and closed claims for the applicant's workers' compensation and employee liability for the three years immediately preceding the date of the application; and

4. The application filing fee as set forth in N.J.A.C. 11:1-32.4(b)12.

(c) If the applicant is a corporation, the applicant may request that the Commissioner include the name of any subsidiary corporation under the control of that corporation in the certificate conditioned upon the applicant's compliance with the requirements of (a) above for each subsidiary corporation.

1. The Commissioner shall not include the name of any subsidiary in the certificate unless the ultimate parent corporation guarantees that it will discharge the subsidiary's liability as evidenced by filing an indemnity agreement in the format of Exhibit B in the Appendix incorporated herein by reference. The applicant shall also file a certification of the resolution of the board of directors, in the format of Exhibit C in the Appendix incorporated herein by reference, or in such other form which is acceptable to the Commissioner.

2. If the name of the subsidiary is included in the certificate of the ultimate parent corporation and ownership of the ultimate parent or subsidiary corporation changes, the ultimate parent or subsidiary shall reapply for the certificate within 30 days of the ownership change. The Commissioner may revoke the existing certificate if the ultimate parent or subsidiary fails to reapply for the certificate as set forth above.

(d) If the applicant is a subsidiary, and the subsidiary's ultimate parent does not apply for a certificate, the subsidiary shall obtain a guarantee from the ultimate parent that it will discharge the subsidiary's liability as evidenced by the filing of an indemnity agreement and certification of the resolution of the board of directors as set forth in (c) above.

(e) In addition to the filing fee set forth in (b)4 above, the applicant shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the applicant from a rating agency as determined by the Commissioner.

(f) If an application is approved, the applicant shall submit a surety bond in a form and amount determined by the Commissioner, with a minimum penal sum of $500,000 and an executed contract of excess insurance in an amount acceptable to the Commissioner. Upon receipt of the required surety bond and executed contract of excess insurance, the Commissioner shall issue a "Certificate of Order Granting Exemption from Insuring Liability for Compensation" to the applicant.

(g) All certificates shall be valid from the date of issuance until June 30 immediately following and may be renewed thereafter, pursuant to N.J.A.C. 11:2-33.4, for a one-year period beginning July 1 and ending June 30 the following year.

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

New Jersey Department of Insurance
Division of Financial Examinations and Liquidations
Attention: Workers' Compensation Self-Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625

11:2-33.4 Renewals

(a) Any certificate holder which applies for renewal shall submit the following so that it is received by the Commissioner not later than 60 days prior to the expiration of its current certificate:

1. A completed "Statement by Employer Exempted From Insuring Liability For Compensation" as set forth in Exhibit D in the Appendix incorporated herein by reference;

2. A supplementary statement of outstanding death or disability claims as set forth in Exhibit E in the Appendix incorporated herein by reference for the calendar year immediately preceding the expiration date of the certificate;

i. The certificate holder shall provide the name, address and telephone number of the person who actually completed the supplementary statement, and shall provide the location of the claim records utilized in the preparation of the statement.

ii. The certificate holder shall include, as an addendum to the supplementary statement, a statement of opinion by a qualified actuary attesting to the adequacy of reserves for outstanding death or disability claims that meets the requirements of N.J.A.C. 11:1-21.

iii. The supplementary statement shall be confidential and 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.;

3. A copy of the certificate of renewal of excess insurance;

4. A financial report for the fiscal year immediately preceding the expiration date of the certificate which is certified to be correct by an independent certified public accountant;

5. The renewal fee as set forth in N.J.A.C. 11:1-32.4(b)12; and

6. Any other information that is materially different from the information provided in the original application or from the information provided in the last renewal period.

(b) In addition to the renewal fee set forth in (a)5 above, the certificate holder shall be assessed and shall pay upon demand the amount necessary to reimburse the Department for expenses incurred in obtaining a risk assessment report on the certificate holder from a rating agency as determined by the Commissioner.

(c) After the submission of the application for renewal, the Commissioner may require a surety bond, or an increase in the penal sum of an existing surety bond, in an amount determined by the Commissioner if he or she deems it necessary to ensure that the certificate holder satisfies the requirements for the issuance of a certificate set forth in N.J.S.A. 34:15-77 and this subchapter.

(d) Upon approval of the application for renewal, the Commissioner shall issue a new certificate.

11:2-33.5 Cancellation of exemption

(a) A certificate holder may cancel its exemption from insuring compensation liability by notifying the Commissioner in writing by certified letter return receipt requested not later than 30 days prior to date such cancellation takes effect.

(b) Notwithstanding the cancellation of the exemption, the employer shall continue to file with the Commissioner a supplementary statement of outstanding death or disability claims as set forth in Exhibit E not later than June 1 of each year until such time as all open claims are resolved to final payment.

(c) If no surety bond is in effect at the time of the notification of cancellation, the Commissioner may require as a condition of cancellation the certificate holder to provide a surety bond, deposit or other security to ensure the discharge of its obligations under N.J.S.A. 34:15-1 et seq.

11:2-33.6 Failure to comply with subchapter; denial of exemption

Failure to submit the information required by this subchapter completely and accurately shall constitute grounds for and may result in the denial or refusal to renew an exemption from insuring workers' compensation liability.

11:2-33.7 Severability

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

APPENDIX
EXHIBIT A
(290)

Exemption No. .....

NOTE:—All Information Given in this Application is Confidential.

STATE OF NEW JERSEY
DEPARTMENT OF INSURANCE

EMPLOYER'S APPLICATION FOR THE PRIVILEGE OF PAYING COMPENSATION WITHOUT INSURANCE

(As provided by Title 34, Chapter 15, Article 77, of the "Revised Statutes")

To the Commissoner of Insurance of New Jersey:

The undersigned, an employer, subject to the provisions of Title 34, Chapter 15, of the "Revised Statutes" of New Jersey, hereby applies for the privilege of being exempt from insuring the payment of compensation, and submits the following facts under oath to the Commissioner of Insurance to enable him to determine if sufficient financial ability exists to render certain the payment of such compensation.

1. Name of applicant .....

2. P. O. address ..... (Number) (Street) (City or Town) (County) (State)

3. The applicant is ..... (State whether individual, co-partnership, limited partnership, corporation, receiver or trustee)

4. If a partnership: Date of formation of partnership ..... Date of commencement of business.....

Name of each partner	*Address*	*Amount of capital contributed*	*Individual's worth outside of interest in this business*
.....	.....	$.....	$.....

5. If a corporation: Date of incorporation.....Date of commencement of business .....

Incorporated under the laws of the State of .....Rates of dividends paid during each of the last five years? .....

List below the names and addresses of officers and directors and the par value of the stock owned by each.

Title	*Name*	*Address*	*Stock owned*
President			
Vice-Presdent			
Secretary			
Treasurer			
Director			
Director			
Director			
Director			
Director			
Director			
Director			
Director			
Director			

Is the employer a subsidiary? ..... If so, give name and address of parent company?

.....

6. Safety, sanitation and welfare conditions:

Is your plant inspected otherwise than by State authority? .....

If so, by whom? .....

Have you a committee of safety whose duty it is to recommend safety devices and to secure compliance with statutes or general orders of the Department of Labor as to safety and sanitation? .....

Do you maintain a hospital in connection with your works? ..... If so, state description of its equipment and service .....

.....

7. Do you maintain any reinsurance against losses?..... If so, furnish copy of policy.

8. Have you set aside any special funds in trust specifically designated for the discharge of outstanding claims of long duration? ..... If any, give name of beneficiary, amount and place of deposit.

.....

9. Give complete description of the organization, personnel and other special arrangements or facilities for performing the duties of a self-insurer .....

.....

.....

.....

10. FINANCIAL STATEMENT, AS OF THE LAST CLOSING DATE ....., 19.....

Assets	*Amount*	*Liabilities*	*Amount*
Cash on hand	$	Open accounts owing (not due)	$
Cash in ..... Bank		Open accounts owing (past due)	
Cash in ..... Bank		Notes payable	
Cash in ..... Bank		Owing to ..... Bank	
Stocks and Bonds owned (Schedule B)		Owing to other banks, bankers or brokers	
Merchandise in stock, at cost		Owing to other persons, relatives or friends	
(Insurance on same $.....)		Deposits and other trust funds	
Work in process or raw material in warehouse at cost		Goods held on consignment	
(Insurance on same $.....)		Liens on merchandise	
Bills receivable, Less than 12 mos. due		Chattel mortgages on	
Bills receivable, Over 12 mos. due		Bonded indebtedness	
Accounts, receivable, GOOD		Mortgages or deeds of trust on real estate (see Schedule C)	
Secured loans owned (Schedule A)		Unpaid workmen's compensation claims	
Machinery & fixtures (Cost $.....)		Other liabilities including reserves (specify):	
Animals & vehicles (Cost $.....)			
Real estate owned (Schedule C)			
If the employer is a partnership or a corporation, state the amount, if any, of bills and accounts owing from partners, officers, stockholders, directors or employees. (NOTE: The amount if any, should also be included among the accounts and bills receivable listed above.)			
..... $			
..... $			
..... $			
..... $			
Other assets (specify):			
	$		
Total		Total	$
		CONTINGENT LIABILITIES (Do not carry amounts out into column)	
		Upon bills receivable, not included in above statement, rediscounted ..... $	
		Accommodation paper or endorsements ..... $	
		Exchanged paper ..... $	
		Guarantees ..... $	
		Bonds ..... $	
		Capital stock outstanding	
		Surplus	

Are the above assets pledged as collateral? .....
If yes, explain .....

Are any of the above liabilities secured by collateral? .....
If yes, explain .....

Is foregoing statement based on actual inventory? ..... If so, date .....
Have the books been audited by a public accountant? ..... If so, when and by whom? .....

11. PROFIT AND LOSS STATEMENT AS OF THE LAST CLOSING DATE ....., 19.....

Losses	*Amount*	*Profits*	*Amount*
Expenses of operation	$	Surplus beginning of period	$
Taxes, rentals and interest paid		From operations	
Bad debts charged off		interest and discounts	
Depreciation charged off		investments	
Repairs or betterment charges		bad debts previously charged off	
Dividends paid or amounts otherwise withdrawn		All income other than from usual operations	
All other amounts withdrawn			
Surplus end of period			
Total	$	Total	$

What is the amount of net profits from operations during period? $ .....

12. Schedules referred to in above Financial Statement.

SCHEDULE A.—SECURED LOANS OWNED.

Description of Security	*Name of Maker*	*Address*	*Amount of Loan*
		Totals	$

SCHEDULE B.—STOCKS AND BONDS OWNED.

Description of Bonds or Stocks—(Give rate of interest and year of maturity of bonds, and number of shares of stock.)	*Par Value*	*Book Value*	*Market Value*
	$	$	$
Totals	$	$	$

SCHEDULE C.—REAL ESTATE OWNED.

Description and Location of Property	*Amount at Which Carried on Books*	*Amount of Liens on Property, if any*	*Estimated Actual Value of property*	*Fire Insurance Carried on property*
	$	$	$	$
Totals	$	$	$	$

13. Statement of Locations of Shops and other Workplaces, Number of Employees, Payrolls and Description of Operations in New Jersey.

This report covers the latest fiscal period of the Employer, extending from ..... to .....

Location of Factory, Office or other work place by town, city or other designation	*Estimated Average Number of Employees at Each Location*	*Division of Operations* (Payroll and number of employees are to be given on separate lines for each operation at each location.)	*Actual Payroll Expenditure for past Year*	*Rate (Do not fill in)*	*Premium (do not fill in)*
		(a) Clerical office employees and draftsmen engaged exclusively in office duties. (b) Outside salesmen, collectors and messengers. (c) Drivers and helpers. (d) Chauffeurs and helpers. (e) General operations at plant of employer or elsewhere within the State of New Jersey. Note: Classify each separate operation as closely as possible in accordance with insurance rate manual in force.			

14. Total estimated average number of employees ....., and total payroll expenditure in the past year $ ..... for *all* operations wherever conducted.

15. The applicant agrees to discharge faithfully and promptly all payments and obligations which are now due or shall become due under the provisions of Title 34, Chapter 15, of the "Revised Statutes" of New Jersey; to furnish to the Commissioner of Insurance such further information as is from time to time requested as a condition to the privilege of going without insurance; and to advise the said Commissioner of Insurance immediately of any accident resulting fatally to two or more employees.

.....
(Signature of Applicant Employer)

By ..... (Name) (Title)

Dated at ....., ..., 19.....

AFFIDAVIT

(The person subscribing to the below affidavit should be the employer himself; or if the employer be a partnership, one of the partners; or if employer be a corporation, its president, vice-president, secretary or treasurer.)

STATE OF NEW JERSEY }
County of ..... } ss.

..... first being duly sworn on oath deposes and says that he is acquainted with the affairs of the above-mentioned applicant employer, to which representations and statements set forth in the foregoing application relate; that he has read said application, knows the contents thereof and that said representations and statements therein contained are true to the best of his knowledge and belief.

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

.....

.....
(Official Title)

EXHIBIT B
INDEMNITY AGREEMENT

This agreement is made on _____, 19____, in the City of _____, County of _____, State of _____,

The parties to the agreement are _____, of _____, City of _____, County of _____ State of _____, hereinafter called "indemnitor," and _____, of _____, City of _____, County of _____ State of _____, hereinafter called "indemnitee."

Since indemnitee is a subsidiary of indemnitor and is an employer subject to the provisions of N.J.S.A. 34:15-1 et seq. and, as such, has applied to the Commissioner of Insurance of New Jersey for exemption from insuring payment of workers' compensation liability in conformity with the provisions of said statutes and an assumption by indemnitor of the self-insurance obligations of indemnitee is essential to secure payment thereof pursuant to the provisions of N.J.A.C. 11:2-33, in consideration of the grant of exemption from insuring liability by the Commissioner of Insurance of New Jersey to indemnitee,

It is hereby agreed:

In the event (indemnitee) shall not pay or cause to be paid directly to claimants the benefits due or that may become due under N.J.S.A. 34:15-1 et seq., then (indemnitor) covenants and agrees that it will pay to all such claimants the benefits due, with the expressed knowledge and understanding that the execution and acceptance of this agreement is for the benefit of unknown and unnamed claimants of (indemnitee) and (indemnitor) does hereby recognize this agreement as a direct financial guarantee to said claimants.

PROVIDED HOWEVER, (indemnitor) shall have a right to cancel and terminate this agreement at any time upon giving the New Jersey Insurance Department at least thirty (30) days written notice of its desire to do so; provided such cancellation shall not affect its liability as to any benefits payable for claims occurring prior to the date of cancellation specified in such notice.

This agreement shall be effective as of _____, 19____. Signed and sealed this _____ day of _____, 19____.

ON BEHALF OF INDEMNITOR

BY: _____
(signature and title)

ATTEST: _____
(signature and title)

ON BEHALF OF INDEMNITEE

BY: _____
(signature and title)

ATTEST: _____
(signature and title)

EXHIBIT C
CERTIFICATION OF RESOLUTION OF THE
BOARD OF DIRECTORS OF _____

Whereas the _____ and _____ [titles of corporate officers] of this corporation propose to execute a general indemnity agreement in favor of _____, a subsidiary, by which this corporation agrees and undertakes to guarantee the payment of any sum of money for compensation, including disability benefits, which may be or become legally due from said subsidiary under the provisions of the N.J.S.A. 34:15-1 et seq., and that this resolution will not be amended or abrogated without prior notice to the Commissioner of Insurance, State of New Jersey; and such agreement having been fully considered and approved by the directors present at this meeting;

Now, therefore, be it resolved that the _____ and _____ [titles of officers] are hereby expressly authorized to execute the general indemnity agreement in favor of _____ [subsidiary] by unanimous vote of the directors of this corporation.

I hereby certify that I am the _____ [secretary] of _____ [corporation], and that the above resolution is a true and accurate copy of a resolution unanimously adopted by the board of directors at a meeting duly called and held on _____, 19____, in the office of the corporation, at which a quorum of the directors was present.

Dated _____, 19____

_____
Signature and Title

[Corporate seal]

EXHIBIT D

(291) Exemption No._____

NOTE:—All Information Given in this Statement is Confidential

STATE OF NEW JERSEY

DEPARTMENT OF INSURANCE

STATEMENT BY EMPLOYER EXEMPTED FROM INSURING LIABILITY FOR COMPENSATION

To the Commissioner of Insurance of New Jersey:

The undersigned employer, being the holder of a certificate of exemption from insuring liability for compensation, in accordance with Title 34, Chapter 15, Section 77 of the "Revised Statutes," desires to have such certificate continued in force and for that purpose submits the following verified statement:

1. Name of employer_____
2. P. O. address _____ (Number) (Street) (City or Town) (County) (State)
3. The applicant is_____ (State whether individual, co-partnership, limited partnership, corporation, receiver or trustee)
4. If a partnership: Date of formation of partnership_____ Date of commencement of business_____

Name of each partner	Address	Amount of capital contributed	Individual's worth outside of interest in this business
		$	$

5. If a corporation: Date of incorporation_____ Date of commencement of business_____
Incorporated under the laws of the State of_____ Rate of dividend paid during the past year?____
List below the names and addresses of your officers and directors and the par value of the stock owned by each.

Title	Name	Address	Stock owned
President			
Vice-President			
Secretary			
Treasurer			
Director			
Director			
Director			
Director			
Director			
Director			
Director			
Director			

Is the employer a subsidiary?_____ If so, give name and address of parent company?

6. Safety, sanitation and welfare conditions:
Is your plant inspected otherwise than by State authority?_____
If so, by whom?_____
Have you a committee of safety whose duty it is to recommend safety devices and to secure compliance with statutes or general orders of the Department of Labor as to safety and sanitation?_____
Do you maintain a hospital in connection with your works?_____ If so, state description of its equipment and service_____
7. Do you maintain any reinsurance against losses?_____ If so, file copy of policy unless already on file_____
8. Have you set aside any special funds in trust specifically designated for the discharge of outstanding claims of long duration?_____ If any, give name of beneficiary, amount and place of deposit.
9. Give complete description of the organization, personnel and other special arrangements or facilities for performing the duties of a self-insurer_____

10. FINANCIAL STATEMENT, AS OF THE LAST CLOSING DATE ...., 19.....

ASSETS	AMOUNT	LIABILITIES	AMOUNT
Cash on hand	$	Open accounts owing(not due)	$
Cash in _____ Bank		Open accounts owing(past due)	
Cash in _____ Bank		Notes payable	
Cash in _____ Bank		Owing to _____ Bank	
Stocks and Bonds owned(Schedule B)		Owing to other banks, bankers or brokers	
Merchandise in stock, at cost		Owing to other persons, relatives or friends	
(Insurance on same $_____)		Deposits and other trust funds	
Work in Process or raw material in warehouse at cost		Goods held on consignment	
(Insurance on same $_____)		Liens on merchandise	
Bills receivable, { Less than 12 mos. due		Chattel mortgages on	
Over 12 mos. due		Bonded indebtedness	
Accounts receivable, GOOD		Mortgages or deeds of trust on real estate (see Schedule C)	
Secured loans owned (Schedule A)		Unpaid workmen's compensation claims	
Machinery & fixtures (Cost $_____)		Other liabilities including reserves (specify):	
Animals & vehicles (Cost $_____)			
Real estate owned (Schedule C)			
If the employer is a partnership or a corporation, state the amount, if any, of bills and accounts owing from partners, officers, stockholders, directors or employees. (NOTE: The amount if any, should also be included among the accounts and bills receivable listed above.)			
_____ $_____		CONTINGENT LIABILITIES (Do not carry amounts out into column)	
_____ $_____		Upon bills receivable, not included in above statement, rediscounted	
_____ $_____		_____ $_____	
_____ $_____		Accommodation paper or endorsements $_____	
Other assets (specify):		Exchanged paper $_____	
		Guarantees _____ $_____	
		Bonds _____ $_____	
		Capital stock outstanding	
		Surplus	
Total _____	$	Total _____	$

Are the above assets pledged as collateral? _____

If yes, explain _____

Are any of the above liabilities secured by collateral? _____

If yes, explain _____

Is foregoing statement based on actual inventory? _____ If so, date _____

Have the books been audited by a public accountant? _____ If so, when and by whom? _____

11. PROFIT AND LOSS STATEMENT AS OF THE LAST CLOSING DATE _____, 19____

Losses	Amount	Profits	Amount
Expense of operation	$	Surplus beginning of period	$
Taxes, rentals and interest paid		From operations	
Bad debts charged off		interest and discounts	
Depreciation charged off		investments	
Repair or betterment charges		bad debts previously charged off	
Dividends paid or amounts otherwise withdrawn		All income other than from usual operations:	
All other amounts withdrawn			
Surplus end of period			
Total	$	Total	$

What is the amount of net profits from operations during period? $_____

12. Schedules referred to in above Financial Statement.

SCHEDULE A.—SECURED LOANS OWNED.

Description of Security	Name of Maker	Address	Amount of Loan
			$
		Total	$

SCHEDULE B.—STOCKS AND BONDS OWNED.

Description of Bonds and Stocks—(Give rate of interest and year of maturity of bonds, and number of shares of stock.)	Par Value	Book Value	Market Value
	$	$	$
Totals	$	$	$

SCHEDULE C.—REAL ESTATE OWNED.

Description and Location of Property	Amount at Which Carried on Books	Amount of Liens on Property, if any	Estimated Actual Value of Property	Fire Insurance Carried on Property
	$	$	$	$
Totals	$	$	$	$

13. Statement of Locations of Shops and other Work places, Number of Employees, Payrolls and Description of Operations in New Jersey.

This report covers the latest fiscal period of the Employer, extending from _____ to _____

Location of Factory, Office or other work place by town, city or other designation	Estimated Average Number of Employees at Each Location	Division of Operations (Payroll and number of employees are to be given on separate lines for each operation at each location.)	Actual Payroll Expenditure for past year	Rate (Do not fill in)	Premium (Do not fill in)
		(a) Clerical office employees and draftsmen engaged exclusively in office duties. (b) Outside salesmen, collectors and messengers. (c) Drivers and helpers. (d) Chauffeurs and helpers. (e) General operations at plant of employer or elsewhere within the State of New Jersey. Note: Classify each separate operation as closely as possible in accordance with insurance rate manual in force.			

14. Total estimated average number of employees _____, and total payroll expenditure in the past year $_____ for *all* operations wherever conducted.

15. **Loss Exhibit**

A. Total amount of compensation (indemnity only) PAID during past year _____ $_____
B. Total amount of medical, hospital and surgical expense for the past year including cost of supplies and equipment for employer's plant hospital (paid $_____) total incurred_____ $_____
C. Outstanding Indemnity Reserve (total of reserve as per Col. 10 of supplementary statement) _____ $_____
D. Total incurred loss for past year [A. + B. + C. - C. (Prior Year)] _____ $_____

_____
(Signature of Employer)

By _____
(Name) (Title)

Dated at _____, _____ 19_____

AFFIDAVIT

(The person subscribing to the below affidavit should be the employer himself; or if the employer be a partnership, one of the partners; or if the employer be a corporation its president, vice-president, secretary or treasurer.)

STATE OF NEW JERSEY,
_____County. } ss.

_____first being duly sworn on oath deposes and says that he is acquainted with the affairs of the above-mentioned employer, to which the foregoing statement and supplementary statement of outstanding disability claims accompanying the same relate, that he has read said statements, knows the contents thereof and that the same are true and completely answer the several questions to the best of his knowledge and belief.

Subscribed and sworn to before me at _____, this _____day of _____, A. D. 19____

_____

_____
(Official Title)

EXHIBIT E

(291 A)

Supplementary Statement by.....(name of employer).....(address).....

Outstanding Death or Disability Claims, as of the last closing date.....19.....

Include all accidents occurring prior to above date which resulted in death or in disability exceeding seven days unless final payment has been made prior to said date in accordance with award or agreement approved by the Workmen's Compensation Bureau, or the right to recovery is barred by limitation of statute.

☞ This statement is to be rendered in all cases. If there are no claims of the kind indicated write "none" in the column numbered 2.

Workmen's Compensation Bureau Case No. 1	Name of Injured or Deceased 2	Date of Accident 3	Weekly Wages at Time of Accident 4	Weekly Compensation 5	Nature of Injury 6	Number of Dependents and Ages of each (Fatal Cases Only) 7	Year of Birth (when Injury is Permanent) 8	Probable Future Duration in Weeks 9	Estimated Total Future Payments 10

Additional supply of this sheet, if required, will be furnished upon request.

(a)

DIVISION OF REAL ESTATE COMMISSION

Prohibition Against Dual Compensation; Fee Cap for Mortgage Services Handling of Funds of Lenders or Borrowers

Proposed Amendments: N.J.A.C. 11:5-1.9 and 1.38

Authorized By: The New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6, 17; *Mortgage Bankers Assoc. of N.J. v. N.J. Real Estate Comm'n et al.,* 102 *N.J.* 176 (1986) (on remand—OAL Docket No. BRE-228-87).

Proposal Number: PRN 1992-235.

Submit written comments by July 3, 1992 to:

Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, N.J. 08625-0328

The agency proposal follows:

Summary

In this issue of the New Jersey Register, both the New Jersey Real Estate Commissioner ("Commission") and the Department of Banking ("Banking Department") adopt regulations implementing recommendations for rulemaking made by Administrative Law Judge Arnold Samuels in his initial decision in the case of *Mortgage Bankers Ass'n v. New Jersey Real Estate Comm'n, et al.,* OAL Docket No. BRE-228-87, on remand from the New Jersey Supreme Court. In addition, the Banking Department has published a new rulemaking proposal in this issue which will exempt from licensing under the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq., all real estate licensees that limit any fee charged for providing mortgage financing services with respect to residential one to six family properties to reimbursement of expenses, to a maximum of $250.00, payable at mortgage closing. The Commission here proposes amendments to its rules to enforce compliance with the fee cap regulation newly proposed by the Banking Department, and to better protect the public by regulating the activities of real estate licensees who may provide mortgage financing services for the maximum $250.00 expense reimbursement without becoming licensed by the Department of Banking pursuant to the newly proposed Banking regulations.

Real estate licensees should take note that by statute the New Jersey Department of Banking regulates first mortage loans on one to six family dwellings, a portion of which may be used for non-residential purposes. Therefore, the Banking Department's proposed exemption from mortgage licensing for real estate licensees that limit the fees charged for mortgage financing services will apply to larger properties, such as five and six family properties, and small properties which combine residential and commercial space, even though these properties are treated as commercial buildings under other Commission regulations, for example, N.J.A.C. 11:5-1.16(g), the Attorney Review Clause. Any real estate licensee who intends to broker or originate mortgage loans on such properties for a fee in excess of the $250.00 maximum expense reimbursement proposed by the Banking Department must be licensed by the Banking Department as a mortgage broker or banker pursuant to the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq.

To prevent commingling of lender or borrower funds with a real estate broker's own funds, the Commission proposes an amendment to its rule on licensees' handling of the funds of others, N.J.A.C. 11:5-1.9. This amendment prohibits real estate licensees from accepting funds for transmittal to a lender or mortgage broker in cash or by check made payable to the real estate licensee or real estate office. Funds may only be received in the form of check or money order made payable by the borrower directly to the lender or mortgage broker. This amendment is intended to halt a disturbing trend in complaints from buyer/borrowers alleging misappropriations of mortgage application fees paid over to real estate licensees in cash. This amendment is also intended to deter licensees who might be tempted to retain some portion of the borrower's funds intended for transmittal to lenders as hidden kickbacks or undisclosed fees in violation of newly adopted N.J.A.C. 11:5-1.38(e), 1.39 and 1.40.

Social Impact

These proposed amendments, like the Banking Department's companion proposal which exempts real estate licensees from the licensing requirements under the Mortgage Bankers and Brokers Act, are expected to benefit the public by making convenient computerized loan organization services available to consumers in real estate offices in New Jersey at modest cost. The proposed amendments will also have a beneficial social impact on consumers by preventing misappropriations, overcharges or hidden kickbacks when real estate licensees accept funds for transmittal to lenders.

Economic Impact

The proposed amendments are expected to economically benefit real estate licensees by permitting them to recoup the expenses of providing more comprehensive mortgage financing services to buyer/borrowers in their offices. Furthermore, the licensing costs incurred by real estate brokers who adhere to the $250.00 fee maximum will be reduced by consolidation of State regulation of these residential mortgage financing activities under the jurisdiction of the Real Estate Commission, eliminating the need for dual licensing and regulation by the Department of Banking. The amendments are intended to have a positive economic impact upon those buyer/borrowers who take advantage of the convenience of computerized mortgage financing services available in real estate offices. These borrowers will pay only a modest fee for these services at closing, or no fee at all if the transaction does not close.

Regulatory Flexibility Analysis

Most of the licensed real estate brokers affected by the Commission's rules are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed amendments will not affect those brokers who do not elect to charge fees for providing mortgage financing services to buyer/borrowers. Further, the proposed amendments will impose no adverse economic impact on those small brokers who do expand their services provided that any additional fees charged for mortgage financing services are limited as provided in the companion regulations proposed by the Banking Department. The funds or payment form requirement imposed by proposed new N.J.A.C. 11:5-1.9(d) will not result in any cost to licensees, and is necessary to maintain the integrity of licensees' operations as providers of mortgage services and the separation of those operations from their activities as licensees in sales transactions.

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

11:5-1.9 Funds of others: safeguards; **funds of lenders**

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

(d) A licensee is prohibited from accepting funds or payments from or on behalf of a prospective purchaser/borrower for transmittal to a lender or mortgage broker in cash or in any form made payable to the real estate licensee or to a real estate broker's trust or business account. A licensee may accept such funds from or on behalf of a purchaser/borrower only in the form of a check or money order made payable to the lender or mortgage broker. A real estate licensee who negotiates any such instrument or makes any use of such funds received for transmittal to a lender or mortgage broker shall be guilty of commingling pursuant to N.J.S.A. 45:15-17(o).

11:5-1.38 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

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

(f) Except as provided in (g) below, when providing mortgage financing services related to the purchase or sale of a one to six family residential dwelling, a portion of which may be used for non-residential purposes, located in New Jersey:

1. A real estate broker shall not solicit or receive compensation or reimbursement pursuant to subsection (e) of this rule other than the $250.00 maximum expense reimbursement permitted at closing by N.J.A.C. 3:38-5.2(a)4 unless licensed as a mortgage broker or mortgage banker by the Department of Banking pursuant to the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq.; and

2. A real estate salesperson or broker-salesperson shall not solicit or receive any compensation or reimbursement pursuant to (e) above from any person other than his or her employing real estate broker unless licensed as a mortgage broker or mortgage banker by the

Department of Banking pursuant to the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq.

(g) Any real estate licensee who is individually employed as a mortgage solicitor by a licensed mortgage banker or mortgage broker and registered in compliance with N.J.A.C. 3:38-5.3 may solicit and accept compensation from his or her licensed mortgage employer for providing mortgage services in residential mortgage transactions.

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Insurance of Municipal Bonds

Proposed Readoption: N.J.A.C. 11:7

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

Authority: N.J.S.A. 17:1-8.1; 17:1c-6(e).

Proposal Number: PRN 1992-214.

Submit comments by July 1, 1992 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules at N.J.A.C. 11:7 concerning the insurance of municipal bonds will expire on October 19, 1992. The New Jersey Department of Insurance (Department) has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Department is charged with regulating the insurance of municipal bonds pursuant to the authority of N.J.S.A. 17:1-8.1 and 17:1c-6(e). Accordingly, subchapter 1 of N.J.A.C. 11:7, entitled "Insurance of Municipal Bonds" was filed and became effective July 23, 1975.

The rules set forth in this chapter are multi-purpose in nature. Specifically, the rules define the subject matter and define contingency reserve. The rules stipulate that insurers shall be properly authorized and licensed in order to engage in the business of writing municipal bond insurance. Most importantly, the rules provide for substantial measures aimed at protecting the consuming public by establishing minimum capital and surplus, as well as contingency reserve standards for municipal bond insurance. The rules provide for limitations and restrictions on the types of municipal bond insurance which may be issued and the total net liability of an insurer in respect to any single issue of municipal bond insurance. Reserves for unearned premiums, unpaid losses and loss adjustment expenses are required by the rules. The rules state that all reserves required shall be reflected in all financial statements filed with the Department by the municipal bond insurer. Finally, the rules prohibit activities which are deemed to be a conflict of interest.

In essence the rules are a necessary element to effective regulation by the Department in the area of municipal bond insurance.

Social Impact

The compliance efforts of all insurers of municipal bonds are facilitated by the rules set forth in subchapter 1. The specific standards prescribed fulfill the Department's regulatory purpose, by preventing abuses and assuring that only qualified licensees and/or authorized insurance companies engage in this type of business. The consuming public has benefited from the oversight that now exists as to the propriety of financial arrangements and the soundness of financial practices. Without these rules, undesirable practices would reenter the marketplace and impose unreasonable and unacceptable risks upon the public at large.

Economic Impact

These rules do not impose any new requirements, fees or charges upon insurers of municipal bonds. Any cost attributable to these rules have been widely accepted by insurers of municipal bonds as a standard cost for the ordinary conduct of business. To the extent that the rules protect the consuming public from unreasonable risks, there is, indeed, a beneficial economic impact.

The primary economic impact of these rules is to establish minimum capital and surplus requirements for insurers that seek to be authorized for insurers that seek to be authorized or admitted to transact the business of municipal bond insurance in New Jersey. The rules also restrict the investment of contingency reserves to those classes of securities set forth in N.J.S.A. 17:24-1(a), (c), (d) and (f), and restrict the total net liability of an insurer with regard to a single issue of municipal bonds. These restrictions are necessary to protect the financial stability of insurers that write municipal bond insurance and have proved reasonable in practice.

The rules also require that a municipal bond insurer's Annual Statement filed pursuant to N.J.S.A. 17:23-1 compute reserves in a manner appropriate to the line of municipal bond insurance. Insurers are prohibited from paying commissions or gratuities to the underwriter or issuer of municipal bonds. These requirements have similarly proved to be reasonable and necessary to ensure the integrity of the business.

Regulatory Flexibility Analysis

Few, if any, insurers regulated by the rules in this chapter are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance, recordkeeping and financial reporting requirements imposed by the rules are clearly defined in the rules themselves, as outlined in the Summary above. Compliance with the various provisions of this chapter must be reflected in all financial statements filed by insurers engaged in the business of issuing policies insuring municipal bonds.

The Department has determined that the rules' requirements continue to be necessary in order to assure the financial stability and integrity of municipal bond insurance. Insurance of municipal bonds is imbued with a significant public interest because it provides unique benefits for public entities. Municipal bond insurance permits these public entities to obtain funding at lower interest rates, which saves costs in financing public projects. The restrictions set forth in the rules promote the long term financial integrity of the insurers that transact this line of business, and therefore the rules apply to all insurers or insurance producers without regard to size. The Department considers the requirements imposed to be the minimum necessary. As such, no differentiation in requirements may be provided based upon business size. The Department is unaware of any provisions of these rules that are excessively onerous to "small businesses" or unnecessary. Future annual costs of compliance with these rules are not expected to differ from current annual costs (see Economic Impact above). The use of the professional services of actuaries and accountants as currently required by the rules will continue to be necessary. These professional services are available either on the staff of insurers or from independent firms.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:7.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Licensee Training and Certification

Proposed New Rules: N.J.A.C. 13:2-22

Authorized By: Catherine A. Costa, Director, Division of Alcoholic Beverage Control.

Authority: N.J.S.A. 33:1-3, 12, 12.40 through 12.48, 23, 25, 26, 27, 31, 39 and 93.

Proposal Number: PRN 1992-233.

Submit written comments by July 1, 1992 to:

Catherine A. Costa
Director, Division of Alcoholic Beverage Control
140 E. Front Street
CN 087
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On January 22, 1991, Governor Jim Florio signed into law S-2707 as Chapter 9 of the Laws of 1991. This Act provides discretion in the Director, Division of Alcoholic Beverage Control, to establish an initial and continuing education program for holders of plenary retail distribution licenses and limited retail distribution licenses issued pursuant to N.J.S.A. 33:1-12. This new legislation is to be codified as N.J.S.A. 33:1-12.40 through 12.48. The purpose and intent of the legislation and the embodying rules offered for promulgation herein are expressed in the preamble to the legislation and provide as follows:

"1. The Legislature finds and declares that:

a. The retail alcoholic beverage industry is one of the most highly regulated industries of the State, controlled by a broad array of laws enacted by the Legislature and regulations promulgated by the Director of the Division of Alcoholic Beverage Control.

b. It is the public policy of this State, as set forth in P.L.1985, c.258 (C.33:1-3.1), to strictly regulate alcoholic beverages to protect the health, safety and welfare of its citizens, to foster moderation and responsibility in the use and consumption of alcoholic beverages, to protect the collection of State taxes imposed upon alcoholic beverages, and to protect the interest of consumers against fraud and misleading practices in the sale of alcoholic beverages.

c. Participation in the alcoholic beverage industry as a licensee under Title 33 of the Revised Statutes is deemed a revocable privilege conditioned upon the proper and continued qualification of the licensee.

d. Notwithstanding the degree to which retail licensees are regulated, licensees are not required to demonstrate knowledge and understanding of the laws and regulations or their social responsibilities, for the purpose of obtaining or renewing the privilege to hold a retail alcoholic beverage license.

e. Since the alcoholic beverage industry was deregulated in 1980, market forces have impacted the retail industry to such an extent that a significant number of licenses have changed, and continue to change hands and a large segment of new licensees have insufficient knowledge of their legal and social responsibilities.

f. These disruptive market forces and the numerous transfers of license ownership have occurred during a period of intensive legislative scrutiny of the industry, the enactment of many new laws and regulations, and the development of programs directed at the responsible sale and consumption of alcoholic beverages.

g. Retail alcoholic beverage licensees should be required to periodically demonstrate a knowledge and understanding of the regulations, laws, and public policies of the State impacting upon their industry."

The licensing records of the Division of Alcoholic Beverage Control indicate that there are currently issued 1,856 plenary retail distribution licenses in the State of New Jersey that will be subject to the educational training requirements of proposed subchapter 22. The holder of a plenary retail distribution license is authorized to sell all types of alcoholic beverages at retail to consumers in original sealed containers for consumption off the licensed premises only.

Division records further indicate that there are 106 limited retail distribution licenses in the State of New Jersey that will be subject to the educational training requirements of proposed subchapter 22. The holder of a limited retail distribution license is authorized to sell only unchilled brewed malt alcoholic beverages in quantities of not less than 72 fluid ounces at retail to consumers in original sealed containers for consumption off the licensed premises only. This latter type license can only be issued for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type bona fide food store at which groceries or other foodstuffs are sold at retail. The sale of groceries or foodstuffs must be the primary and principal business conducted at the location.

The specific sections in subchapter 22 proposed for adoption and a brief description of their provision follow:

N.J.A.C. 13:2-22.1 establishes the concept and requirement for plenary and limited retail distribution license holders to successfully complete a training program at times, with conditions, and under identified consequences for noncompliance, as set forth in the subchapter. Successful completion shall entail full attendance during the training session and participation in the program's group exercises and questioning activities.

N.J.A.C. 13:2-22.2 provides in subsection (a) that all current holders of plenary and limited retail distribution licenses are required to attend an initial training program within nine months from the effective date of these rules.

Subsection (b) defines what changes in license ownership would classify an entity as a new licensee to commence the nine month time period in which the initial course training and attendance must be successfully completed. The subsection considers a license holder to be a new licensee for training purposes when there is a newly issued license, an approved person-to-person transfer of a license is granted or a change occurs of 33⅓ percent or more of the stock of a corporate licensee.

Subsection (c) sets forth a requirement for attendance at supplemental training programs when determined necessary by the Director based upon modifications or changes in the law, regulations, policy or societal conditions. The schedule for supplemental training shall be set forth in the ABC Bulletin and further communicated to all licensees.

N.J.A.C. 13:2-22.3 sets forth which individuals must attend the training program on behalf of the holder of the plenary or limited retail distribution license, which license could be held by an individual owner, partnership, or corporation. The sole proprietor of an individually owned license must attend the training personally. For licenses held by a partnership, at least one of the partners actively engaged in the operation or control of the business must attend the training. For licenses held by a corporation, at least one of the corporate officers or a stockholder possessing 25 percent or more of the corporate stock, who is actively engaged in the operation or control of the business, must attend. When a licensee designates on its license application that it has a manager, the manager is also required to attend. Lastly, on a space available basis, a licensee can register other employees in the training program not mandated to attend on its behalf.

N.J.A.C. 13:2-22.4 provides that training programs shall be made available and reasonably accessible to all plenary and limited retail distributions licensees of the State. The programs shall be offered at least once every three months, subject to need, in each of the three geographic areas covered by the three telephone area codes in the State; as well as at least once annually on a Statewide basis.

N.J.A.C. 13:2-22.5 reflects the authorization under N.J.S.A. 33:1-12.45 to contract with a non-profit educational organization to accomplish the educational purpose and intent of the training law on a most cost effective basis. In furtherance thereof, the Director, Division of Alcoholic Beverage Control, may contract with a non-profit educational organization of the State of New Jersey to administer and conduct all or part of the educational programs required by this subchapter. It is currently contemplated that the Director will utilize this option, particularly in light of the current fiscal constrictions and human resource limitations in the Division. Combining Division personnel in the training program with the educational organization functioning as additional trainers and attending to the administrative scheduling and procurement of training materials and facilities, should enable the program to be provided in the most feasible basis at the least cost to the attendees.

N.J.A.C. 13:2-22.6 sets forth in subsection (a) that the Director, Division of Alcoholic Beverage Control, shall establish and revise annually the course content of the training program and approve the individual instructors and lecturers. While input and consultation in the area of course curriculum and instructors or lecturers will be received from any non-profit educational organization that may be involved in the training program, all final determinations in this area shall be vested in the Director.

Subsection (b) identifies the basic course content of the initial training program, which includes, but is not limited to, an explanation and development of the provisions of the Alcoholic Beverage Control Act, the Division's rules and regulations, New Jersey tax collection and remittance requirements, municipal laws and regulations, disciplinary and adjudicative procedures, administrative policies and Legislative purpose applicable to retail license activity, both State and Federal.

Subsection (c) identifies the basic curriculum for the supplemental training program, which shall include, but is not limited to, any changes that occur in the law or regulations governing the industry, any administrative or judicial policy modifications or pronouncements, prevailing market or societal conditions, and reinforcement or further expansion of matters addressed in the initial training program or revisions thereto.

N.J.A.C. 13:2-22.7 provides in subsection (a) for the payment by each attendee of a registration fee for attendance at the educational training session. The fee shall be based upon the actual costs attendant to the operation and maintenance of the program. The amount of the fee shall be reviewed annually and established by the Director, Division of Alcoholic Beverage Control at an amount not less than $50.00, nor more than $150.00.

Subsection (b) provides that a specific schedule of fees and any adjustments thereto will be promulgated by the Director and set forth and published in the Division's Alcoholic Beverage Control Bulletin and further disseminated to all affected licensees.

Subsection (c) provides that, for purposes of administration, if a non-profit educational organization is contracted with by the Director, the full registration fee will be collected by the organization. Twenty percent of the fee shall be remitted to the Director within seven business days after receipt for deposit in the State Treasury in order to compensate the Division for its direct participation in the program and its related certification and oversight activities. The balance of the registration fee will be retained by the educational organization to reimburse it for the cost of expenses incurred in scheduling the training sessions, providing notices, site rental expenses, payment of instructional expenses and course materials, maintaining records and books of account, and other related operational expenses required in the conduct of the program.

Subsection (d) requires the non-profit educational organization, if retained by the Director, to maintain true and accurate books of account of their receipts and expenditures in the conduct of the educational program. All records and documents related to the Association's activities shall be made available for inspection by the Director or her designee on demand. The educational organization shall submit to the Director annually an operational and fiscal report of its activities in the operation and conduct of the training program, and shall post an adequate performance bond if required by the Director.

N.J.A.C. 13:2-22.8 provides in subsection (a) for the issuance of a Certificate of Educational Training which will be issued to a licensee by the Director, Division of Alcoholic Beverage Control, upon successful completion of the training program. That certificate will contain relevant information concerning the identity of the attendee(s) for the licensee and the date and location of the training. The certificate may be displayed by the licensee on the licensed premises, and must be made available to the licensee's issuing authority with any application for renewal of its license.

Subsection (b) sets forth a procedure whereby a licensee can apply to the Director for a deferment of the training requirement. If the licensee establishes good cause why it cannot attend the training program within the time periods set forth in subchapter 22, the Director can issue an Order of Deferment extending the time for training, not to exceed six months. The Director shall promulgate a form for the deferment request which shall be accompanied by a nonrefundable processing fee of $25.00 to be paid to the Director and deposited in the State Treasury.

Circumstances envisioned as appropriate justifications for deferment of training would include, but are not limited to, significant personal health or family matters affecting the required attendee, an imminent pending transfer of ownership to a new entity, an extension of license to a fiduciary, such as an executor, trustee in bankruptcy or receiver, or in cases where there is a permanent intent to discontinue business and the license is placed in an inactive status pending municipal retirement or other disposition.

N.J.A.C. 13:2-22.9 lists the sanctions that will be imposed for a non-excused attendance or failure to successfully complete the required training programs. The first failure to timely or successfully complete the program will result in the licensee being required to pay a monetary penalty of $250.00 in lieu of institution of formal disciplinary proceedings. The licensee shall also be required to attend and successfully complete the program within the following three months. A second failure to attend or successfully complete has similar consequences, except the monetary penalty amount is raised to $500.00. A third consecutive non-attendance or failure to successfully complete again has similar consequences, except the monetary penalty is raised to $1,000. Any failure to pay a monetary penalty as noted above will result in the institution of formal disciplinary charges that can lead to an actual suspension of license or acceptance by the Director of a monetary penalty, in compromise, in lieu of license suspension, pursuant to N.J.S.A. 33:1-31.

A fourth consecutive failure to attend or successfully complete the required training program will result in the institution of formal disciplinary proceeding by the Director, pursuant to N.J.S.A. 33:1-31. That administrative proceeding can lead to an indefinite suspension of the license, with leave granted to the licensee to apply to lift the suspension, upon payment of a monetary penalty of $2,000 and proof of satisfactory completion of the required educational training program.

Social Impact

As reflected in the Legislative Statement attached to S-2707 this law permits the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety to establish an educational program for the 1,962 holders of plenary and limited retail distribution licenses (package store owners) in the State of New Jersey. Licensees would be required to successfully complete the educational programs offered or be subject to sanctions concerning the viability and continued operation of their licenses.

The program will include information on State laws governing the alcoholic beverage industry, the rules and regulations, policy and administrative determinations of the Director of the Division of Alcoholic Beverage Control, New Jersey tax law requirements, the techniques to identify persons under the legal age, various violation interdiction practices, the disciplinary and adjudicatory procedures applicable to situations of violative conduct, and the health aspects of alcoholic beverage use.

The alcoholic beverage industry is a highly regulated industry in the State, governed by a vast array of laws and regulations and requires a high degree of social consciousness and awareness of public policy. The turnover in ownership of package store licenses has been significant in the last 10 years since deregulation of the industry and far too many licensees have entered the industry with little knowledge of their legal and social responsibilities.

The educational training envisioned in S-2707 is a vehicle to educate these licensees concerning the laws, regulations, and their social responsibilities, with the expectation that the enhanced awareness acquired from these courses will better enable licensees to responsibly and properly exercise the privileges of an alcoholic beverage license.

Concurrent with the decrease in State initiated investigations of retail liquor license holders and their business operations that resulted from a realignment of investigative resources of the Department of Law and Public Safety and the actual reduction in State ABC inspectors, is the heightened need to support and encourage reliance upon voluntary compliance with the law and regulations by the industry. It is critical, therefore, to afford the licensed beverage industry a mechanism to acquire a comprehensive exposure to the laws, regulations and social responsibilities that govern the public trust reposed in the license privilege to sell alcoholic beverages to the public.

The regulatory provisions set forth in the proposed new subchapter 22 will have a diverse and comprehensive positive social impact in many areas. With respect to the holders of retail distribution licenses, the training requirement will ensure and verify that the licensees are adequately trained and made aware of the requirements attendant to the proper conduct of their business. The public-at-large will benefit from the enhanced training because the activities of licensees, particularly inappropriate conduct such as sales to minors, clearly impact on the health, safety and welfare of all the citizens of the State of New Jersey. The State, county and municipal law enforcement community will benefit from the expected improved voluntary self-compliance by the licensees, which will enable the law enforcement community to direct their limited resources to other important areas of oversight and deterrence.

Economic Impact

The first identifiable economic impact imposed by the provisions of subchapter 22 involves the registration fee established for the training program to be assessed against the holders of plenary and limited retail distribution licenses. The exact amount of the fee will be established by the Director, Division of Alcoholic Beverage Control, upon assessment of the actual expenses that will be entailed in conducting and maintaining the educational training program within a range of $50.00 to $150.00 per attendee. At the least, a licensee will be required to pay $50.00 for the training and at the most $150.00. A licensee requesting a deferment of training will be required to pay a $25.00 processing fee. In an industry where a medium size licensed business would have gross sales in the area of $300,000, the required fees are reasonable. Contrasted to the cost of registration is the economic savings all licensees stand to gain by eliminating their potential penalties for future minor and major violations that will be achieved through a greater awareness of their requirements under the law and their exposure to procedures and techniques to maintain full compliance.

Attendant to providing the educational training programs will be the costs involved to the Division of Alcoholic Beverage Control and any designated non-profit educational organization that will join the Division in the conduct of the programs. Expenses will include the scheduling, notice and promotional expenses, site expenses, instructional expenses, course materials, Certificates of Educational Training, Orders of Deferment and other related costs. Neither the Division of Alcoholic Beverage Control nor any designated non-profit educational organization will engage in this activity as a profit making venture. The fees derived from

the registrations (80 percent to the educational organization and 20 percent to the Division of Alcoholic Beverage Control) will reimburse the two entities for actual expenses incurred in the operation and maintenance of the training programs and will be adjusted upward or downward to achieve this objective. The $25.00 processing fee to be paid to the Division for requests for deferments will reimburse the Division for the administration and adjudication attendant thereto. In consequence, there will be no unreimbursed governmental costs incurred in furthering the legislative intent of S-2707.

With full and complete implementation of the educational training requirements of subchapter 22, it is reasonably anticipated that cost reductions will occur in the area of ABC law enforcement and investigations for violations, at both the State and municipal levels. This result is anticipated because a direct consequence of the enhanced, voluntary compliance fostered by the training will be a diminishment in the number and costs attendant to administrative hearings on violations and the required law enforcement oversight.

Lastly, but of paramount significance, the general public will most meaningfully achieve positive economic and societal benefits that directly flow from responsible, prudent alcoholic beverage activity by liquor licensees. For example, the training program will emphasize the totally unacceptable consequences of selling alcoholic beverages to persons under the legal age, not only because of the penalties that will be imposed for violations, but also because of the economic and societal dangers posed to all citizens when minors consume alcoholic beverages. These unacceptable consequences should be significantly reduced as a direct result of the training afforded the licensees. Training and identification of interdiction techniques to detect underage purchasers and to refuse them service will directly benefit the citizens of the State of New Jersey.

Regulatory Flexibility Analysis

The provisions in subchapter 22 will basically impact upon the 1,962 businesses that hold plenary and limited retail distribution licenses issued under N.J.S.A. 33:1-12. All of these licensees would be considered small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and no one business would be considered dominant in its field. No additional reporting or recordkeeping requirements are being imposed in connection with these proposed rules.

There is a compliance requirement imposed. At least one individual actively engaged in the operation or control of the licensed business must attend and successfully satisfy the educational training requirements imposed by these rules. In essence, that individual would spend one day or part thereof attending the required initial or supplemental training program. No capital costs are associated with the rules, nor will there be any need for any additional professional expenses to comply with the rules. The annual cost of compliance will range from $50.00 to $150.00. A $25.00 fee for requests for deferment must be paid. There is no variation in this expense to the affected licensees since they are all basically classified as small business under the Regulatory Flexibility Act definitions.

In juxtaposing the minor economic costs to attend the training programs imposed by these rules on the licensee, as noted in the Social and Economic Impact Statements above, it is estimated that the licensee should, through enhanced awareness of their obligations under law, reduce or eliminate the potential exposure to much greater economic costs from administrative, criminal or other civil penalties for violations. In application, these rules will lessen the economic impact on these businesses. By providing licensees with a complete and comprehensive awareness of those actions which will result in civil and criminal sanctions of much greater economic consequence, many of which are caused by their lack of knowledge, any negative effect on these businesses and society as a whole will be reduced.

Reporting, recordkeeping and compliance requirements are imposed on non-profit educational institutions with which the Director may elect to contract to provide the training program. Some such institutions may be considered small businesses. The contracted institutions would be required to remit 20 percent of the program registration fees to the Director; to maintain books of account on all aspects of the program to be available for inspection by the Director; to provide a complete annual report on the program to the Director; and, if required, post an adequate performance bond. The costs of providing the program will be met by the registration fee percentage retained by the institutions. No capital costs or need for professional services are anticipated. No differentiation in requirements is made based upon the size of the institution, since the information and security requirements imposed are necessary to ensure effectiveness of the program in meeting the objectives expressed by the Legislature.

Full text of the proposal follows:

SUBCHAPTER 22. LICENSEE TRAINING AND CERTIFICATION

13:2-22.1 Licensee training program established

All holders of a plenary or limited retail distribution license issued under the provisions of N.J.S.A. 33:1-12 shall successfully complete educational training courses at such times, under such conditions, and with identified consequences for noncompliance, as are hereinafter set forth in this subchapter.

13:2-22.2 Requirements for successful completion; time for completion

(a) All holders of a plenary or limited retail distribution license at the time this subchapter is adopted shall successfully complete an initial educational training program within nine months of the effective date of this subchapter. Successful completion shall entail attendance during the entire training program and satisfactory participation in the program's group exercise and questioning activities.

(b) Any person or entity that thereafter acquires a plenary or limited retail distribution license as a newly issued license, or by an approved person-to-person transfer of license, or any currently existing plenary or limited retail distribution license held by a corporation which is subject to a change of 33⅓ percent or more of its corporate stockholders, shall be required to attend and successfully complete an initial educational training program within nine months of the new license issuance, the approval of a person-to-person license transfer application or the change of 33⅓ percent or more of the stockholdings in a corporate license.

(c) All holders of plenary or limited retail distribution licenses that have successfully completed an initial educational training program shall be required to attend and successfully complete supplemental continuing educational training programs determined necessary by the Director based upon modifications and changes in the law, regulations, policy or societal conditions. The schedule for supplemental training shall be set forth in the Alcoholic Beverage Control Bulletin and further communicated to all affected licensees.

13:2-22.3 Individuals required to attend

(a) One or more of the following individuals shall be required to attend the educational training programs on behalf of the plenary or limited retail distribution licensee:

1. For licenses held in the name of an individual as a sole proprietorship, or for licenses held in the name of a partnership, the required attendee shall be the individual owner of the license, or at least one of the partners actively engaged in the operation or control of the business, respectively.

2. For licenses held by a corporation, the required attendee shall be at least one of the corporate officers or a stockholder owning at least 25 percent of the corporate stock, who shall be actively engaged in the operation or control of the business.

3. Where any licensee designates a manager on its license application, the required attendee shall also include that individual, in addition to the persons identified in (a)1 or (a)2 above.

4. In addition to the above, any licensee may register as an attendee, on a space available basis, any other officer, stockholder, clerk or other employee actively engaged in the operation or control of the licensed business.

13:2-22.4 Dates and location of training

The educational training programs required under this subchapter shall be available and reasonably accessible to all plenary and limited retail distribution licensees in the State. The training programs shall be offered at least once every three months, subject to need, in the geographical area covered by each of the current three telephone area codes in New Jersey; as well as at least once annually on a Statewide basis.

13:2-22.5 Designation of entity to conduct the training programs

In order to satisfy the training requirements on the most cost efficient basis, and in furtherance of the authority set forth in N.J.S.A. 33:1-12.45, the Director, Division of Alcoholic Beverage Control may contract with a non-profit educational organization in this State to administer and conduct all or part of the educational training programs required by this subchapter.

13:2-22.6 Training program curriculum

(a) The Director, Division of Alcoholic Beverage Control, shall establish and revise annually the course content and shall approve the individual instructors or lecturers who will conduct the training programs, in consultation with any non-profit educational organization he or she may have contracted with in accordance with N.J.A.C. 13:2-22.5.

(b) The curriculum for the initial training programs shall include, but is not limited to, an explanation and development of the following:

1. The provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., as it relates to the distribution, transportation, sale, and marketing of alcoholic beverages by retail distribution licensees; with detailed emphasis placed on the provisions of law governing the sale and delivery of alcoholic beverages to persons under the legal age;

2. The rules and regulations promulgated by the Director, Division of Alcoholic Beverage Control, N.J.A.C. 13:2, governing the sale, advertising, transportation, required records, promotion and marketing of alcoholic beverages, the disciplinary and adjudicatory procedures and consequences attendant to violative activity, and the permitted and prohibited conduct and use of the license and the licensed premises;

3. The application of municipal ordinances and regulations concerning the licensure, hours of sale, location, restrictions and permitted use of retail licenses and licensed premises established by municipal governing bodies or municipal boards of alcoholic beverage control;

4. Relevant administrative policies and determinations of the Director, Division of Alcoholic Beverage Control, the requirements and procedures for the collection and remittance of New Jersey taxes, and other State and Federal laws and regulations that impact upon the retail alcoholic beverage industry of the State of New Jersey; and

5. The relationship and application of the 10 point legislative declaration of policy and purpose set forth in N.J.S.A. 33:1-3 to the conduct and use of retail liquor licenses.

(c) The curriculum for the supplemental training program shall include, but is not limited to, any changes in the Alcoholic Beverage Control Act or other related laws affecting retail licensed businesses, new or amended regulations of the Division of Alcoholic Beverage Control, administrative and judicial policy changes, prevailing market or societal conditions and reinforcement or further expansion of matters addressed in the initial training program or revisions thereto.

13:2-22.7 Registration fees

(a) Each attendee shall be required to pay a registration fee in an amount to be established by the Director, Division of Alcoholic Beverage Control, giving due consideration to the actual expenses required to properly operate and maintain the educational training programs. The cost of registration shall be reviewed annually by the Director against the actual operational expenses and adjusted accordingly. In no event shall be registration fee for each attendee be less than $50.00 nor more than $150.00.

(b) A schedule of registration fees and any subsequent amendments thereto shall be set forth and published in the Alcoholic Beverage Control Bulletin, and otherwise disseminated to all affected licensees.

(c) For purposes of administration, if the Director contracts with a non-profit educational organization pursuant to N.J.A.C. 13:2-22.5, the full registration fee shall be remitted to the contracting educational organization. That organization shall forward 20 percent of the fee to the Director, within seven business days after receipt for deposit in the State Treasury. The balance of the fee shall be retained by the educational organization to reimburse it for the costs associated with the conduct and maintenance of the educational training programs, including the scheduling, notice and promotional expenses, site expenses, instructional expenses (other than personnel of the Division of Alcoholic Beverage Control or other State employees), course materials, and other related expenses.

(d) The non-profit educational organization shall maintain true and accurate books of account concerning all aspects of the operation and maintenance of the educational training program, which records shall be made available for inspection by the Director upon demand. The organization shall provide the Director with a full and complete fiscal and operational report detailing the program's activities on an annual basis; and it shall post an adequate performance bond if required by the Director.

13:2-22.8 Certification of educational training or order of deferment

(a) Upon the satisfactory completion of an initial or supplemental educational training program required under this subchapter, the holder of a plenary or limited retail distribution license shall receive from the Director, Division of Alcoholic Beverage Control, a Certificate of Educational Training. The certificate shall include the date and location of the completed training program, the name of the attendee or attendees on behalf of the licensee, and the licensee's name, address and license number. The Certificate of Educational Training may be displayed on the licensed premises and must be made available to the licensing issuing authority at the time of any application for renewal of the license.

(b) Any holder of a plenary or limited retail distribution licenses who submits that it will be unable to attend an initial or supplemental training program within the required time period, may apply to the Director, no later than 30 days before the expiration of the requisite training time period, for a deferment of the requirement for attendance in the educational program. The request for deferment shall be made to the Director on a form to be promulgated by the Director and accompanied by a non-refundable processing fee of $25.00. If the Director is satisfied that there is good cause for the deferment, the Director shall issue an Order of Deferment of the training requirement, subject to conditions thereon as may be appropriate. Any Order of Deferment shall not exceed six months.

13:2-22.9 Sanctions for noncompliance

(a) Any holder of a plenary or limited retail distribution license who fails to attend and successfully complete the required initial or supplemental educational training program within the time period set forth in this subchapter, and who has not received a currently valid Order of Deferment, shall be subject to the following administrative sanctions to be imposed by the Director, Division of Alcoholic Beverage Control.

1. The first failure to attend or successfully complete the training program within the time periods set forth in this subchapter shall constitute a first offense and shall subject the licensee to a monetary penalty of $250.00 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

2. Failure to attend or successfully complete the training program within the three month extension after a first offense shall constitute a second offense and subject the licensee to a monetary penalty of $500.00 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

3. Failure to attend or successfully complete the training program within the additional three month extension granted a second offender shall constitute a third offense and subject the licensee to a monetary penalty of $1,000 in lieu of institution of formal disciplinary proceedings, with a requirement that the training be completed within the following three months.

4. Any failure to comply with the final three months extension afforded a third offender shall subject the licensee to formal administrative charges that can lead to an indefinite suspension of license, with leave granted to lift the suspension upon payment of a monetary

penalty of $2,000 and proof of satisfactory completion of the educational training program.

(a)

DIVISION OF STATE POLICE

Criminal History Record Information Background Checks for Noncriminal Justice Purposes; Authorized and Unauthorized Access and Uses.

Proposed Amendments: N.J.A.C. 13:59-1.1, 1.2, 1.3, 1.4 and 1.8

Authorized By: Colonel Justin J. Dintino, Superintendent, Division of State Police.

Authority: N.J.S.A. 53:1-20.5, 53:1-20.6 and 53:1-20.7 (P.L. 1985, c.69); 28 CFR §§20.1, 20.3, 20.20, 20.21, 20.33, 20.36.

Proposal Number: PRN 1992-234.

Submit comments by July 1, 1992 to:
Colonel Justin J. Dintino, Superintendent
c/o State Bureau of Identification
New Jersey State Police
P.O. Box 7068
West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 53:1-20.5, 20.6 and 20.7, as well as N.J.A.C. 13:59 and 28 CFR §§20.1 et seq., the Division of State Police provides access to Criminal History Record Information for both noncriminal justice purposes relating to employment and/or licensing, and for criminal justice purposes. The following amendments provide: (1) that the State Bureau of Identification in the State Police shall produce records of New Jersey criminal court convictions, and any pending charges and arrests alleging violations of New Jersey's criminal laws, to authorized agencies for noncriminal justice purposes, and (2) the limitations on access, including dissemination, by both public servants and other authorized recipients of Criminal History Record Information for noncriminal justice and/or criminal justice purposes. Other technical and grammatical amendments are also included.

N.J.A.C. 13:59-1 is amended to define the scope of Criminal History Record Information which may be provided to authorized agencies for noncriminal justice purposes. This amendment is consistent with the amendment by the Federal Department of Justice to its own regulations regarding the same subject matter, which became effective on September 6, 1990 (55 F.R. 32072 (1990)). Prior to that amendment, the Federal government's policy precluded the dissemination of pending arrest data and charges which were more than one year old, despite their continuing viability. While the Division of State Police was not required to follow the former Federal policy, it was informally adopted, partly for purposes of maintaining consistency with the Federal practice, and partly to avoid the unintentional dissemination of stale charges, that is, charges no longer active or which resulted in acquittals or dismissals.

Contemporary experience with the so-called "one year rule" has revealed that it is both arbitrary and counter-productive, especially in light of existing advances in computer technology. The former rule precluded those agencies which had a significant and legitimate need for access to Criminal History Record Information from receiving relevant and factually accurate arrest data concerning prospective employees or licensees. For example, under the prior practice, arrests for rape or child abuse over one year old, and not accompanied by dispositions, could not have been provided to an authorized agency to determine that individual's suitability for employment in a child care center. Thus, the authorized recipient of the information never actually knew whether the applicant had a criminal record, or instead, whether he or she had a record of pending charges that could not be disseminated because of the "one year rule." Therefore, in 1990, the Department of Justice amended its policy. The amendments were designed to protect both the interests of the recipients of the criminal records and those of the subjects of the inquiries. (See 28 CFR §33(a)(3) and 28 CFR §50.12).

The amendments to N.J.A.C. 13:59-1.2 and 1.8 are intended to follow the Federal precedent to the extent practicable. The amendment to the definition of "processing Criminal History Information background checks," contained in N.J.A.C. 13:59-1.2, follows the Federal model and permits the State Police to disseminate all data relating to New Jersey State criminal court convictions and pending charges, regardless of age. This benefits the public in general, and the employer specifically. At the same time, the employment or licensing prospects of the subjects of criminal record inquiries are protected by a written direction to the recipient of the record to furnish the subject with an opportunity to complete and/or challenge the accuracy of the information contained in the Criminal History. Obviously, this should occur prior to rendering a final determination that the individual is not suitable for licensing and/or employment based on the record information. The proposed amendments also require a written direction to the recipient not to consider a pending charge without disposition as presumptive of guilt. See amendments to N.J.A.C. 13:59-1.8(a), (b) and (c).

With enhanced technology, improved communication between the courts and the State Bureau of Identification, and the ongoing complete redesign of New Jersey's Computerized Criminal Justice Information System (anticipated to be on line by March 1993), the possibility that criminal arrests or charges, which have been disposed of by way of acquittal or dismissal, will be erroneously described as "pending" is extremely remote. In that most unlikely event, the prospective employee or licensee would be afforded the opportunity to correct or complete the record as it pertains to pending charges or arrests.

The second purpose of these amendments is to insure that persons, especially public servants, maintain the confidentiality of Criminal History Record Information. The Federal regulations permit each state to disseminate its own Criminal History Record Information as it deems appropriate. Historically, the Attorney General and the Division of State Police have restricted dissemination to criminal justice and authorized noncriminal justice agencies as defined by these regulations. The restrictions on criminal justice and noncriminal justice use are contained in "Users Agreements" entered into between the Division of State Police and criminal justice agencies. N.J.A.C. 13:59-1.8 is amended to codify and reiterate existing State and Federal policies regarding the inability of public officers or employees to access computerized Criminal History Record Information for purposes other than those authorized in the performance of their official functions. This prohibition would include permitting access to Criminal History Record Information to unauthorized persons and entry into the system for unauthorized purposes. In short, public officers or employees may not utilize Criminal History Record Information data obtained from any computer, computer system or computer network linked to the New Jersey Criminal Justice Information System for reasons other than those lawfully permitted.

N.J.A.C. 13:59-1.8, as amended, also requires the State Police to include on any record provided to an authorized agency a written statement which prohibits the disclosure of the information contained therein for any purpose other than for which it was lawfully obtained. Thus, like the public officer or employee who accesses the computer to obtain Criminal History Record Information, the recipient of such information will clearly be on notice that he or she may not provide access to same for unauthorized purposes. A copy of these regulations shall also be provided to all users of the New Jersey Criminal Justice Information System.

The additions to the definitions included in N.J.A.C. 13:59-1.2 more accurately describe and distinguish the use of criminal history record information for authorized noncriminal justice and criminal justice purposes. These definitions will facilitate the restrictions on access imposed by N.J.A.C. 13:59-1.8. The amendment to N.J.A.C. 13:59-1.2 incorporates existing statutory authorization for collection for fees when both Federal and State criminal record checks are authorized. The remaining amendments are technical or grammatical.

Social Impact

While the Federal regulations permit each state to disseminate its own criminal history information as it deems appropriate (28 CFR §20.21), the Attorney General and the State Police have consistently adhered to a restrictive policy regarding such access. These regulations do not enlarge the category of authorized recipients of Criminal History Record Information. Rather, those already authorized to receive such records will be provided information relevant to making informed judgments pertaining to prospective employees or licensees. In this regard, the rule amendments strike an appropriate balance between the competing interests of authorized agencies and the subjects of authorized inquiries for licensing and/or employment. The rules will promote the public welfare by allowing for the release of all relevant Criminal History

Record Information to authorize entities for licensing and/or employment purposes. However, it also protects the interests of the subject of the inquiry by providing safeguards, most importantly, a written direction that the recipient permit the applicant to complete or challenge the accuracy of any information contained in the Criminal History Record.

The amendments also mandate that no public officer or employee shall access computerized Criminal History Record Information for any purpose other than that authorized by law or regulation. Moreover, no person who is unauthorized to access Criminal History Record Information shall be permitted access for any purpose. It is anticipated that these changes will assist in insuring that privacy interests are protected and that computer terminals are not misused for private or other inappropriate purposes.

Economic Impact

In adopting the proposed amendments, the New Jersey State Police will realize a savings in resources. Presently, in accessing Criminal History Records, the State Police manually redact any arrest information pertaining to charges over one year old. The abolition of the "one year" policy will result in a savings of time and resources. However, it is impossible to quantify the amount of monetary savings which may result from adoption of this rule. The proposed amendments impose no new costs on either authorized agencies or the subjects of criminal history background checks. The amendment to N.J.A.C. 13:59-1.2 merely codifies existing law regarding the collection of fees where Federal checks are authorized.

Regulatory Flexibility Statement

The vast majority of authorized agencies are not small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, there are several exceptions to this general rule, including banks (N.J.S.A. 17:9A-18.1), nuclear facilities (10 CFR Part 73), pharmaceutical companies (21 CFR §§1301.90 to 1301.93) and trucking companies (49 CFR §391.15).

There are no increases in statutorily fixed costs for any small business as defined by N.J.S.A. 52:14B-16 et seq. Nor are there any additional reporting or recordkeeping responsibilities. The only additional requirement relates to compliance with the written direction on the records received by agencies directing that they provide an opportunity for prospective employees and/or licensees to complete and/or challenge the accuracy of information contained in the Criminal History Record. It is impossible to estimate the initial or annual compliance costs associated with this provision. Such costs, if any, are anticipated to be extremely minimal, and will vary depending upon the volume of Criminal History Record Background checks received from the State Bureau of Identification.

The amendment is designed to minimize to the extent possible any adverse impact on small businesses. The ability of small businesses to receive information pertaining to all pending arrests and charges should far outweigh any minor inconvenience or minimal costs associated with compliance with the rule amendment. Moreover, small businesses will be subject to the same compliance requirements as other authorized recipients of criminal history record information.

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

13:59-1.1 Definitions

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

"Access" means to instruct, communicate with, store data in, gain entry into, retrieve data from, disseminate, or otherwise make use of any computer, computer system or computer network.

"Administration of criminal justice or criminal justice purpose" includes:

1. The detection, apprehension, detention, pretrial and post-trial release, prosecution, adjudication, correction, supervision or rehabilitation of accused persons or criminals offenders;

2. The hiring of persons for employment by criminal justice agencies; and

3. Criminal identification activities, including the accessing of the New Jersey Criminal Justice Information System by criminal justice agencies for the purposes set forth in paragraphs 1 and 2 of this definition.

"Attorney General" includes the Attorney General of New Jersey and, when authorized by the Attorney General to access Criminal History Record Information, his or her Assistants and Deputies.

"Authorized agency" means any agency [which is] authorized by a Federal or [state] **State** statute, rule or regulation, executive order, administrative code or local ordinance to [have] access [to the] Criminal History Record Information [File] **maintained as part of the computerized data base of the New Jersey Criminal Justice Information System for noncriminal justice purposes,** including licensing and/or employment purposes.

"Criminal History Record Information" or "CHRI" means information collected by criminal justice agencies regarding individuals, and stored in the computerized data base of the New Jersey Criminal Justice Information System, consisting of identifiable descriptions and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising therefrom, including sentencing, correctional supervision and release.

"Criminal justice agency" means:

1. The courts of the State of New Jersey; and

2. A government agency of the State of New Jersey or any subunit thereof which performs functions pertaining to the administration of criminal justice pursuant to a statute, ordinance or regulation, and which allocates a substantial portion of its budget to the administration of criminal justice.

"Fee" means that [price] **cost** established by law for processing all **criminal history** record requests **for authorized agencies** for **noncriminal justice purposes, including** [a] licensing and/or employment [purposes for authorized agencies].

"Licensing and/or employment purpose" means any [matter] **noncriminal justice purpose, including licensing and/or employment,** [in] **for** which applicant fingerprints or name search requests are submitted **by authorized agencies** as required **or permitted** by a Federal or State Statute, rule or regulation, executive order, administrative code **provision** or local ordinance to the State Bureau of Identification **for the** processing **and obtaining of Criminal History Record Information background checks** [from all authorized agencies].

"Processing Criminal History Record background checks" means:

1. [the] **The** process whereby the State Bureau of Identification**, at the request of an authorized agency, accesses the criminal history record data base of the New Jersey Criminal Justice Information System to** compare[s] a set of classifiable fingerprints or **to** conduct[s] a name search request to determine if [a] New Jersey [criminal history record] **Criminal History Record Information** exists for the person identified by the [request] **authorized agency**[.]; **and**

2. The furnishing by the State Bureau of Identification to an authorized agency of all records of convictions in a New Jersey State court, and all records of pending arrests and/or charges for violations of New Jersey laws which the New Jersey Criminal Justice Information System indicates as having no dispositions, regardless of their age, unless such records have been expunged pursuant to law.

"Public servant" means any officer or employee of State government or of any political subdivision or public body of the State, including any advisor or consultant retained by government to perform a governmental function.

"State Bureau of Identification, (S.B.I.)" means the State Bureau of Identification [as] created by **P.**L.1930, c.65 as a bureau within the Division of State Police.

13:59-1.2 Fees

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

(d) In addition to the fees specified in (a), (b) and (c) above a nonrefundable fee shall be collected from each applicant to pay for the actual cost of securing and processing Federal criminal record checks for noncriminal justice purposes, where such checks are authorized by law.

13:59-1.3 Separation of fees

All **noncriminal justice** licensing and/or employment [purpose] requests from authorized agencies will be subject to the prescribed

fees as set forth at N.J.A.C. 13:59-1.2 [limited to that purpose only]. **All such fees shall be deposited in the "Criminal History Record Information Fund" established pursuant to N.J.S.A. 53:1-20.7.**

13:59-1.4 Prescribed forms

(a) Requests for Criminal History Record Information by authorized [agents] **agencies** shall be on forms as prescribed by this section.

(b) The prescribed forms [must] **shall** be used to [obtain] **access** Criminal History Record Information [on] **for** any requests [which meets the dissemination criteria for the state licensing and/or employment purposes from authorized agencies] **from authorized agencies for noncriminal justice purposes, including licensing and/or employment.**

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

13:59-1.8 Limitations [of] **on** access [to] **and use of** Criminal History Record Information (CHRI)

(a) Access to Criminal History Record Information [(CHRI)] for noncriminal **justice purposes, including** licensing and/or employment [purposes] is restricted to authorized agencies as defined [in] **by this** [subchapter] **chapter. Such agencies shall limit their use of Criminal History Record Information solely to the authorized purpose for which it was obtained, and Criminal History Record Information furnished by the S.B.I. shall not be disseminated to unauthorized persons within agencies or disseminated outside of the agencies authorized to receive the record.**

(b) If Criminal History Record Information is to be used to disqualify an applicant, the person acting on behalf of the authorized agency making the determination of suitability for licensing and/or employment should provide the applicant with an opportunity to complete and/or challenge the accuracy of any information contained in the Criminal History Record. In this regard, the applicant should be afforded a reasonable period of time to correct and/or complete the record. A person should not be presumed guilty of any pending charge or arrest for which there is no final disposition indicated on the record.

(c) Except in those instances where no Criminal History Record Information is found at the time of the request, the State Bureau of Identification shall prominently display the following on any record accessed for noncriminal justice purposes, including, employment and/or licensing.

Use of this record is governed by Federal and State regulations. Unless fingerprints accompany your inquiry, the State Bureau of Identification cannot guarantee this record relates to the person in whom you have an interest. Use of this record shall be limited solely to the authorized purpose for which it was given and shall not be disseminated to any unauthorized persons. This record shall be destroyed after it has served its intended and authorized purposes. Any person violating Federal or State regulations governing access to Criminal History Record Information may be subject to criminal and/or civil penalties.

If this record is used to disqualify an applicant, the official making the determination of suitability for licensing and/or employment should provide the applicant with an opportunity to complete and/or challenge the accuracy of the information contained in the Criminal History Record. In this regard, the applicant should be afforded a reasonable period of time to correct and/or complete this record. A person is not presumed guilty of any charges or arrests for which there is no final disposition indicated on the record. This record is certified as a true copy of the Criminal History Record Information on file for the assigned State identification number.

(d) Criminal justice agencies, for purposes of the administration of criminal justice, and the Attorney General for any purpose related to the performance of his or her official duties, may access Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) or State Crime Information System data (SCIC) from the data base of the New Jersey Criminal Justice Information System.

(e) Except when authorized as a lawful exercise of official duties in conformity with (d) above, or unless officially authorized for noncriminal justice purposes, no public servant shall access or permit any other person to access Criminal History Record Information (CHRI), the Computerized Criminal History-Automated Name Index (CCH/ANI), or State Crime Information Center data (SCIC) stored in the New Jersey Criminal Justice Information System. This prohibition shall include use of any computer, computer system or computer network which may access CHRI, CCH/ANI, and SCIC stored in the New Jersey Criminal Justice Information System. Access by any public servant to CHRI, CCH/ANI and SCIC stored in the New Jersey Criminal Justice Information System shall be in strict conformity with these rules, the Federal regulations (28 CFR §20.1 et seq.) and any "New Jersey Criminal Justice Information System Users Agreement" entered into by any criminal justice agency and the Division of State Police.

(f) Any criminal justice agency which has executed a "New Jersey Criminal Justice Information System Users Agreement," and which accesses Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) or State Crime Information System data (SCIC) stored in the New Jersey Criminal Justice Information System for the performance of administration of criminal justice functions, shall be provided with the full text of these rules by the State Bureau of Identification.

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF NURSING

Notice of Request for Informal Public Input

Prescriptive Practice of Nurse Practitioner/Clinical Nurse Specialist

Authorized By: Board of Nursing, Golden Bethune, President.
Authority: P.L. 1991, c.377, section 11 (N.J.S.A. 45:11-50(a)).

Take notice that the Board of Nursing is soliciting, pursuant to N.J.A.C. 1:30-3.2(a), comments with respect to the implementation of section 10 of P.L. 1991, c.377 (N.J.S.A. 45:11-49), the Nurse Practitioner/Clinical Nurse Specialist Certification Act (the "Act"). Under section 10 of the Act, a nurse practitioner/clinical nurse specialist is authorized to "manage specific common deviations from wellness and stabilized long-term illnesses by: (1) initiating laboratory and other diagnostic tests; and (2) prescribing or ordering medications and devices, as authorized by subsections (b) and (c) of this section."

The full text of subsections (b) and (c) is set forth below.

To assist the Board in establishing regulations which will promote and protect the public health and welfare, comments and suggestions concerning section 10 of P.L. 1991, c.377, the prescriptive practice of the nurse practitioner/clinical nurse specialist, will be solicited at an **open public forum** to be held on Thursday, June 18, 1992, between 2:00 P.M. and 4:00 P.M. at:

Mercer County College
Communications Center, Room 110
1200 Old Trenton Road
Trenton, New Jersey 08690

Persons wishing to speak at the public forum should provide written notice to the Board of Nursing at least three business days prior to the date of the public forum. The address of the Board of Nursing is Post Office Box 45010, Newark, New Jersey 07101.

So that the Board may determine the sequence and identity of speakers who will provide it with relevant, noncumulative comments and data, the notice should include a brief synopsis of the proposed statement.

If necessary because of the number of individuals wishing to comment, speakers will be limited to a three-minute statement.

This is a Notice of Request for Informal Public Input (see N.J.A.C. 1:30-3.2(a)). Any rule proposal which may result concerning the subject of the public forum must still comply with rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

Full text of subsections (b) and (c) of section 10 of P.L. 1991, c.377 follows:

b. A nurse practitioner/clinical nurse specialist may order medications and devices in the inpatient setting, subject to the following conditions:

(1) no controlled dangerous substances may be ordered;

(2) the order is written in accordance with standing orders or joint protocols developed in agreement between a collaborating physician and the nurse practitioner/clinical nurse specialist, or pursuant to the specific direction of a physician;

(3) the nurse practitioner/clinical nurse specialist authorizes the order by signing his own name, printing the name and certification number, and printing the collaborating physician's name;

(4) the physician is present or readily available through electronic communications;

(5) the charts and records of the patients treated by the nurse practitioner/clinical nurse specialist are reviewed by the collaborating physician and the nurse practitioner/clinical nurse specialist within the period of time specified by rule adopted by the State Commissioner of Health pursuant to section 13 of P.L. 1991, c.377 (C.45:11-52); and

(6) the joint protocols developed by the collaborating physician and the nurse practitioner/clinical nurse specialist are reviewed, updated and signed at least annually by both parties.

c. A nurse practitioner/clinical nurse specialist may prescribe medications and devices in all other medically appropriate settings, subject to the following conditions:

(1) no controlled dangerous substances may be prescribed;

(2) the prescription is written in accordance with standing orders or joint protocols developed in agreement between a collaborating physician and the nurse practitioner/clinical nurse specialist, or pursuant to the specific direction of a physician;

(3) the nurse practitioner/clinical nurse specialist writes the prescription on the prescription blank of the collaborating physician, signs his name to the prescription and prints his name and certification number;

(4) the prescription is dated and includes the name of the patient and the name, address and telephone number of the collaborating physician;

(5) the physician is present or readily available through electronic communications;

(6) the charts and records of the patients treated by the nurse practitioner/clinical nurse specialist are periodically reviewed by the collaborating physician and the nurse practitioner/clinical nurse specialist; and

(7) the joint protocols developed by the collaborating physician and the nurse practitioner/clinical nurse specialist are reviewed, updated and signed at least annually by both parties.

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Public Records

Proposed Amendment: N.J.A.C. 14:3-6.5

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, and Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:2-13 and 47:1A-1 et seq.

BRC Docket Number: AX92030352.

Proposal Number: PRN 1992-215.

Submit written comments by July 1, 1992 to:

Edward D. Beslow, Legal Specialist
Board of Regulatory Commissioners
44 South Clinton Avenue
CN 350
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board has authorized the proposed amendment to N.J.A.C. 14:3-6.5 in order to bring this rule within the parameters of existing New Jersey statutory and case law. New Jersey Right to Know Law, N.J.S.A. 47:1A-1 et seq. (P.L. 1963, c. 73); *Irval Realty v. Board of Public Utility Commissioners,* 61 *N.J.* 366 (1972).

Under the Right to Know Law, all records which are required by law to be "made, maintained or kept on file" by an agency are defined as "public records." Accordingly, with only limited exception, every citizen of this State may have access to inspect such records. In obtaining access to records under this statute, an individual is not obligated to prove any personal interest therein.

In *Irval,* the New Jersey Supreme Court determined that, in that case, any interest in maintaining the confidentiality of the accident report was "clearly outweighed" by the interests of those persons who sustained personal injuries or property damages as a result of the accident. Accordingly, the court allowed access to the reports. It should be noted, however, that the court further ruled that the determination of whether a report should be released is best left to a case-by-case review. As the court stated at 61 *N.J.* 375:

Although we hold ... that as between the interest of the public in maintaining the confidentiality of these records and the interest of the plaintiffs in examining them, the latter outweighs the former, **nevertheless the facts of another case may quite possibly call for a different result. It may be that some material in a report such as those we are considering should not be revealed because the public interest will be best served by its remaining secret.** (Emphasis added)

The Board would further note the modification to former subsection (b) by eliminating the reference to the President as it is the opinion of the Commissioners that such decisions, as envisioned by that section, are to be made by the Board.

Social Impact

As noted hereinabove, the adoption of the proposed amendments will make this rule consistent with current statutory and case law in this State. New Jersey citizens will therefore have a more clear understanding as to those documents maintained by the Board to which they have a right of access.

Economic Impact

The proposed amendments will have no direct economic impact on the Board, those entities which it regulates or the public. However, they may do away with some future costs through the elimination of disputes as to what constitutes a public record.

Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The amendments concern access to records maintained by the Board of Regulatory Commissioners.

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

14:3-6.5 Public records

(a) All records, except those records set forth in [(d)]**(b)** below, which specifically are required by [statute] **law** to be made, maintained or kept by and for the Board of [Public Utilities] **Regulatory Commissioners** shall be public records within the meaning of [P.L. 1963, c.73] **N.J.S.A. 47:1A-1 et seq.**

(b) All records which specifically are required by law to be made, maintained or kept by and for the Board which relate to accidents and investigation of accidents concerning public utilities and to safety inspections and surveys of property and equipment of public utilities shall be deemed public records, copies of which may be purchased or reproduced under the provisions of N.J.S.A. 47:1A-1 et seq., unless it is determined by the Board that the inspection, copying or publication of such records shall be inimical to the public interest.

[(b)]**(c)** All other records of the Board shall not be subject to the provisions of [Chapter 73, P.L. 1963] **N.J.S.A. 47:1A-1 et seq.,** and shall be available for inspection and examination only to the extent

and for such purposes as may be expressly authorized by the [President of the] Board.

[(c)](d) The fee for copies of records, instruments and documents of the Board shall be the fee established by law.

[(d) All records which are required to be made, maintained or kept by and for the Board which relate to accidents and investigation of accidents concerning public utilities and to safety inspections and surveys of property and equipment of public utilities shall not be deemed public records, copies of which may be purchased or reproduced under the provisions of Chapter 73, P.L.1963.

(e) This Section shall take effect October 1, 1963, and shall remain in force and effect until amended, modified, repealed or terminated by action of the President of the Board or by the Governor.]

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Route 10 in Morris County

Proposed Amendment: N.J.A.C. 16:28A-1.8

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1992-220.

Submit comments by July 1, 1992 to:

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

The agency proposal follows:

Summary

The proposed amendment will establish "no parking" bus stop zones along Route 10 in Parsippany-Troy Hills, Morris County for the efficient flow of traffic, the enhancement of safety, the safe on and off loading of passengers at established bus stops, and the well-being of the populace.

Based upon a request from the local government, in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the "no parking" bus stop zones along Route 10 in Parsippany-Troy Hills, Morris County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.8 based upon the local government's request and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking" bus stop zones along Route 10 in Parsippany-Troy Hills, Morris County, for the efficient flow of traffic, the enhancement of safety, the safe on and off loading of passengers at established bus stops, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the installation of "no parking" bus stop zone signs. The cost involved in the installation and procurement of signs varies, depending upon the material used, the size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.8 Route 10

(a) (No change.)

(b) The certain parts of State highway Route 10 described in [(b) of this section] **this subsection** shall be designated and established as "no parking" **bus stop** zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is [hereby] granted to erect appropriate signs at the following established bus stops:

1.-2. (No change.)

3. Along the eastbound (southerly) side in Parsippany-Troy Hills, Morris County:

i. Near side bus stop:

(1) Powder Mill Road—Beginning at a point 35 feet west of the westerly curb line of Powder Mill Road and extending 85 feet westerly therefrom.

4. Along the westbound (northerly) side in Parsippany-Troy Hills, Morris County:

i. Far side bus stop:

(1) Powder Mill Road—Beginning at a point 35 feet west of the westerly curb line of Powder Mill Road and extending 75 feet westerly therefrom.

Recodify existing 3. as **5.** (No change in text.)

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Gross Income Tax Priorities in Claims to Setoff

Proposed Amendment: N.J.A.C. 18:35-2.11

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:4-8.64 and 54A:9-8.1.

Proposal Number: PRN 1992-222.

Submit comments by July 1, 1992 to:

Nicholas Catalano
Chief, Tax Services Branch
Division of Taxation
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment updates N.J.A.C. 18:35-2.11 to bring it into line with recent statutory changes which have affected the sequence of priorities in claims of setoff under the Gross Income Tax Act. These include amendments to N.J.S.A. 54A:9-8.1, as well as statutory provisions such as N.J.S.A. 54:4-8.64 and 8.65 (see P.L. 1990, c.61). (See also N.J.S.A. 2A:17-56.16 and 2A:17-56.25 dealing with child support.) The proposed amendment provides the following order of setoff priority with respect to homestead rebates: first, a local property tax deficiency; second, any unpaid child support; third, a State tax deficiency; and fourth, other agencies, including the Internal Revenue Service, by date of claim. The following setoff priority applies with respect to a gross income tax refund: first, any unpaid child support; second, a State tax deficiency; and third, other agencies, including the Internal Revenue Service, by date of claim.

Social Impact

The proposed amendment will assist the general public and certain governmental agencies in understanding the priority sequence used by the Division of Taxation in the setoff of homestead rebates and income tax refunds.

Economic Impact

The proposed amendment should have no specific economic impact, since it is a synthesis of statutory provisions which deal with setoff priorities in terms of homestead rebates and income tax refunds.

Regulatory Flexibility Statement

The proposed amendment will have no impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since the statutes in question deal with individual income tax refunds and with homestead rebates due taxpayers of the state. Thus, a regulatory flexibility analysis is not required.

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

18:35-2.11 Priorities in claims to setoff

(a) (No change.)

[(b) Notwithstanding the priority in (a) above, the Division has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund.]

(b) Notwithstanding the general rule for priority set forth in (a) above, the priorities for setoff are as follows:

1. With respect to homestead rebates:

i. A local property tax deficiency;

ii. Any unpaid child support;

iii. A State tax deficiency;

iv. Other agencies, including the Internal Revenue Service, by date of claim.

2. With respect to gross income tax refunds:

i. Any unpaid child support;

ii. A State tax deficiency;

iii. Other agencies, including the Internal Revenue Service, by date of claim.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF POLLUTION PREVENTION

Pollution Prevention Program Requirements

Pre-Proposed New Rules: N.J.A.C. 7:1K

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1B-1 et seq.; 13:1D-9; 13:1D-35 et seq.; and 34:5A-1 et seq.

DEPE Docket Number: 020-92-05.

Pre-Proposal Number: PPR 1992-5.

Take notice that the Department of Environmental Protection and Energy (Department) is preparing to propose a new chapter, N.J.A.C. 7:1K, to implement the provisions of the Pollution Prevention Act (Act), P.L. 1991, c.235 (codified at N.J.S.A. 13:1D-35 et seq. and 34:5A-1 et seq.) The Act, which authorizes the Department to implement a comprehensive program for making pollution prevention a primary technique in the control of hazardous substances and their environmental and health effects throughout the State, was signed on August 1, 1991 by Governor Florio. The goals of the Act include: reductions in the use of hazardous substances, reduction in the generation of hazardous substances as nonproduct output, and reductions in the multi-media environmental release of hazardous substances. N.J.S.A. 13:1D-36. Among other mandates, Section 6(a) of the Act requires the Department to adopt by February 1, 1993 rules and regulations necessary for the implementation of the Act. See N.J.S.A. 13:1D-40(a).

On January 21, 1992, the Department issued a pre-proposal initiating the public participation process for developing the Pollution Prevention Program Requirements (see 24 N.J.R. 178(b)). This first pre-proposal discussed seven issues which the Department felt would have the broadest impact on the scope and development of pollution prevention plans under the Act. Based upon the comments received in response to the January pre-proposal, the Department has decided to issue this second pre-proposal to obtain additional input from all interested parties prior to developing and issuing a formal rule proposal.

This second pre-proposal is part of the Department's efforts toward meeting the February 1, 1993 deadline. Following the close of the public comment period, the Department will consider all comments received (both in writing and during the public workshop) and use them to develop a formal rule proposal on the issues that are presented below. At the same time, the Department will be drafting rules for any remaining issues for which rulemaking is required by the Act to meet the February 1, 1993 deadline. The Department anticipates publishing a formal rulemaking proposal in the Fall of 1992 for the Pollution Prevention Program Requirements, N.J.A.C. 7:1K. These program requirements will be available for public comment in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Department will hold additional public meetings at that time. The Department will then respond to comments received on the formal rulemaking proposal and anticipates adopting a final rule early in 1993.

The Department will hold an interactive **public workshop** to provide opportunity for discussion of this pre-proposal. This public workshop will be held in a similar format to the two previous pollution prevention workshops in that formal testimony will not be presented. Rather, there will be an interactive dialogue on the issues outlined in this pre-proposal. The workshop will be held on:

Monday, June 15, 1992
10:00 A.M. to 3:00 P.M.
N.J. Department of Environmental Protection and Energy
401 East State Street, 1st floor Public Hearing Room
Trenton, NJ

Because of the limited seating capacity at this location, the Department is requesting that individuals interested in speaking at these sessions preregister before June 10, 1992 by calling Debra Milecofsky of the Office of Pollution Prevention at (609) 777-0518.

Interested persons may submit, in writing, views, proposed regulatory language, or arguments relevant to this pre-proposal by Wednesday, July 1, 1992 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

This notice of pre-proposal is being published in order to obtain comments of interested persons on several of the subjects to be included in the Department's rulemaking under the Act. Although the Department will be developing and proposing a comprehensive set of new rules to implement all provisions of the Act (and comments may be submitted on any aspect of the Act through this process), at this time it is seeking comments on the topics identified below because these issues have been identified as being of concern in the comments previously received by the Department.

This pre-proposal contains two separate sections. Section I provides a description of the Department's overall plans for implementing the pollution prevention program. This is intended to describe the Departmental policies that are being developed in order to shape the new pollution prevention program.

Section II is organized to be consistent with the format of the January pre-proposal. Each issue included in the first pre-proposal is repeated and four new issues (nonproduct output definition; in-process recycling definition; intermediate product definition; and reporting thresholds) have been added. Under each issue, there are three subsections. The first subsection describes the issue and, if applicable, summarizes the discussion of that issue in the first pre-proposal. The second subsection is a comment/response format summarizing general and specific comments received during the comment period along with the Department's response. The last subsection included for each issue is a summary of the Department's responses and a recommended direction on the issue.

The outline for the specific issues presented in Section II of this pre-proposal is as follows:

1. Pollution Prevention Plans
   A. Grouping Sources and Processes
   B. Targeting Sources and Processes
   C. Criteria for Identification of Production Processes Requiring Plan Revisions
   D. Reporting Requirements and Nomenclature
2. Criteria for Adding New Hazardous Substances
3. Input-Use Exemption

4. Incentives
5. Nonproduct Output Definition
6. In-process Recycling Definition
7. Intermediate Product Definition
8. Reporting Threshold
9. Confidentiality

Based on discussions during the two public workshops, the written comments received, and subsequent policy discussions with involved parties, the Department would like to highlight three issues that appear to be generating the most concern:

1. Targeting: There are two key points to this issue. The first is whether facilities should be allowed to complete their pollution prevention plan Part I inventories for less than 100 percent of their production processes or whether every facility should be required to do a complete Part I inventory for each process at their facility. There appear to be strong arguments on both sides of this point. Industry groups argue that such targeting would allow them to focus their resources on implementation of pollution prevention measures rather than on exhaustive paperwork with little practical value. Environmental groups argue that a complete Part I inventory must be done in order for a facility to identify all pollution prevention options, not just the most obvious or cost-effective options. The Department has outlined an approach in this pre-proposal for targeting that essentially establishes a two-step procedure to provide flexibility for targeting sources and processes during preparation of Part I of a pollution prevention plan. According to this approach, the facility would use estimates of facility-level data to target specific processes and sources. At the same time, the facility would be expected to conduct a complete Part I analysis for targeted sources. For those processes and sources targeted during Part 1, the facility's Part 1 inventory would be a more detailed analysis only on the targeted sources and processes. The Department is specifically seeking comments on how many facilities would choose to use this option and whether they believe it is necessary.

The second key point to this issue concerns Part II targeting. The approach suggested in this pre-proposal would establish a menu of options from which a facility would choose to target processes for Part II of its pollution prevention plan. This approach is fundamentally different from the more flexible menu of criteria approach proposed for grouping. The Department has chosen a more restrictive approach for Part II targeting because those processes which are **not** targeted will be eliminated from Part II analysis for a minimum of five years, as opposed to the situation in grouping in which processes are not eliminated from further analyses. The Department is seeking comments on the fundamental philosophy that underlies the difference in approaches suggested for Part II targeting versus grouping.

2. Input-Use Exemptions: N.J.S.A. 13:1D-40(e) exempts a facility from setting a use reduction goal for a hazardous substance for which there is no reasonably available or economically viable alternative, but still requires the facility to consider pollution prevention methods other than material substitution for the substance and the process. The Department believes that the Act clearly requires facilities to conduct Part I and Part II of a pollution prevention plan (except for the provisions that apply to use reduction goals) for a hazardous substance for which an input-use exemption is being claimed. However, the Department is concerned because, as evidenced by written comments received on the first pre-proposal, considerable confusion exists on this issue. Some companies mistakenly believe that this provision would exempt them from all pollution prevention planning for the substance and the process. Therefore, the Department has provided guidance in Section 3, below, as the first step in educating concerned parties about input-use exemptions.

3. Nonproduct Output (NPO): Several issues have been raised regarding the terms "NPO" and "in-process recycling." In this pre-proposal, the Department has outlined several options for defining "in-process recycling" that could be adopted through rulemaking and urges that specific comments be provided regarding the advantages, disadvantages and implications of each option.

In addition, issues have been raised regarding the definition of "product" as used in the Act, and the definitions of closed-loop recycling, co-product and by-product as they are used in New Jersey and Federal hazardous waste regulations. Although all of these terms are related, they are not interchangeable, resulting in materials having different status under different sets of regulations at the same point in time. Although the Department believes it would be desirable to have a consistent set of terms, it recognizes that due to the complexity of both the concepts and regulations involved, it will not be possible to achieve this goal in the short term.

I. Description of Department's Plans for Implementation of the Pollution Prevention Act:

The development and passage of the New Jersey Pollution Prevention Act marked the dawn of a new age in environmental protection. Inherent in the form and function of the Act was the understanding that the "command and control" single-media end-of-pipe approach to environmental protection was limited in reducing the impact of using and generating hazardous substances on the environment. In the Act, the Legislature declared that "the inherent limitations of the traditional system of pollution control should be addressed by a new emphasis on pollution prevention, including the reduction of the use of hazardous substances in industrial and manufacturing processes; that a rigorous accounting of the use of hazardous substances, the generation of hazardous substances as nonproduct output, and the multimedia environmental release of hazardous substances at each step of an industrial process will identify the points at which, and the procedures by which, pollution can be prevented; that pollution prevention can be achieved through a more efficient and rational use of hazardous substances, or through the use of less hazardous substitute substances or processes less prone to produce pollution; and that a soundly planned pollution prevention program can be implemented without adversely affecting the State's economic health or the livelihood of those employed by industries that use and discharge hazardous substances." See N.J.S.A. 13:1D-36.

Toward this end, the Department has embarked upon this process of rule development seeking to implement the provisions of the Act and, as such, to change and improve the existing environmental protection regulatory structure. This second pre-proposal is part of an extensive public participation process that the Department hopes will incorporate the concerns of all affected parties.

Following the publication of the first pollution prevention pre-proposal and the two public workshops, the Department has developed a four-pronged policy approach to serve as a guide in the development of the Pollution Prevention Program Requirements. The Department believes that articulating a "big picture" policy approach will enable public commenters to provide more specific and useful comments on the issues contained. There are four facets to the Department's pollution prevention policy approach, as follows:

1. Flexibility. It was clear from early in the development of the Act that "pollution prevention" would mean different things to different facilities and that encouraging facilities to shift their focus from the end-of-the-pipe to the production process would require the Department to shift its traditional methods of regulation. Therefore, to the maximum extent possible, the Pollution Prevention Program Requirements will provide individual facilities with considerable flexibility in meeting their obligations under the Act. In areas where it appears that providing flexibility in pollution prevention plan development will cause tradeoffs with the degree of specificity required by plan approval criteria, the Department will attempt to describe those tradeoffs and solicit comments from the public on the direction to be taken in the rules.

While the Department intends to implement the pollution prevention program with provisions for maximum flexibility, the Act does require the Department to collect certain types of data. The Department intends to collect this data in a format that is least burdensome to industry and is respectful of industry's concerns regarding confidentiality. Yet it must be made clear that the Department has an obligation to collect substantive information as mandated by the Act.

The Department believes that the level of specificity of data it routinely needs to conduct its analysis and meet its obligations under the Act is less than the level of specificity of data needed by industry to use pollution prevention planning as a strategic decision-making tool. This pre-proposal's discussion of the nature of information to be reported on plan summaries and progress reports outlines an approach that is intended to provide the Department and the public with the data required by the statute in a way that is easily reportable by industry. The Department will use this data to track pollution prevention progress by a given facility over time and to conduct the trend analysis required by the Act (N.J.S.A. 13:1D-45).

There were extensive comments on the first pre-proposal in support of flexibility in administering all aspects of the Act. These comments have resulted in the Department expanding the role of flexibility on

several issues, as is apparent in the discussion of specific issues later in this pre-proposal.

2. Design by Incentive. Although the Act contains several enforcement mechanisms, it appears that the Legislature believed that the economic and environmental incentives provided by pollution techniques would serve as the primary motivation for industrial facilities to adopt aggressive pollution prevention strategies.

In keeping with the spirit of the Act, the Department plans to issue all 10-15 Facility-Wide Permits required by the Act to volunteer facilities. See N.J.S.A. 13:1D-48. Provided that 10-15 facilities volunteer to be a part of this innovative effort and to enable the Department to fulfill its legislative mandate, the Department does not intend to unilaterally act against any facilities to transform pollution prevention plan requirements into enforceable permit conditions through issuance of a facility-wide permit. The Department believes that there are significant benefits to companies for volunteering in the facility-wide permit pilot effort including: providing the Department with policy guidance at the inception of a new program; potential regulatory flexibility; and administrative ease of consolidated regulatory requirements.

In addition, the Department plans to postpone until 1996 any unilateral implementation of N.J.S.A. 13:1D-43(c), which allows the Department to incorporate pollution prevention plan requirements into an industrial facility's existing single-media permits. In 1996, the Department is required to report to the Legislature and the Governor on the successes or shortcomings of the facility-wide permit program as well as on the Department's trend analysis efforts. At that time, the Department will have compiled pollution prevention plan summaries and one year of progress reports, and completed the trend analysis mandated by N.J.S.A. 13:1D-45. The Department plans to perform this trend analysis to learn how best to implement N.J.S.A. 13:1D-43(c) and (d) and to evaluate whether to expand the facility-wide permit program. By 1996, the Department will also have completed its pre-pilot facility-wide permitting program, which currently involves three industrial facilities.

The Department believes that these approaches will remove the potential disincentives for facilities to set aggressive goals for pollution prevention. The Department also plans to incorporate specific incentives into the rules, as will be detailed in Section 4 of this pre-proposal.

3. Simplicity of Program Design. The Department's goal is to design a pollution prevention program that is effective, accessible to industry and the public, and is not weighed down by unnecessary administrative burdens. To this end, the Department will pursue, to the greatest extent possible, consolidating pollution prevention reporting with the State and Federal Right-to-Know reporting. The Department also intends to assign an individual Department staff member to each covered facility; maintain some form of regular written communication with the public and industry; develop a simple database for pollution prevention data to ensure that data is accessible to the public in a timely manner; ensure that the public and industry are fully involved in developing pollution prevention policy; and encourage industry and the public to identify new pollution prevention policies and techniques that should be considered by the Department.

4. User-friendly Documents. Rather than provide the public with a combination of rules, formal guidance documents, informal guidance and instructions for filling out forms, the Department will be developing a set of rules (as required by N.J.S.A. 13:1D-40(b)), and a pollution prevention guidance document. The set of rules will largely consist of the specific pollution prevention planning requirements contained in the Act, and will also include additional requirements where needed to resolve ambiguity in the Act or to implement areas in which the Act grants discretion to the Department to develop program requirements. In addition to the set of rules, the Department will also develop a pollution prevention guidance document. The pollution prevention guidance document will be a user-friendly document intended to differentiate between the items required to be reported in the rules, as well as examples and methods of how to calculate the items required to be reported. The examples and methods will not be binding, but will be provided for illustration and can be used by facilities who elect to use them. The rules will be reproduced in the guidance document alongside the guidance on how to comply with them. In addition, the guidance document will contain the forms to be used for pollution prevention plan summaries and progress reports including instructions to be used to complete the forms. It is hoped that by providing all of this information in one document, it will simplify the reporting of information required by the Act.

In addition, the Department plans to pre-test the guidance document using a limited number of volunteer facilities and to make the document available for public review and comment.

The Department believes that this type of guidance document is appropriate for a program that aims to be non-prescriptive in its policies and program requirements. In addition to providing guidance via the development of a user-friendly guidance document, the Department intends to initiate an aggressive education and outreach program to industry prior to the reporting deadline of July 1994. The purpose of the outreach program will be to eliminate confusion over the requirements of the pollution prevention program as well as to encourage businesses to see their pollution prevention planning efforts as a part of their strategic decision-making process rather than an administrative burden.

The Department welcomes comments on all aspects of this four-pronged policy approach.

II. Outline of Specific Issues

1. Pollution Prevention Plans

A key provision of the Act requires priority industrial facilities to prepare pollution prevention plans and submit information on the use and release of "hazardous substances," "hazardous wastes" and "nonproduct output" as defined by the Act. A priority industrial facility is defined by N.J.S.A. 13:1D-37 as "any industrial facility required to prepare and submit a toxic chemical release form pursuant to 42 U.S.C. §11023" or any other facility designated as a priority industrial facility by the Department through rules and regulations to be developed in the future. The term "hazardous substance" is defined in N.J.S.A. 13:1D-37 to include "any substance on the list established by the United States Environmental Protection Agency for reporting pursuant to 42 U.S.C. §11023," (commonly known as the Federal Right-to-Know list), and any other substance defined by the Department through the process described in Section 2 of this pre-proposal. At the present time, there are approximately 329 chemicals and chemical compounds on the Federal Right-to-Know list. However, this list can be expanded at any time by the United States Environmental Protection Agency through rulemaking, which would automatically expand the list of hazardous substances regulated by the Act. "Hazardous wastes" are defined by N.J.S.A. 13:1D-37 as "any solid waste defined as hazardous waste by the department" pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. See also N.J.A.C. 7:26-1.4. The term "nonproduct output" ("NPO") is defined by N.J.S.A. 13:1D-37 to include "all hazardous substances or hazardous wastes that are generated prior to storage, recycling, treatment, control, or disposal and that are not intended for use as a product."

Pollution prevention plans are the primary mechanism to be used by industrial facilities to achieve the goals of the Act. Pollution prevention plans are to be prepared in two parts, as follows:

Part I of a pollution prevention plan will consist of a comprehensive inventory of the use, generation and release of hazardous substances and the generation of hazardous waste and nonprofit output at each source and production process at an industrial facility. See N.J.S.A. 13:1D-41(b).

Part II of a pollution prevention plan will consist of a detailed analysis of targeted production processes and sources including descriptions of each targeted production process and targeted source that is identified by the facility, identification of available pollution prevention options, a feasibility analysis of potential pollution prevention options, goals for reduction of use and generation of nonproduct output per unit of production, and descriptions of the methods to be used to achieve stated goals for reductions in the use and generation of hazardous substances and nonproduct output. See N.J.S.A. 13:1D-41(c).

A. Grouping Sources and Processes

a. Summary of Issue

N.J.S.A. 13:1D-41(k) requires the Department to develop criteria for considering sources or production processes that use similar ingredients to produce one or more similar products as a single source or production process for the purpose of reporting information in a pollution prevention plan, pollution prevention plan summary or progress report. This provision, known as "grouping," offers the potential for significant flexibility for many "batch" and other operations. The Department expects that grouping of sources or processes will reduce time and resources

spent on materials tracking without reducing the effectiveness of the pollution prevention plan.

In the January pre-proposal, the Department suggested several broad criteria which could be used to define similar ingredients and similar products. These criteria included: similar chemical properties, similar environmental impacts, generation of the same hazardous substances, and use of the same production equipment to manufacture similar classes of products.

In addition to these broad criteria, the Department also suggested that a "no statistically significant changes in the calculation of nonproduct output per unit of product" criterion could be used in grouping production processes. This is intended to avoid groupings that lead to noncomparable units from year-to-year. In other words, if different ingredients, or statistically significant changes in the proportions of similar ingredients or products are annually generated, then grouping would not be appropriate.

b. Comments and Responses

1. Comment

All commenters stressed that maximum flexibility be provided to enable facilities to take full advantage of grouping and not limit its applicability. Specific industries which seemed to be impacted the most included pharmaceutical manufacturers, flavors and fragrances manufacturers, batch chemical manufacturers and small businesses. To maintain maximum flexibility, industry urged the Department not to adopt a mandatory grouping classification scheme which must be used by each covered facility.

Industry also suggested that the Department establish an "other" category which would provide the facility even greater flexibility to develop its own grouping criteria. Some commenters suggested that there be a "demonstration" or proposal to the Department or an approval by the Department for grouping criteria or methods identified by a facility.

Response

The Department currently intends to offer significant flexibility by allowing each facility to make its own decisions on grouping sources and processes. The Department plans to allow facilities to develop their own criteria to define what is "similar" when identifying ingredients and products to be grouped.

Facilities may be able to develop other criteria for grouping by focusing on equipment and processes at the facility and the particular physical locations of equipment at the facility.

The Department intends to propose that no demonstration is necessary for grouping criteria developed by individual facilities. The Department does not plan to review or approve the criteria or the use of the criteria in grouping sources and processes at the facility. However, the Department plans to reserve the right to review and approve a facility's grouping decision as part of the Department's authority for pollution prevention plan review and approval (N.J.S.A. 13:1D-42.b and N.J.S.A. 13:1D-44.b).

2. Comment

Several commenters disagreed with the Department's description in the January pre-proposal of process materials accounting as a "detailed quantitative analysis of the chemicals used at each **step** in each production process." Industry contended that requiring an analysis at each "step" is too restrictive and contrary to the flexibility needed for successful pollution prevention planning by industry.

Response

Use of the term "step" in the description of materials accounting was not intended to make the Part I analysis required by N.J.S.A. 13:1D-41 more restrictive. In this description, the term "step" was intended to be synonymous with "source" as that term is used in the Act. See N.J.S.A. 13:1D-37. The description of process materials accounting was intended to reflect the Legislative finding ". . . that a rigorous accounting of the use of hazardous substances, the generation of hazardous substances as nonproduct output, and the multimedia environmental release of hazardous substances at each step of an industrial process will identify the points at which, and the procedure by which, pollution can be prevented . . . ." N.J.S.A. 13:1D-36. The Department agrees that a process materials accounting could be time consuming and that flexibility is needed.

3. Comment

In general, industry commenters did not object to the broad criteria for grouping suggested in the January pre-proposal. The commenters suggested that these criteria, and possible additional criteria, be listed as a menu in the regulations to provide facilities with the discretion to pick and choose criteria for grouping appropriate for their specific facility.

Specific criteria suggested for the grouping menu included: same functional group and chemical property (for example, alcohol, amine, aldehydes or esters); same chemistry (for example, nitration, hydrogenation, suspension polymerization, etc.) same product line or class of products; same "function" of equipment (rather than specific equipment); and similar equipment (as opposed to the "same" equipment as stated in the January pre-proposal).

Comments from several environmental groups suggested that separate production lines be considered as distinct processes and not be grouped.

Criteria for identifying similar processes proposed by environmental groups included: same class of products using the same manufacturing method; interchangeable products; variations and styles in a product line; and products already grouped for inventory and accounting purposes.

Response

The Department has incorporated all of the above suggested criteria into the broad grouping criteria described in the recommendation below. Therefore, facilities will be allowed to use all the above criteria in grouping their sources and processes. The Department will be providing guidance to facilities on how the suggested criteria, and others, may be used in grouping and describing production processes.

4. Comment

One environmental group identified criteria which it suggested were inappropriate for grouping, including: if production levels cannot be aggregated with reasonable units of measure (similar to the Department's statistical significance criteria), and if the products are made of different "basic" materials. Environmental groups were also concerned with grouping processes based on similar environmental impacts because it has questionable merit and may be unworkable in practice.

Response

The Department shares the concern that grouping of processes with different units of measure or different basic materials would produce data that would be of limited value. However, the Department believes that once facilities apply the criteria described below, they will reach the same conclusion and will choose not to group processes with different units of materials.

5. Comment

Several commenters from industry suggested that the Department adopt the format of the existing DEQ-114 form for reporting grouping. Some suggested that the same form be used for process-level reporting of groups of processes. One commenter suggested that the different media surveyed by the DEQ-114 form be used as the "group" so that only facility-level data would be submitted to the Department. This commenter proposed that the detailed process-level data remain at the facility.

Response

The Department will be coordinating the Act's data requirements for pollution prevention progress reports with the existing DEQ-114 form. However, the Act requires process level data to be reported. This data will be submitted to the Department and will not remain at the facility. The Act also requires that progress reports be submitted to the Department and be made available to the public.

Because the process-level data will need to be more specific than the data collected by the DEQ-114 form, using environmental media as the basis for grouping would not meet the data needs for the progress report.

6. Comment

Several environmental groups agreed with the need for flexibility for grouping and allowing facilities to use knowledge of their own manufacturing operations in combining sources and processes. They suggested that the Department establish basic criteria, provide guidance, and allow the planning process to be initiated. The grouping criteria could then evolve and become more specific through time. For example, the Organic Chemical, Plastics and Synthetic Fibers (OCPSF) product-process codes used in the Federal Effluent Guideline program could be used for grouping.

Response

The Department has suggested broad criteria for grouping, below, and will be providing guidance on grouping and process descriptions in a Pollution Prevention Program guidance document. The initial version of the guidance document is intended to be descriptive and provide general guidance. The Department agrees that additional guidance providing

more specific information could be developed in the future. The Department will consider the OCPSF codes in developing its initial guidance for process descriptions.

7. Comment

Many commenters from industry were opposed to the "statistical significance" criteria for grouping suggested by the Department in the January pre-proposal.

Response

Based on a review of these comments, the Department does not plan to propose a statistical significance criteria for grouping. This will add to the overall flexibility for grouping. Furthermore, due to technical factors and market influences, it is presently impractical to establish criteria for statistical significance.

c. Summary of Responses: Department Recommendation

As discussed in the above responses, the Department intends to provide facilities significant flexibility for grouping sources and production processes. This flexibility would be provided in the early stages of pollution prevention plan preparation and is intended to carry through to the later stages of analyzing and selecting pollution prevention options and annual progress reporting. The Department plans to allow facilities to group any sources or production processes that they feel are appropriate at their facility.

Allowing facilities to define the term "similar" will reduce the paperwork burden for planning, but will not impact the actual quantity of hazardous substances considered for pollution prevention reductions, nor will it impact the analysis and reporting requirements under the Act.

The only exception to this flexibility will be the exclusion of treatment systems from eligibility for grouping. The Department will not allow treatment or control systems to be grouped within a production process. Inclusion of treatment or control systems in groups of production processes would result in the reporting of use and NPO data in which the Department and the public would not be able to differentiate reductions in use or NPO due to pollution prevention versus reductions due to treatment or control.

The Department suggests the following broad criteria to help identify processes which can be grouped:

1. What is the function of the chemical, that is, how is the chemical used in the process? This criterion is intended to help facilities distinguish between basic types or classes of products manufactured, for example, chemicals or articles.
2. What is the function of the equipment? This criterion is intended to distinguish between different modes of operation, for example, batch operations or continuous operations.
3. Do the sources or processes use similar ingredients?
4. Do the sources or processes create similar products?
5. Do the sources or processes have any other characteristics that are similar?

The Department will propose that facilities be allowed to define the term "similar," as used in criteria 3, 4, and 5 above. The Department plans to develop examples and additional guidance on what is "similar," to be published in the Pollution Prevention Plan Guidance Document.

The above grouping criteria are intended to be used by an interested facility to identify when circumstances are different enough that two different operations should probably not be grouped into one. The Department will not "require" that certain processes be grouped or stop a facility from grouping two or more processes.

For example, the grouping criteria can be applied to distinguish chemical manufacturing and formulating processes from article manufacturing processes, and also to cover instances where hazardous substance storage and handling might not logically be associated with a single production process. The criteria would define continuous process chemical manufacturing production units by their isolated products, but would define batch process chemical manufacturing production units by similar equipment and chemistry. Figure 1 below provides a schematic overview of how these grouping criteria could be applied appropriately.

All facilities that group production processes will be encouraged to use the method presented in Figure 1 in developing a description of their production processes. This is intended to aid the Department in analyzing data for groups of processes. This issue is related to Issue 1.D(ii) below, which discusses common nomenclature for similar processes.

The Department is seeking comments on the approach presented in Figure 1 and on the Department's ideas for providing maximum flexibility for grouping.

B. Targeting Sources and Processes

The issue of targeting production processes and sources in the pollution prevention plan has raised a wide range of comments, responses and recommendations. The table below outlines the pre-proposal format for this issue:

TARGETING
a. Summary
b. Comments and Responses
   1. Need for Overall Flexibility in Targeting
   2. Specific Approach
   3. General Approaches
   4. Combined Approaches
c. Department Recommendation

a. Summary of Issue

N.J.S.A. 13:1D-41(d) requires the Department to develop criteria to be used by priority industrial facilities to identify targeted production processes and targeted sources for the purpose of focusing pollution prevention strategies on those targeted production processes and targeted sources. This provision offers flexibility for a facility to focus its resources on processes where significant progress in pollution prevention can be made.

In the January pre-proposal, the Department discussed criteria for targeting in Part II of a pollution prevention plan. This implied that all sources and production processes must be included in the inventory stages of Part I of a pollution prevention plan and that any criteria for targeting would be applied only after the Part I information is obtained.

In the January pre-proposal, the Department suggested one specific and two general approaches for defining criteria to be used in targeting.

The specific approach was based on toxicity and suggested that specific substances be targeted based on significantly higher risks to human health or the environment.

The generel approaches were based on defining "significant contribution" to use, generation of NPO and releases. One approach, termed the "Minimum" approach, proposed that a facility could target any process or source that contributes to any one of the following:

10 percent of the use or release of a hazardous substance;
10 percent of the generation of hazardous waste; or
10 percent of the generation of NPO.

The second general approach, termed the "Maximum" approach, would allow the facility to select any processes or sources or combination of mutually exclusive processes and sources where the total of the processes or sources results in targeting 90 percent or more of the use of hazardous substances or 90 percent or more of the generation of hazardous substances as NPO.

The Department also noted that if an industrial facility did not target sources and processes using one of the proposed methods, the Department intended to require the facility to perform a complete Part II analysis for all processes and sources at the facility.

b. Comments and Responses

1. Need for Overall Flexibility in Targeting

i. Comment

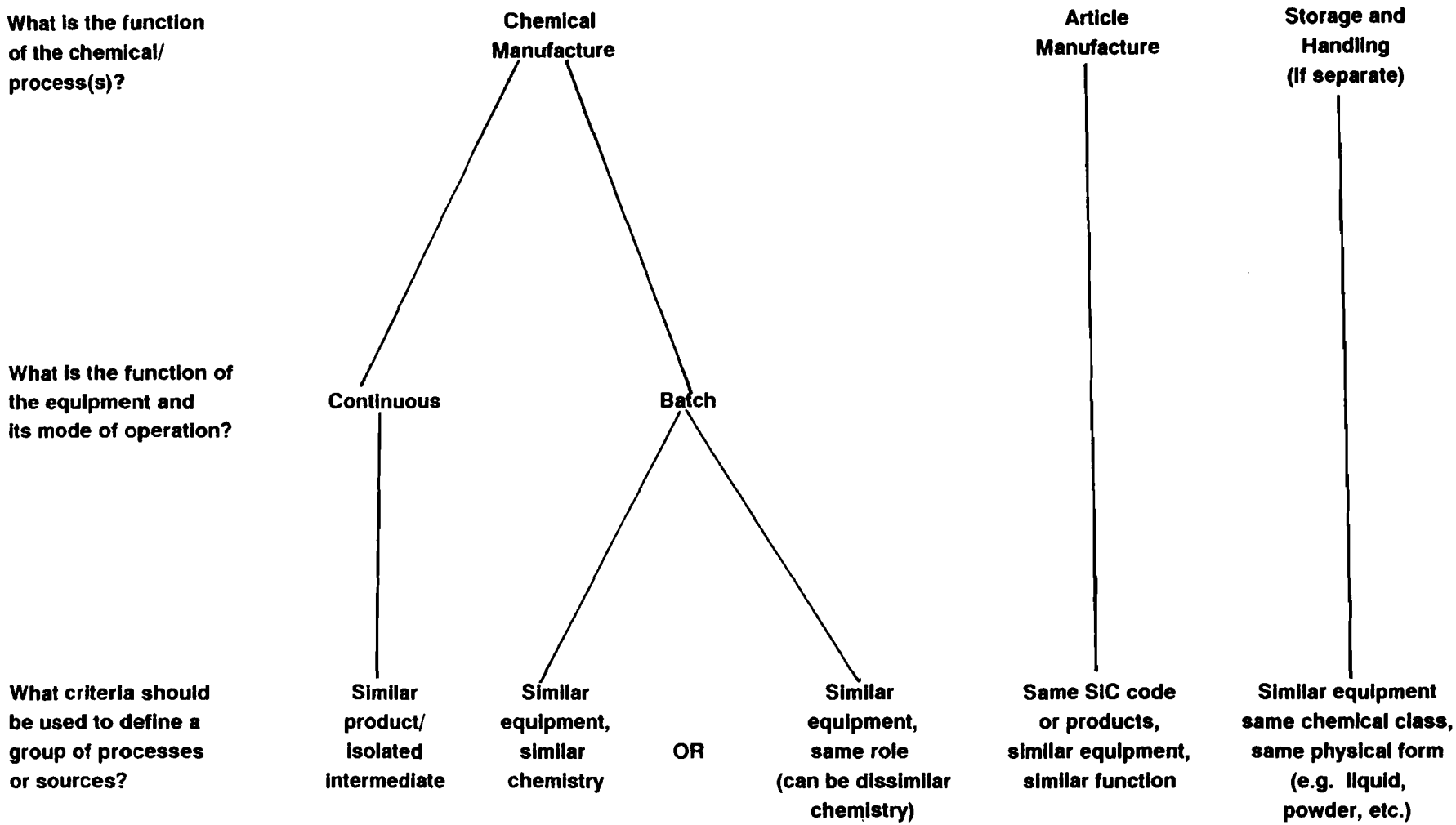
Based upon the comments received, it is evident that industrial representatives were concerned about at what point during the preparation of a pollution prevention plan they could target sources and production processes. Almost all commenters from industry stressed the need for overall flexibility in targeting. Industry representatives indicated that detailed Part I information is not needed to identify targeted processes and that this information should only be developed for processes after they have been targeted for potential source reduction opportunities.

Commenters from industry stressed that the objective of the Act was to actually implement pollution prevention and not to generate paper which would be "useless." In some cases facilities would need to commit several man-years of work to do the detailed mass balances involved in Part I before getting to any implementation of pollution prevention. The industry commenters felt that they know their facilities and production processes well enough to either directly identify targeted processes with no analysis or to do a "rough cut" facility-level analysis to identify targeted processes.

A few commenters suggested approaches that could be used for targeting sources and processes during Part I of the pollution prevention plans rather than, or in addition to, during Part II.

One commenter suggested that the first step of a Part I pollution prevention plan include an overall mass balance calculated by subtracting

Figure 1. GROUPING OF SOURCES OR PROCESSES



the product output from the raw material input for each process. These data could be used for identifying targeted processes. The specific NPO by media for each process would then be developed only for the targeted processes in a second phase of the Part I.

Another specific approach proposed for Part I targeting included an analysis of existing purchasing and production records for processes using SARA 313 chemicals, pounds of SARA 313 chemicals used per "batch," and batches of each process produced per year. It was noted by the commenter that this approach may not be applicable to all facilities and that flexibility is needed to allow individual facilities to choose their own mechanism for targeting.

Response

The provision in the Act for identifying targeting processes is intended to provide a facility flexibility for preparing its pollution prevention plans. This flexibility, however, cannot be used to ignore specific requirements intended to help the facility identify potential pollution prevention options. The Part I information for all covered chemicals and processes at the facility should, at a minimum, be estimated using readily available facility-level data. The "rough-cut" approach would be sufficient if it results in estimated quantities for process-level NPO for each covered chemical.

ii. Comment

Industry representatives stressed that maximum flexibility for targeting must be provided and that the targeting decision must be the facility's responsibility. They suggested that the Department establish a menu of options, similar to the suggestions on grouping, to allow the facility to pick the targeting method most appropriate to its specific situation. Also, similar to the comments on grouping, several comments suggested that the Department develop an "other" option to be determined by the facility and then reviewed and approved by the Department.

Response

The Department intends to provide a menu of several options from which a facility may choose a targeting option. The targeting options are intended to be mutually exclusive, so only one option would be used for the facility. In cases where drastically different operations occur at the same facility (for example, continuous and batch) the Department may consider the use of two different options. The Department is not planning to include an "other" category as was included for grouping. Also, the Department wants to avoid a "review and approval" framework where pre-approval from the Department is needed before a facility goes forward with its pollution prevention plans.

The Department has chosen a more restrictive approach to Part II targeting than the very flexible approach used in grouping for a specific reason. In the grouping phase, facilities are not eliminating entire processes from further pollution prevention planning. Therefore, an infinitely flexible menu of criteria is appropriate. At the targeting phase, facilities will potentially be eliminating entire processes from further pollution prevention planning for a minimum of five years. If the Department were to allow facilities to target using any criteria they chose, it would create a loophole whereby facilities could exclude processes from pollution prevention planning for long periods of time. The Department does not believe such an open-ended criteria is desirable or appropriate, nor does it believe it meets the statutory intent of N.J.S.A. 13:1D-41.

iii. Comment

Several commenters also suggested that the Department establish thresholds as another way to incorporate overall flexibility for targeting. These commenters indicated that a threshold would reduce the number of covered chemicals and processes included in the pollution prevention plans and allow a facility to focus on its largest sources and processes.

Response

The Department is planning to establish a 10,000 pound facility threshold. This issue is discussed in detail in Section 8 below.

iv. Comment

Commenters from environmental groups stated that they interpret the Act to require facilities to do a complete Part I analysis on all sources and processes. Also, they stated that research conducted by the congressional Office of Technology Assessment, INFORM (an environmental research group), and others indicates that a complete analysis of a facility's use and generation of hazardous substances and the costs associated with such use and generation is the most important step in identifying and implementing pollution prevention. This information can reveal cost-effective opportunities which were not apparent at first to the facility.

The environmental groups commented further that the pollution prevention planning requirements in New Jersey's Act are based on this research and the basic philosophy that information gathering by the facility will lead to implementation of pollution prevention measures. These groups felt that allowing facilities to target during Part I goes against the research conducted to date and some of the basic philosophy embodied in the Act.

The environmental groups also felt that the criteria for targeting should be developed to avoid having a facility reduce the time and resources spent on a complete Part I analysis. They commented that such time and resources would be well spent in completing a full Part I analysis. In addition, they noted that a complete Part I analysis may identify pollution prevention options that the facility may not have otherwise identified.

Response

The Department agrees with all of the comments above regarding the value of conducting a complete Part I inventory. The Department is also concerned that requiring a complete Part I inventory at some facilities, **depending on the level of effort required to complete the inventory,** could require several years to complete and would detract from a facility's ability to actually implement pollution prevention measures. Again, the Department invites comment from all interested groups on this issue.

2. Specific Approach

i. Comment

Almost all comments from industry were opposed to the specific approach for Part II targeting based on toxicity of individual chemicals. These comments stressed that a specific chemical could pose a substantial risk in a given situation, but that toxicity by itself should not provide a basis for requiring the chemical to be targeted. Industry stressed that an actual risk based on site specific exposure must be considered and that the mere existence or use of a chemical does not pose a risk.

Other comments stated that the relative risk of chemicals was too difficult to determine and that having a "subset" of toxic chemicals for which Part II targeting is required would lead to chemical substitutions with potentially unknown outcomes.

A few commenters stated that the Department did not have the authority to develop a sublist based on toxicity and that the Pollution Prevention Advisory Board is the appropriate entity to address this issue.

Response

The Department agrees that a specific approach using toxicity as the criterion is inappropriate because: (1) all hazardous substances on the covered list are toxins that should be considered for reduction; and (2) conducting individual risk assessments for hazardous substances may create excessive paperwork and resource burdens on facilities, which is not the intent of the Act. As such, the Department does not plan to propose a toxicity-based approach for Part II targeting at this time.

3. General Approaches

i. Comment

Regarding the general approaches for targeting outlined in the January pre-proposal, several commenters from industry indicated that the percentages suggested for both the maximum and the minimum approaches were too restrictive. Alternative percentages in the ranges of 20 to 30 percent and 70 to 80 percent were suggested for the minimum and maximum approaches, respectively. One commenter suggested that the Department could establish more stringent targets if they are needed to meet the Statewide public policy goal for significantly reducing the use of hazardous substances and a 50 percent reduction in generation of hazardous substances as NPO as required by N.J.S.A. 13:1D-36.

Response

The Department suggests that the "backstop" percentages for targeting remain at 90 percent for the maximum approach. There will be limited time to modify the backstop values and have facilities modify their plans to meet the 50 precent Statewide public policy goal if trend analysis reveals problems in attaining this goal. Therefore, the Department does not consider making changes to the backstop value to be a realistic option.

ii. Comment

One commenter suggested that economic criteria for targeting be added to the criteria for toxicity and significant contribution to use, NPO generation or release. These economic criteria could include shortest payback period and greatest NPO reduction per investment dollar. In addition to proposing economic criteria, this commenter requested that

the Department provide assistance to interested facilities on Total Cost Assessment approaches.

Response

No economic criteria are included for targeting in N.J.S.A. 13:D-41(d). The Department is currently looking at whether the Act provides authority to develop economic criteria for targeting.

iii. Comment

Other commenters suggested that the Department focus on criteria for targeting based on the greatest environmental improvement. Here, the commenters wanted the Department to focus on the release and NPO criteria and not on the use of specific hazardous substances.

Response

The Act clearly directs the Department to consider use of hazardous substances and generation of hazardous substances as well as environmental release of hazardous substances in the implementation of the pollution prevention program. The inclusion of use in this statutory direction is based on the premise that reducing the overall use of hazardous substances in industrial processes will lead to improvements in environmental quality, occupational health, and consumer safety. The Department believes that the Legislature's intent on inclusion of use reduction in the Act is very clear and direct.

iv. Comment

For the minimum approach, one commenter suggested that the Department establish a process threshold of 1,000 pounds, indicating that this threshold would be consistent with the 10,000 pound facility threshold allowed in N.J.S.A. 13:1D-40(d) because 1,000 is 10 percent of 10,000.

Response

The Department believes that the minimum criteria allows facilities adequate flexibility so that a 1,000 pound threshold will not be necessary. In addition, the authority provided in N.J.S.A. 13:1D-40(d) for establishing thresholds is at a facility level and cannot be established at a process level.

v. Comment

A few commenters expressed concern with the minimum approach and indicated that it could be used as a major loophole to circumvent pollution prevention planning requirements. These commenters suggested that a facility could use the flexibility provided for grouping and the definition of "process" to make several small processes, all of which contribute to less than 10 percent of the use, release or generation of hazardous substances or the generation of NPO. Therefore, the facility would not have to target any processes and would not have to conduct any technical or economic analysis as required by Part II.

Response

The Department is aware of this potential concern. However, the Department feels that the minimum approach is a valid option for facilities choosing to use it appropriately. The Department intends to develop the pollution prevention program requirements on the assumption that facilities will choose to comply rather than assuming facilities are looking for loopholes. However, based on additional comments received on this pre-proposal, the Department may decide not to propose the minimum approach in the regulations. The Department welcomes additional comments on this issue.

vi. Comment

Several industry commenters took issue with the chemical-specific nature of the minimum and maximum approaches. One commenter contended that the Department did not have the authority to establish chemical-specific requirements for the "significant contribution" criterion of use, NPO generation and release. Another commenter further contended that the Department could establish targeting criteria based on only the **total** amount of hazardous substances for the facility.

Response

The Department is evaluating whether N.J.S.A. 13:1D-41(d) allows the Department to set chemical-specific criteria for targeting.

vii. Comment

A few commenters suggested that the Department did not have the authority to require that all processes at a facility be targeted if the facility does not follow the Department's approaches for targeting.

Response

N.J.S.A. 13:1D-41(d) requires the Department to develop "criteria pursuant to which owners and operators of industrial facilities **may** identify targeted production processes . . ." (emphasis added). The Department interprets this section to mean that facilities are not **required** to target production processes. If they choose not to target, all other pollution prevention plan requirements of N.J.S.A. 13:1D-41 must be met.

4. Combined Approaches

i. Comment

A general issue raised by one industry commenter was whether facilities should develop its pollution prevention priorities based on reducing volume of NPO generated, reducing risk, or both.

Response

The Department's response at this point is that volume and risk reduction should both be targeted. However, the Department has not yet developed guidance on the relative importance or weighing of these factors against each other.

Comment

Without specific guidance from the Department, industry was concerned that they would not be able to predict what criteria would be applied by the Department in reviewing and approving their pollution prevention plans. N.J.S.A. 13:1D-44(b) authorizes the Department to require a facility to provide information to support the decision on the identification of targeted sources and processes. Industry wanted to know what minimum criteria will be used by the Department in reviewing a facility's decision on targeting.

Response

The Department currently has no plans for proposing specific criteria for approving pollution prevention plans and targeting decisions. The Department is concerned that by developing such a formal criterion, it would send a message to industry that the pollution prevention program is being implemented in a traditional command and control approach, which is neither the Department's nor the Act's intent. At this point, the Department's position is that the pollution prevention plan is a facility's document. Significant flexibility is being proposed so facilities can integrate the plan preparation process with their other strategic planning and environmental quality improvement efforts.

iii. Comment

A commenter suggested a combined approach for targeting based on a hierarchy requiring information on all carcinogens, ozone depleters and "extraordinarily hazardous substances" (starting with the TCPA list) to be included in Part II of a pollution prevention plan. For the remaining chemicals, the "maximum approach" suggested in the first pre-proposal would be used. This approach would emphasize both risk reduction and volume reduction but would place a greater emphasis on risk reduction because no flexibility is offered for targeting high-risk chemicals.

Response

The Department feels that the proposed combined approach is valid and has included it in the pre-proposal as a potential option. The Department will reevaluate these options after comments are received on this pre-proposal.

c. Department Recommendation

Based on its interpretation of the Act and the comments received to date, the Department plans to propose a two-step procedure to provide flexibility for targeting sources and processes during preparation of Part I of a pollution prevention plan.

In the procedure to be proposed, the facility would first target sources and processes using facility-level information and estimates of the "new" process-level throughput data required by N.J.S.A. 13:1D-41(b)6. The process-level data which would be estimated would include NPO generation and quantity of hazardous substances consumed. It is the Department's understanding that, with readily available information, the facilities' determination of these two pieces of data would be straightforward.

Once the facility has used the estimates to target sources and processes, the facility would conduct a detailed analysis to obtain any additional data needed to identify pollution prevention options. This detailed analysis would only be conducted on targeted sources and processes identified by the facility. The data developed for the non-targeted sources and processes would be limited to that information discussed in the previous paragraph.

The Department plans to propose that any facility choosing to take advantage of the two-step procedure must meet the following requirements for the non-targeted sources and processes:

A. The detailed information required by Part I would be required for the non-targeted sources and processes in the first five year revision of the facility's pollution prevention plan. Although the facility would be

allowed initially to target specific sources and processes prior to obtaining more detailed Part I information for targeted sources and processes, this provision would not exempt the remaining sources and processes which were not targeted from eventually undergoing Part I analysis.

B. If a facility is planning to take advantage of grouping, (as discussed in Section 1.A. above), the facility must group all sources and processes at the facility prior to targeting during Part I.

C. For each non-targeted process, process descriptions and changes in NPO per unit of product must be reported in pollution prevention plan summaries and progress reports.

D. The Part I pollution prevention plan for the facility must include sources and processes comprising at least 90 percent of the use of hazardous substances and 90 percent of the release of covered hazardous substances.

The Department intends to establish in the proposed regulations a menu of as many targeting options as possible and to allow facilities to select a targeting option from this menu. The Department has already developed three options, as follows:

Each facility would be able to choose one of these options to fit its specific situation:

A. The facility must complete Part II for all sources and processes using covered hazardous substances that are known or suspected carcinogens, ozone depleters and extraordinarily hazardous chemicals as defined by the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-9 et seq. For the remainder of covered chemicals, sources and processes comprising 90 percent of the use of hazardous substances and 90 percent of the release of hazardous substances must be included in Part II.

B. The facility must complete Part II for sources and processes, or any combination of mutually exclusive of sources processes, for 90 percent of the use of covered hazardous substances and 90 percent of the release of hazardous substance. This is the "Maximum" approach suggested in the January pre-proposal.

C. The facility must complete Part II for any process or source that contributes more than 10% to the use, generation as NPO or release of a covered hazardous substance. This is the "Minimum" approach suggested in the January pre-proposal.

The Department is willing to consider additional specific options to be included in this menu, and welcomes suggestions on this issue. The Department is seeking comments on the overall approach of establishing a menu of options and allowing the facilities to choose the options fitting their facility, on the three options recommended above, and on additional options to be included in the menu.

C. Criteria for Identification of Production Processes Requiring Plan Revisions

a. Summary of Issue

In the January pre-proposal, the Department requested comments on the development of criteria for the identification of production processes that are established after January 1, 1992, for which owner/operators do not have to report information pertaining to improvements in pollution prevention until the first five-year revision of their pollution prevention plan. See N.J.S.A. 13:1D-40(f). The Department specifically sought comments on how to differentiate between (1) processes that are altered after January 1, 1992 and are called new processes, and (2) processes which did not exist prior to January 1, 1992 and are in fact new processes.

Comments were received on two aspects of this issue:

1. The criteria that should be used to define a new versus a modified process; and

2. The extent of reporting requirements that new processes should be exempted from, that is, what constitutes "information pertaining to improvements" as that term is used in N.J.S.A. 13:1D-40(f)?

b. New vs. Modified Processes

i. Comments

Several commenters felt that the facilities themselves should be allowed to define what a new process is. They felt that flexibility was important in pollution prevention planning, particularly in light of the fact that for a new production process, a facility would likely need several permits and approvals from the Department. Therefore, modifying a pollution prevention plan to include a new process might be redundant exercise.

Other commenters offered various criteria for defining a new process, most of which the Department has incorporated in the criteria described below.

One commenter suggested that the Department offer expedited media-specific permit processing as an incentive for a facility willing to include a new production process in its pollution prevention plan. Others recommended that the criteria be based on decreases in releases to environmental media to provide an additional incentive to implement pollution prevention measures.

ii. Response and Department Recommendation

Based on its interpretation of N.J.S.A. 13:1D-40(f) and the comments received on the January pre-proposal, the Department is considering including the following language in the Pollution Prevention Program Requirements:

For production processes established after January 1, 1992, a production process shall be considered a new process and will be exempt from the reporting of information pertaining to improvements in pollution prevention until the first five-year revision of the pollution prevention plan and pollution prevention plan summary, or until five years after the production process is established, whichever occurs later, provided that it meets either of the following criteria:

1. The process has required the construction of new capital facilities; or

2. The process results in a product which was not identified in the facility's most recent pollution prevention plan.

For production processes which existed as of August 1, 1991 but which are modified after January 1, 1992, a production process shall be considered a new process and shall be exempt from reporting information pertaining to improvements in pollution prevention until the first five-year revision of the pollution prevention plan and pollution prevention plan summary, or until five years after the modification has occurred, whichever occurs later, provided that it meets all of the following criteria:

1. The modified process results in a decrease in releases to environmental media; and

2. The modified process results in a decrease in the generation of nonproduct output per unit of product, compared to the process that existed prior to modification; and

3. The modified process:

   a. Produces a product whose active ingredient is chemically different from other products made at the facility; or

   b. Produces a product which is made by a different chemical route (as opposed to an improvement in the established chemistry such as a more efficient catalyst, etc.); or

   c. Produces a product which was not identified in the facility's most recent pollution prevention plan; or

   d. Produces a product which no longer meets applicable criteria for grouping; or

   e. Results in a greater than 50 percent replacement of existing capital facilities.

c. Reporting Requirements for New Processes

i. Comments

Several commenters, particularly those who were involved in the drafting of the Act, expressed differing views on what N.J.S.A. 13:1D-40(f) was intended to accomplish. One commenter believed that the Act exempts new processes from all pollution prevention plan requirements for five years because new processes must meet state-of-the-art requirements of all single-media permit programs, which are presumed to be at least as stringent as pollution prevention plan requirements might be. The commenter noted that even if state-of-the-art requirements are less stringent than pollution prevention plan regulations and N.J.S.A. 13:1D-40(f) is interpreted to exempt facilities from all reporting on a new process, this exemption would be for a fixed time period (until the next five-year revision of the pollution prevention plan or until five years after the process is established, whichever occurs later).

Another commenter stated that only the Part II requirements were intended to be exempted under N.J.S.A. 13:1D-40(f), so that the facility-level and process-level information on the use, generation, and multimedia releases of hazardous substances required by Part I of a pollution prevention plan could be collected by the Department for new processes for the research on pollution prevention trends required by N.J.S.A. 13:1D-45.

Additionally, some commenters recommended that even for new processes which are exempt from Part I requirements, there should also be threshold considerations, based on quantitative or qualitative use or release data or degree of hazard, which might trigger a Part II analysis or plan revision.

One commenter suggested that the Department exempt from Part I and Part II reporting production processes which have completed the targeting process and for which the facility has implemented pollution

prevention measures. These processes were referred to by industry as "improved processes."

ii. Response and Department Recommendation

The Department again suggests that "information pertaining to improvements in pollution prevention," which will be temporarily exempted from reporting in pollution prevention plans, should be defined as all Part II pollution prevention planning requirements. Any new or modified production process is subject to reporting of facility-level throughput data on EPA's Form R (used in TRI reporting) and New Jersey's DEQ-114 form. By requiring facilities to report the same information on new processes at the process level in Part I of a pollution prevention plan, the Department believes that it will be better able to meet its mandate to perform trend analysis for priority industrial facilities (see N.J.S.A. 13:1D-45). Specifically, N.J.S.A. 13:1D-45 requires the Department to conduct research on pollution prevention trends within each of the Standard Industrial Classification industry groups represented by priority industrial facilities, which includes Standard Industrial Classification groups 20 through 39. The Department must then prepare pollution prevention profile reports for each Standard Industrial Classification group and report to the Governor, the Legislature, and the public on any administrative or legislative action necessary to increase pollution prevention activities at priority industrial facilities. In order to comply with this mandate, the Department envisions trend analysis to consist of facility-wide comparisons of data on the use, generation, and multimedia releases of hazardous substances. These comparisons would not be complete if certain production processes (including new production processes) were exempt from reporting Part I information.

Additionally, the Department believes that facilities should be required to report Part I inventory information for all processes because the reporting of use and release information has been shown to encourage voluntary pollution prevention reductions (as demonstrated by the success of the Federal TRI program).

The Department does not believe that N.J.S.A. 13:1D-40(f) was intended to be applied to production processes other than new processes and can find no basis for promulgating an exemption for "improved processes."

D. Nomenclature for Reporting and Interface with Existing Release and Source Reduction (DEQ-114) Report

Within this heading, the Department has identified two issues of concern under the Act. The first is whether the pollution prevention summary and progress reports should be in paper or electronic format. The second issue is the form of the nomenclature to be used to describe processes and products in pollution prevention planning.

1. Format

a. Summary of Issue

In the January pre-proposal, the Department indicated that it was considering requiring that pollution prevention plan summaries and progress reports be submitted in a form compatible with the Department's electronic information storage and retrieval system. Since the summaries and progress reports will be available to the public, and since they will be important sources of information for the Department in determining pollution prevention trends, the Department sought input on a format that would maximize both ease of submission and public and Departmental access to this information.

b. Comments and Department Recommendation

The comments received to date are largely in favor of maximizing the degree to which pollution prevention progress reports and summaries are physically meshed with the Department's already-existing Release and Source Reduction Report form. This report is presently identified as the DEQ-114 form; this designation, as well as the title of the report, may change in the future.

The Department believes that the progress reports and summaries can be readily meshed with the DEQ-114 form. The DEQ-114 form was developed by the Department's Office of Hazardous Substances Information (Community Right-to-Know Program) and currently surveys facility-wide data for hazardous substances as required by N.J.S.A. 13:1D-9 and N.J.S.A. 34:5A-1 et seq. It is anticipated that the process-specific information required by N.J.S.A. 13:1D-41 can be identified on a separate attachment to the DEQ-114 form. These attachments could be mailed out in the same package as the DEQ-114 form.

Presently, the DEQ-114 form is mailed to facilities and returned to the Department in paper form only. It is clear from the comments received so far that facilities have no great enthusiasm for electronic reporting. However, it is likely that electronic reporting may become quite feasible by July 1, 1994, the date on which the first batch of plan summaries is due.

Electronic reporting offers the opportunity for extremely rapid and accurate data entry, with the consequent rapid availability of the data to the Department and the public. The Department is required to make use of data from plan summaries, the first group of which will be submitted by July 1, 1994, to prepare pollution prevention profile reports. The Department anticipates that data from plan progress reports, to be submitted by July 1, 1995, will also be essential to prepare a comprehensive pollution prevention profile report. This report must be prepared within five years of the effective date of the Act, that is, by August of 1996.

For these reasons, the Department would like to take any reasonable steps to speed data entry. At this time the Department does not believe that the details of an electronic reporting procedure have been sufficiently refined to allow it to implement a mandatory electronic reporting system for the pollution prevention program. However, the Department plans to work with volunteer facilities to develop and fine-tune an electronic reporting system that will meet the needs of all involved parties.

Most commenters were concerned that the first few years of a new electronic reporting system will be difficult for both the facilities and the Department. However, the success with which the USEPA has instituted electronic reporting of Form R data in the TRI Program, and the likelihood that many facilities would take advantage of an electronic reporting option for the DEQ-114 and associated pollution prevention progress reports, convince the Department that at a minimum it must proceed with efforts to develop an optional electronic reporting format for data to be submitted pursuant to the Act.

Several commenters stated that the ideal electronic reporting format would be that of the standard electronic spreadsheet. As discussed above, the Department expects to proceed with the development of a reporting form which will be an attachment to the DEQ-114. Initially, this attachment will be distributed to covered facilities in a paper format. Eventually, the form may be set up like a spreadsheet, enabling possible subsequent versions of the form to be in electronic spreadsheet format without substantially changing the appearance of the form.

The Act specifies the minimum data elements that must be included in a pollution prevention plan summary and progress report. See N.J.S.A. 13:1D-41(g) and (h). The Act also authorizes the Department to request additional information from facilities as part of these submissions. Based on the Department's research and the comments received to date, the Department has formulated several additional items that it believes should be reported in pollution prevention plan summaries and progress reports. These elements and the elements at N.J.S.A. 13:1D-41(g) and (h) are listed in Tables A and B below. This table contains explanations of certain data elements where such explanations appear necessary.

The Department intends to develop forms based on the elements in Tables A and B. The Department will then ask a number of volunteer facilities to complete the forms to determine the clarity of the forms and instructions. In addition, the Department intends to test whether the forms are understandable to the public by providing some members of the public with the volunteer facilities' completed forms and asking the public testers to assess the clarity of the forms. The Department hopes that this additional review and comment will lead to the development of a final format which best meets the needs of both the regulated community and the public while remaining in keeping with the Act.

2. Nomenclature

a. Summary of Issue

In the January pre-proposal, the Department solicited public comment on ways to guarantee uniformity and comparability of information submitted under the Act. Since pollution prevention plan summaries and progress reports will be available to the public, and since they will be important sources of information for the Department in determining pollution prevention trends, the Department is particularly concerned about ensuring clarity and consistency of information. The crux of the nomenclature issue is to what degree the Department should attempt to provide systematic wording or codes for descriptions of processes, products, methods of reductions, etc. which are to be reported to the Department under the Act.

b. Comments

Several who commented stressed that the Department should avoid requiring simplistic or overly restrictive choices of nomenclature which would, in effect, "pigeon hole" responses into inappropriate categories. Several commenters also expressed the concern that attempts to direct responses with prescribed nomenclature could lead to comparisons between processes, products, or facilities which would not be warranted and which might mask their differences. Others stated that nomenclature systems would have to be huge to be comprehensive, but would nevertheless be of limited value for analysis purposes because of the unique nature of some New Jersey facilities.

However, other commenters, including at least two industrial facilities, encouraged the Department to develop a catalog of categories for the reporting of pollution prevention program reports and summaries to facilitate such reporting.

c. Department Recommendation

As discussed above, the Act specifies the information to be included in plan summaries and progress reports. See N.J.S.A. 13:1D-41 and Tables A and B below. In addition to several quantitative measures of pollution prevention goals and progress, the progress reports are to contain an "identification" of each production process and other items, an "indication" of the method used to achieve each reduction, and a "description" of pollution prevention techniques the facility intends to undertake. Similarly, summaries must contain a "description" of processes and techniques.

The Act also requires the Department to conduct research on pollution prevention trends within each of the Standard Industrial Classification industry groups represented by priority industrial facilities. See N.J.S.A. 13:1D-45. The Department recognizes the importance of protecting sensitive or proprietary information during this analysis, and knows that it will be technically complex and difficult to "describe," "identify," or "indicate" processes, methods, and techniques in a meaningful and efficient manner. But it is also clear that the Act directs the Department to collect information suitable for use in its trend analyses. If the descriptions, identifications, and indications submitted by facilities are totally unique or expressed in a totally individualized manner the Department will not be able to relate or analyze them in any meaningful way.

Thus, the Department believes that it must proceed with an effort to develop nomenclature which can be used, where applicable, in a systematic way to describe, identify, and indicate important factors in pollution prevention progress.

To some extent, the use of nomenclature to describe processes is related to the methods used to group processes. Clearly, in order to group, processes must be defined in some way. It should be possible to translate this definition into a reportable description which is chosen by the facility from a menu of possible choices, as long as such menu includes sufficient leeway to permit the assigning of singular processes, or processes which do not fit any of the nomenclature, to an "other" category, and as long as such menu affords ample allowance for other exceptions.

If a process is defined, as under the criteria in Figure 1, Grouping of Sources or Processes, then once the defining criteria of the process have been selected, nomenclature that can be used to describe the process will have been provided. Such nomenclature can be as simple as one or two word descriptor phrases that can be divided up into separate lists based on the defining criteria. At this time, the Department has developed the following headings for possible categories of nomenclature lists:

1. Chemical process
2. Product
3. Reaction type/chemistry
4. Equipment
5. Chemical class
6. Phase/physical form
7. Unit operations/process steps
8. Article manufacturing process

Depending on how a process is defined, some of these nomenclature lists will be more relevant than others. See Figure 1. For example, if the process is determined to be a batch chemical manufacture and the defining criterion to be used is "same equipment," then the suggested lists to describe the process would be "equipment," "unit operation," and "chemical class." However, since the primary goal is to clearly describe the process, whatever works best to describe the process should be used. If necessary, phrases from any combination of the lists should be used to describe the process. For each list, the Department will provide the option of choosing "other" as a descriptor and inserting a phrase that is not found in the list. It may also turn out that while no descriptor in the lists describes a particular process, a listed term may come close. A descriptor column allowing for this possibility will be included in each list.

A facility may elect to use methods other than the criteria recommended by the Department to define a process. However, the Department will require a facility to use the descriptive nomenclature provided by the Department if such nomenclature is determined by the facility to adequately describe any given process, regardless of whether the Department's recommended criteria for process definition are actually used to define the process.

TABLE A

Pollution Prevention Plan Summary Report Elements

(Summary report to be attached to DEQ-114 report; one summary report for each hazardous substance)

1. Hazardous Substance Name
2. Hazardous Substance CAS Number
3. Percent goals for reduction in use and in NPO of hazardous substance by date five years after summary report, based on quantities of use and NPO on date of summary report.
   a. In both cases, goals should be expressed in terms of percent reduction of facility-wide quantities per appropriate measure of aggregated production.
   b. Facility may calculate the aggregated production measure with whatever method best reflects overall mix of products associated with the use of the substance.
   c. Facility need not report the aggregated production measure, only the percent reduction goal need be given.
4. Percent goals for reduction in use and NPO of hazardous substance from 1987 quantities to date five years after date of summary report, expressed in terms of aggregated production, as described in 3 above.
5. Percent progress in reduction in use and NPO of hazardous substance from 1987 quantities to date of summary report, expressed in terms of aggregated production, as described in 3 above.
6. Written description of progress made in reducing use and NPO prior to 1987.
7. List of each targeted process and other processes as required by the Department, with identifying number. Number assigned to process must correspond to number indicated on progress report form, and must be permanently assigned to process. Once a number is assigned to a process, it cannot be assigned to another process. For each targeted process, the following information shall be presented, using Department's nomenclature wherever applicable:
   a. Description of process;
   b. Percent reduction in use per unit of production goal;
   c. Percent reduction in NPO per unit of production goal;
   d. Range of amount used in process (0 to 5000 lbs., greater than 5000 to 10,000 lbs., and greater than 10,000 lbs.);
   e. Descriptions of targeted sources within processes;
   f. Descriptions of techniques intended to be used for each targeted process within the next five years; and
   g. Certification by owner/operator that facility has prepared plan and that plan is available on site for inspection by the Department.

TABLE B

Pollution Prevention Progress Report Elements

(Progress report to be attached to DEQ-114 report; one progress report for each hazardous substance)

1. Hazardous Substance Name
2. Hazardous Substance CAS Number
3. List of each process, with identifying number. Number assigned to process must correspond to number indicated on summary report form, and must be permanently assigned to process. Once a number is assigned to a process, it cannot be assigned to another process. For each process, the following information shall be presented, using Department's nomenclature wherever applicable:
   a. Description of process;
   b. Description of product(s) of process;
   c. SIC code for each product of process;
   d. Unit of production;
   e. Indication of whether process is targeted or not;

f. Percent reduction in use per unit of production compared to previous year;
g. Percent reduction in NPO per unit of production compared to previous year;
h. Percent reduction in total releases per unit of production compared to previous year;
i. Primary method (technique) used to achieve each reduction indicated in items f, g, and h;
j. Progress, expressed in percent of goal reached in previous year, relative to original five-year goal for this process as indicated on summary form;
k. Original five-year goal for this process actually indicated on summary form in use and NPO per unit of production;
l. Explanation of why progress in reaching goal may be less than anticipated; and
m. Descriptions of pollution prevention techniques anticipated to be used in next year to reduce use, NPO, and total releases per unit of production.

2. Criteria for Adding New Hazardous Substances

A. Summary of Issue

In the January pre-proposal, the Department suggested adding to the list of hazardous substances covered by the Act several substances which are currently regulated under the New Jersey Worker and Community Right to Know Act but not regulated under Federal Right to Know (TRI) reporting. The Department also indicated that it intended to adopt the three criteria listed in N.J.S.A. 13:1D-42(i) for inclusion of hazardous substances on this list, as follows:

(1) Prior regulation as a hazardous substance pursuant to 42 U.S.C. §11023; the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Section 4 of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-9 et seq.; or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601;

(2) Consideration of the toxicity of a hazardous substance; and

(3) Evidence of the production of the substance in commercial quantities.

B. Comments

Several commenters were extremely concerned that the Department was considering requiring pollution prevention reporting for four more hazardous substances than the 329 hazardous substances currently covered by the TRI list. They commented that there was extensive discussion during legislative deliberations over which of several thousand chemicals should be reported for pollution prevention planning purposes, and they believed that the Legislature wanted the Department to begin the program with a relatively small list.

Most commenters were not concerned that unless these four hazardous substances were added, the New Jersey Right-to-Know program and the Pollution Prevention Program would use different reporting lists, despite the clear legislative objective of consolidated reporting for these two programs (as stated in the Assembly Appropriations Committee statement on the Act and in the reporting requirements of N.J.S.A. 13:1D-40(b)).

Other commenters believed that omission of these four chemicals was a legislative oversight and that adding them would not present an additional reporting burden on regulated facilities.

C. Department Recommendation

The Department has decided not to expand the list of hazardous substances covered by the Act at this time, even though it believes that the discrepancy between the definitions of "hazardous substance" in the Act and the definition of "environmental hazardous substance" in the amendments to the N.J. Worker and Community Right to Know Act (NJWCRTKA) was an oversight. However, the Department may at some point in the future add to this list the four hazardous substances which are currently covered by NJWCRTKA but which are not on TRI (amitrol, hydrogen sulfide, bromine, and phosphorus trichloride). Three of these hazardous substances (bromine, hydrogen sulfide and phosphorus trichloride) are also covered under the Toxic Catastrophe Prevention Act, specifically N.J.S.A. 13:1K-19.

The Department is considering the following criteria for addition of a hazardous substance to the list of substances regulated under the Act pursuant to N.J.S.A. 13:1D-42(i):

(1) Prior regulation as a hazardous substance pursuant to 42 U.S.C. §11023; the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.; Section 4 of the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-9 et seq.; or the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601;

(2) Consideration of the toxicity of a hazardous substance; and

(3) Evidence of the production of the substance in commercial quantities.

These three criteria are identical to the criteria in the Act, but the Department anticipates expanding these criteria as it learns more about the use and toxicity of the various hazardous substances on all of its regulatory lists of hazardous substances.

Finally, the Department intends to support the proposed expansion of the TRI list at the Federal level because it believes that the Federal list should be a constantly evolving list that provides information on the comprehensive use of hazardous substances on a national level. The current list of 329 TRI substances is a compilation of lists developed many years ago by New Jersey and Maryland and there are many hazardous substances which need to be researched to determine whether they meet the criteria for expansion of the TRI list. Pursuant to the definition of "hazardous substance" at N.J.S.A. 13:1D-37, expansion of the TRI list would automatically expand the pollution prevention list.

3. Input-Use Exemption

A. Summary of Issue

During the development of the Act, industry was concerned that facilities would be required to specifically reduce the amount of hazardous substances used, or be directed to use an alternative raw material regardless of a substance's necessity for a particular process. In fact, the Act is designed to allow all companies to self-identify which pollution prevention options, if any, to employ within the facility, including any combination of five different categories of techniques: improved housekeeping, in-process recycling, equipment modification, product reformulation, and material use substitution. The Act does not mandate use reduction of hazardous raw materials nor does it mandate the use of alternative raw materials. This acknowledges that raw material substitution is not the only pollution prevention technique that may lead to reducing the amounts of hazardous substances used in an industrial process. Rather, the application of other pollution prevention techniques may reduce the use of hazardous substances through increased efficiency, resulting in a lesser need for raw materials.

Accordingly, the Act contains a provision that allows the "owner or operator to include in a pollution prevention plan, summary and progress report an input-use exemption list, the input-use of which he has determined through pollution prevention planning cannot be reduced below the current level." See N.J.S.A. 13:1D-40(e).

In the January pre-proposal, the Department stated that it expected facilities to submit input-use exemption demonstrations to the Department for approval. The Department also indicated that facilities applying for an input-use exemption for a particular hazardous substance would have to complete virtually all other pollution prevention plan reporting for the substance. In addition, the Department sought input on the procedure that facilities should use to demonstrate that they qualify for an input-use exemption.

B. Comments

a. Comments on a Self-Evident List

During the two public workshops and in written submissions, several comments were raised concerning the scope of the input-use exemption. Several commenters suggested that when it is self-evident that a hazardous substance is the critical, non-substitutable ingredient in a production process, then a company should not have to receive approval for this input-use exemption entry. It was also suggested that the Department provide a list of exempted raw materials for specific processes. Several recommendations were provided to the Department on hazardous substances in specific processes that should be exempted, including:

(1) Vinyl chloride in PVC manufacturing;

(2) Benzene, cyclohexane, ethyl benzene and toluene and xylenes in petroleum crude oil;

(3) Nickel or nickel compounds for the manufacture of nickel salts; and

(4) Phenol in manufacturing organometallic alkylates.

One comment was received stating that if a list of self-evident hazardous substances is created, it would pose a disincentive for investigating and developing alternatives.

b. Comments on Approval of Input-Use Exemption List

One commenter interpreted N.J.S.A. 13:1D-40(e) to mean that all input-use exemption requests must be approved by the Department

based on a demonstration by the owner/operator that there is no reasonably available and economically viable alternative to the current level of input-use of the hazardous substance in the specified production process. Under this scenario the Department would establish guidelines on required elements for approval of input-use exemption requests. Others commented that guidance on the level of documentation needed for placing a hazardous substance on the input-use exemption list should be provided by the Department.

At one of the workshops, it was recommended that if input-use exemptions are to be submitted to the Department, a limited timeframe should be established for the Department to decide on the approval or disapproval of a facility's input-use exemption list. It was recommended that a 30 to 60 day period be allocated to the Department for the review and approval process.

Several commenters recommended that only a list of exempted substances should be submitted to the Department and that justifications for exemption should be part of the pollution prevention plan. These commenters stated that the Act does not provide the Department with the authority to approve the input-use exemption requests but simply requires the facilities to demonstrate to the Department why an input-use exemption is being claimed. Some of these commenters suggested that a justification description should not be submitted to the Department but should be available on site for inspection as part of the pollution prevention plan. Others, who also argued that hazardous substances on the input-use exemption list should be excluded from pollution prevention planning, stated that the company should be required to submit a list of exempted substances and a brief description of the exemption basis to the Department.

Comments were also received stating that the input-use exemption list should be included in the pollution prevention plan summary and that a list of the exempted chemicals and processes should be published in the New Jersey Register. One commenter recommended submitting input-use exemptions as a simplified chart identifying the process, the substance, the pollution prevention options evaluated, and the reason that the technique is not economically or technically feasible.

In addition there were concerns about the confidentiality of justifications for input-use exemption list substances.

c. Comments on Planning Requirements for Input-Use Exempted Hazardous Substances

One industry group commented that except for hazardous substances on the "self-evident" exempted list, a hazardous substance should be fully evaluated in a pollution prevention plan to qualify for an input-use exemption. These commenters felt that the input-use exemption is not a loophole to avoid the evaluation of reduction options, but the documentation of a technical fact that no alternatives exist.

On the other hand, some commenters argued that any hazardous substances on the input-use exemption list should be excluded from evaluation in Part I of the pollution prevention plan.

Several comments were also received objecting to the use of the phrase "very specific and narrow," which was used by the Department to describe the input-use exemption in the January pre-proposal.

C. Department Recommendation

Based on the discussions of this issue and the comments received, the Department remains extremely concerned that the use of input-use exemptions needs to be clarified. After further review and consideration of these comments, the Department is considering the following approach for regulations concerning the input-use exemption list.

It is apparent that there is considerable confusion on the intended application of the input-use exemption provision in the Act. The Act states that hazardous substances can be placed on an input-use exemption list if the owner or operator has determined **through pollution prevention planning** that the input-use cannot be reduced below current levels. N.J.S.A. 13:1D-40(e) (emphasis added). Therefore, the Department believes that, at a minimum, a facility must complete Part I through to the feasibility analysis step of Part II of the pollution prevention plan (see pollution prevention planning requirements listed at N.J.S.A. 13:1D-41) before a substance can be considered for inclusion on an input-use exemption list. If after conducting the feasibility assessment section of Part II of the pollution prevention plan, a facility determines that the input-use of a hazardous substance in a particular process cannot be feasibly reduced through substitution of another reasonably available and economically viable alternative material, then the facility may add that substance to its input-use exemption list. However, the facility would still be required to explore pollution prevention techniques, other than raw material substitution, for the substance.

Thus, in order for a facility to place a hazardous substance on its input-use exemption list, the company must provide documentation, within the pollution prevention plan, on the infeasibility of substituting this input material. This information would likely include: chemical name; a description of the process where the chemical is used as an input; an explanation of why substitutes are not available; and an explanation of why substitutes are not economically viable.

Most importantly, the Act states that the owner or operator of a facility is required to consider pollution prevention techniques other than use reduction (that is, material substitution) for all hazardous substances on an input-use exemption list. N.J.S.A. 13:1D-40(e). Therefore, the Department plans to require the facility to complete both Part I and II of the plan, exclusive of raw material input substitution, for the exempted hazardous substance in order for the facility to evaluate other pollution prevention techniques within the exempted process.

The input-use exemption list will not be separately submitted to the Department for approval. Rather, the list and appropriate justification documentation will be part of the pollution prevention plan that is maintained on-site at the facility. The plan, including the list and documentation, is subject to inspection, review, and in some cases approval, by the Department. See N.J.S.A. 13:1D-43.

As part of the facility's documentation on the input-use exemption, a certification document will be included in the pollution prevention plan and plan summary. This certification will state that the company has:

(1) Completed Part I through to the feasibility analysis step of Part II of the pollution prevention plan for the hazardous substance (see pollution prevention planning requirements listed at N.J.S.A. 13:1D-41);

(2) Determined that there are no reasonably available and economically viable alternatives to the input-use hazardous substance; and

(3) Conducted complete pollution prevention planning for the input-use exempted hazardous substance, including examining all pollution prevention techniques within all processes.

This certification would be signed by the plant manager or owner/operator of the facility.

Under the Act, "an owner or operator shall not be required to include in a pollution prevention plan, pollution prevention summary, or pollution prevention progress report a reduction in use for any hazardous substance included on an input-use exemption list, but shall be required to provide all other information concerning such a hazardous substance required in a pollution prevention plan, pollution prevention summary and pollution prevention report." N.J.S.A. 13:1D-40(e)

As discussed above, the input-use exemption list and a summary of the justification for each input-use exempted substance will be reported in the pollution prevention plan, and plan summary.

In the pollution prevention progress report, the Department anticipates that the use reduction goals for the specific processes exempted will state that current levels are not anticipated to be reduced due to input-use exemption status. In other words, for those processes where the input-use exemption is being claimed for a substance, the facility may report that the use reduction goal is zero. However, the facility will still be required to provide a numerical value for a nonproduct output goal and any other relevant process-specific information for each substance exempted from reporting a process use reduction goal.

Although the N.J.S.A. 13:1D-40(e) exemption only applies to input uses, the Department does plan to encourage facilities to consider reductions in the non-input uses of an exempted substance. For example, a facility may determine after conducting its pollution prevention plan that benzene is the only feasible material to use in the production of chlorobenzene and therefore would place this substance for this process use on an input-use exemption list within its pollution prevention plan. This would not exempt the facility from considering reducing the use of benzene for other purposes, for example, using benzene as an equipment cleaning solvent. Again, the Act does not exempt the facility from considering other pollution prevention methods for the substance.

However, creating an input-use exemption list will not obligate a facility to reduce or eliminate the input use of any other hazardous substances not on the exemption list, or the non-input uses of hazardous substances on the exempted list. The Act is intended to encourage facility owners and operators to consider a broad range of pollution prevention techniques, but does not mandate that any one specific approach be implemented by the facility.

Under the Act, if a covered hazardous substance is a facility's product, that use of the substance is excluded from pollution prevention planning and reporting requirements. See N.J.S.A. 13:1D-41(b)17. However, any covered hazardous substances used in the production of the hazardous

substance product are still subject to pollution prevention planning and reporting requirements.

The Department recognizes that some hazardous substances, such as petroleum crude oil or vinyl chloride in PVC manufacturing, cannot be feasibly substituted in certain production processes. Nonetheless, it was also clear from the comments received on the January pre-proposal that most facilities view the input-use exemption list as a means of avoiding pollution prevention planning requirements. Therefore, the Department is concerned that if it creates a list of chemicals automatically exempt from material substitution evaluation, many facilities will not develop adequate pollution prevention plans considering all other pollution prevention opportunities, as required by the Act. In addition, the information is not currently available for the Department to determine those hazardous substances and processes for which input use of covered hazardous substances cannot feasibly be reduced. As such, the Department does not plan to develop a "self-evident" input-use exemption list, but will reconsider the issue after the first five-year planning process.

4. Incentives

A. Summary of Issue

The January pre-proposal requested comments on a broad issue affecting pollution prevention planning, namely, what kind of incentives exist (or can be developed by the Department) to encourage industrial facilities by set aggressive goals for reducing the use and generation of hazardous substances in their pollution prevention plans, especially in light of the authorities contained in N.J.S.A. 13:1D-43(c) and (d).

B. Comments and Department Recommendations

a. Comment

One commenter suggested that there are incentives inherent in many of the Department's permit programs that allow for reduced fees and reduced regulatory burdens associated with reducing the use, generation and release of hazardous substances. Other commenters suggested that the existing permit regulations contain significant disincentives to implementing pollution prevention measures.

In some instances, meeting the goals set forth in a pollution prevention plan may require modification of existing single-media permits. A number of commenters suggested that fast tracking permit modifications for permittees who are implementing pollution prevention measures would serve as an incentive for setting aggressive pollution prevention goals by alleviating concerns about delays in permit processing. These commenters felt that having to wait for permit modifications to be processed by the Department serves as a built-in disincentive for a facility to establish aggressive goals in the first place.

Department Recommendation

The Department envisions developing procedures to ensure that all permit modifications necessary for implementing pollution prevention measures are addressed as priority items. This would alleviate long waiting periods that might otherwise prevent a facility from moving ahead with pollution prevention initiatives.

The Department is aware that disincentives to aggressive pollution prevention do exist within certain media specific permit regulations that have been promulgated pursuant to media-specific laws. The Department is involved in an on-going review of regulations in order to identify and correct some of these disincentives. For example, an air permit rule is currently being re-written to remove a recognized disincentive to implementing pollution prevention measures.

b. Comment

Several commenters recommended that the Department (and the State) provide financial incentives for pollution prevention such as tax incentives, fee waivers, and reduced penalties for permit non-compliance for facilities implementing pollution prevention measures.

Department Recommendation

The Department believes that financial incentives will play a primary role in facilities' decisions on whether or not to implement pollution prevention options that require significant amounts of capital, particularly in small businesses. The Department is currently performing research to identify the disincentives to pollution prevention that exist in New Jersey's tax structure and to develop a system of tax incentives that would reflect the preferred waste management hierarchy (where pollution prevention is the preferred option for waste management, followed by recycling, then treatment, then secure disposal).

Regarding fee waivers, the Department has begun to explore the feasibility of changing existing fee structures and will continue to do so. In some instances, it will not be possible for the Department to change fee structures without statutory changes. If the Department determines that statutory fee changes are necessary and desirable policy tools to encouraging the adoption of pollution prevention measures by industry, the Department will recommend such proposed changes in the report to the Legislature required by N.J.S.A. 13:1D-45.

Regarding reduced penalties for permit non-compliance, the Department will also be exploring this policy option as part of its overall enforcement strategy to encourage the adoption of pollution prevention measures by industry. However, studies done to date (including research conducted by the Department and other research conducted by public interest groups) indicate that a strong and consistent permit enforcement program itself acts as an incentive to the implementation of pollution prevention by industry.

c. Comment

All of the comments received stressed the need for flexibility in all aspects of the pollution prevention plan requirements, including incentives.

Department Recommendation

The Department believes that by emphasizing flexibility in several key areas, including grouping, targeting, input-use exemptions and reporting, it will provide industrial facilities with incentives to maximize their opportunities for pollution prevention. The Department does not intend to impose upon facilities either a set of prescriptive goals or prescriptive methods to be used to achieve pollution prevention goals.

d. Comment

Several commenters at the workshops suggested that the Department delay using its authority, under N.J.S.A. 13:1D-43(c) and (d), to "ratchet down" existing discharge or emission levels in either single-media permits or facility-wide permits. The commenters believed that this delay would remove perceived disincentives to setting aggressive goals for reducing the use and generation of hazardous substances.

Department Recommendation

Although the Legislature provided the Department with several enforcement mechanisms in the Act, it appears that it also intended the economic and environmental incentives provided by pollution prevention techniques to serve as the primary motivation for industrial facilities to adopt such strategies.

In keeping with the spirit of the Act, the Department intends to propose that all 10-15 Facility-Wide Permit candidates be volunteers. See N.J.S.A. 13:1D-48. Provided that 10-15 facilities step forward to volunteer to be a part of this innovative effort, thereby enabling the Department to fulfill its legislative mandate, the Department does not intend to unilaterally convert pollution prevention plan requirements into enforceable permit conditions through issuance of a facility wide permit. This would remove another identified potential disincentive to setting aggressive goals for reducing the use and generation of hazardous substances.

In addition, the Department plans to postpone until 1996 any unilateral implementation of N.J.S.A. 13:1D-43(c), which allows it to incorporate pollution prevention plan requirements into an industrial facility's existing single-media permits as enforceable permit conditions. In 1996, the Department is required to report to the Legislature and the Governor on the successes or shortcomings of the facility-wide permit program as well as on the Department's trend analysis efforts. At that time, the Department will have collected pollution prevention summaries and one year of progress reports and completed its statutorily mandated trend analysis. The Department expects to perform this trend analysis with an eye toward how best to exercise its authority under N.J.S.A. 13:1D-43(c) and (d), as well as how and whether to expand the applicability of the facility-wide permit program. By 1996 the Department will also have completed its pre-pilot facility-wide permitting program, which currently includes three industrial facilities.

The Department believes that by temporarily removing the disincentives posed by these sections of the Act, facilities will choose to set aggressive goals for pollution prevention.

5. Definition of Nonproduct Output

A. Summary of Issue

This issue was not identified as an issue of concern in the January pre-proposal but was raised by industry prior to the workshop. Nonproduct output (NPO) is defined at N.J.S.A. 13:1D-37 as "all hazardous substances or hazardous wastes that are generated prior to storage, recycling, treatment, control, or disposal and that are not intended for use as a product." This definition provides the focus and emphasis for

pollution prevention throughout the Act, and is the basis for much of the information to be collected under the Act. Because of the importance of this basic issue, the definition of NPO was discussed in depth at the workshops.

To help clarify the NPO definition, the Department prepared Figure 2, below, illustrating the difference between releases and NPO. Figure 2 was circulated to the workshop attendees and discussed at the workshops.

B. Comments and Responses

At first, the Department was concerned about whether the differences in interpretation of the definition of NPO affected the basic premise of the Act as a pollution prevention law as opposed to an emission reduction law. However, comments received indicate that industry recognizes the Act's emphasis on pollution prevention and understands that NPO is to be measured prior to any treatment, recycling or reuse.

Other comments received on the definition of NPO focused on some of the finer points of the definition such as the relation of NPO to hazardous waste requirements under RCRA, clarification of in-process recycling as it relates to NPO, and the relation of NPO to workplace releases.

Hazardous Waste Issues

1. Comment

Industry was concerned that pollution prevention plans will be used to identify activities that require a Hazardous Waste Facility Permit (that is, a RCRA Part B permit). There were several generic scenarios discussed which raised questions on hazardous waste classification issues. One commenter questioned if a material which is currently not classified as a hazardous waste would be considered a hazardous waste once the material is identified as NPO.

Response

The Department believes that the definition of NPO does not affect the classification of hazardous wastes under RCRA. If the material is not classified as a hazardous waste under State and Federal rules, identifying the same material as NPO in a pollution prevention plan, pollution prevention plan summary or progress report will not change the existing classification. Since the Act defines a hazardous waste to include "... any solid waste defined as hazardous waste by the Department pursuant to P.L. 1970, c.39 (C.13:E-1 et seq.)," nothing else in the Act would affect existing hazardous waste classifications.

It is possible that by preparing a pollution prevention plan a facility may identify materials that have not been classified at all. If the pollution prevention planning process identifies a "new" hazardous waste at a facility, the Department would obviously require that the facility take appropriate action.

2. Comment

A second issue concerns an existing "residue" which is classified as a hazardous waste but is currently recycled on-site in accordance with the exemption provided in N.J.A.C. 7:26-9.1(c)10.

Response

The Department believes that identifying this residue as NPO will not affect existing exemptions or require the facility to obtain a Hazardous Waste Facility permit. It is possible that by preparing a pollution prevention plan, a facility may identify recycle streams that have not yet received exemptions. However, existing exemptions will not be affected.

3. Comment

The final hazardous waste issue raised in the comments on the January pre-proposal concerns a "mixed" waste containing hazardous substances other than those which cause the waste to be classified as hazardous. Some industry commenters were concerned with the potential overlap between NPO and hazardous waste in this situation because hazardous waste is included in the NPO definition. Further complicating this issue is the fact that hazardous waste is measured in total pounds of waste and not specific quantities of individual chemicals. Due to these issues, the companies were concerned that hazardous wastes would be "double-counted" as both a specific chemical and total waste.

Response

The Department does not believe that "double-counting" will be a problem because information reported under the Act does not affect other reporting requirements. For example, manifests and annual reports for a hazardous waste must still be prepared and submitted even if chemical specific information is reported under the Act. In addition, any reports filed under the Act for the hazardous substance in question will identify the quantity of the substance in the hazardous waste. Existing TRI reports address this same information.

b. In-Process Recycling

1. Comment

Several industry commenters requested clarification of the phrase "... prior to storage, recycling, treatment, control or disposal ..." within the Act's definition of NPO, N.J.S.A. 13:1D-37. These companies contended that the definition of NPO does not distinguish between in-process and out-of-process recycling and requested that the term "recycling" in the definition of NPO be interpreted as "out-of-process recycling" to be consistent with the definition of pollution prevention.

If "recycling" is not interpreted as out-of-process recycling, quantities of hazardous substances which were recycled within the process would be included in the NPO data submitted in plan summaries and progress reports. The commenters contended that even though the in-process recycling activities would be considered pollution prevention, the data submitted would not show reductions in NPO.

Additional specific comments on defining the term "in-process recycling" were also received. These comments are addressed in Section 6 below.

Response

The Department intends to clarify the definition of NPO to include "all hazardous substances or hazardous wastes that are generated prior to storage, out-of-process recycling, treatment, control or disposal and that are not intended for use as product." With this clarification, the Department intends to exclude quantities of hazardous substances that are recycled "in-process" from the NPO data in plan summaries and progress reports.

c. Workplace Releases

Other Comments

One commenter suggested that the Department exclude releases within an industrial facility from the NPO definition if those releases are intended to be used in a product or are not ultimately released to the environment.

Response

The definition of "multimedia release" in the Act includes releases into workplaces. See N.J.S.A. 13:1D-37. In addition, the legislative findings of the Act state in part that while "the traditional system has produced palpable improvements in the State's environmental quality, it does not adequately address the impact of the use of hazardous substances upon occupational health in pollution-generating industries." The Act's findings also state that "it is in the interest of the environment and public and **occupational health**, and in the general public interest of all residents of the State, to transform the current system of pollution control to a system of pollution prevention. ..." N.J.S.A. 13:1D-36 (emphasis added).

The Department feels that the emphasis placed on occupational exposure in the Act dictates that the pollution prevention program requirements address NPO releases to the workplace. The main measure of pollution prevention progress is based on tracking NPO. If releases to workplaces are excluded, a major emphasis of the Act will be eliminated.

As part of implementing this mandate to address occupational exposure, the Department is planning to clarify in its regulations that the term "disposal" in the NPO definition includes "multimedia release."

C. Department Recommendation

Based on an analysis of the comments received on the NPO definition, the Department is satisfied that facilities understand that the Act is a pollution prevention law and not an emissions reduction law. Therefore, it does not believe that this issue needs further clarification.

As discussed above in the response to specific comments, the Department does not believe that the Act's definition of NPO will impact the classification of hazardous wastes under current State and Federal laws.

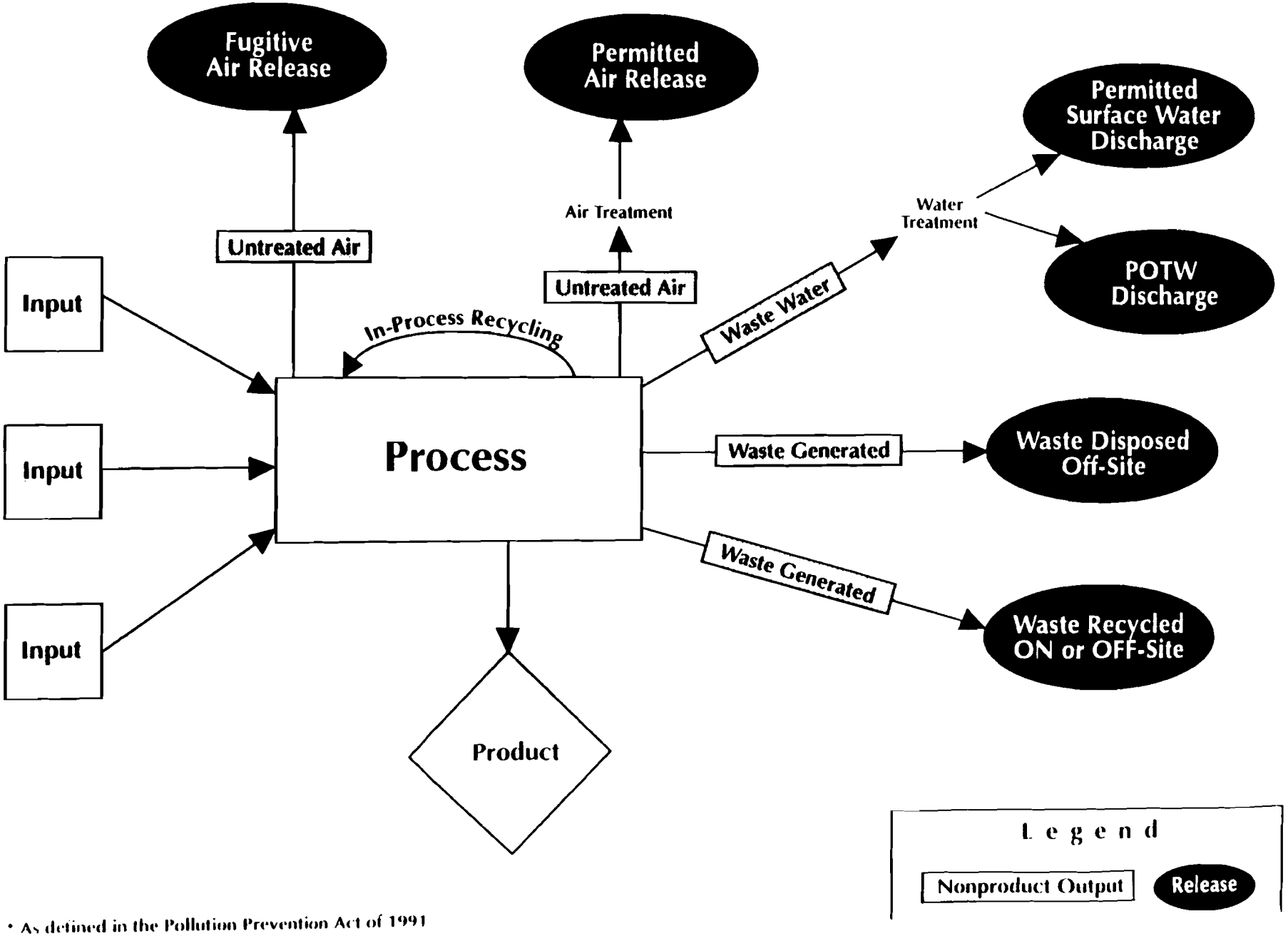
The definition of in-process recycling and the use of the recycling exemption at N.J.S.A. 13:1D-37 require additional discussion and clarification prior to proposing the regulations. These issues are discussed below in Section 6 below.

6. Definition of In-Process Recycling

A. Summary of Issue

To aid the discussions on the January pre-proposal, the Department prepared a diagram illustrating the NPO definition. This diagram was given to everyone attending the workshops held in March. The diagram originally identified "closed-loop" recycling instead of "in-process." This

Figure 2. Nonproduct Output vs. Multimedia Releases*



* As defined in the Pollution Prevention Act of 1991

raised several questions concerning the definition of in-process recycling and what specific recycling activities would meet the definition. This is an extremely important issue because under the definition of pollution, in-process recycling is considered to be pollution prevention and out-of-process recycling is not. See N.J.S.A. 13:1D-37.

The Act does not define in-process recycling, therefore, several aspects of this issue were open to discussion.

B. Comments and Responses

a. Comment

Several companies indicated that many activities are not closed-loop but should be considered pollution prevention. These comments indicated that there are many recycling activities which conserve resources and avoid environmental risks and should be counted as pollution prevention. This is especially true for batch production processes, whereas closed-loop systems are more compatible with continuous flow operations. These commenters suggested that the "closed-loop" term included in the Department's original diagram be changed to "in-process" to be consistent with the statutory definition of pollution prevention and allow for activities other than closed-loop piping systems to count as pollution prevention.

Response

The Department has made the suggested change to the diagram, but this change by itself does not answer the question of what constitutes in-process recycling other than closed loop systems. See Department recommendation below.

b. Comment

To clarify their comments on in-process recycling, several companies presented specific examples of recycling activities they thought should be counted as in-process recycling. These examples were based on "batch" operations. To provide a basis for these examples, one commenter provided a proposed definition of "batch" process as:

> A manufacturing process which requires that a finite amount of raw material is charged to a process vessel, which, when the process is finished, provides a finite amount of product. That product is then removed from the process vessel and a new batch can be started.

The first scenario deals with a residual material generated in one batch which is collected and stored prior to being reintroduced as a raw material into the next batch making the same product. Based on current definitions, this would not be considered in-process recycling or pollution prevention.

Other recycling scenarios concerned the introduction of a residual from one process into a "similar" process making a different, but similar, product. There was significant discussion on how grouping processes together provides significant flexibility and whether grouping can be applied to this scenario.

For example, a facility may collect and store a residual generated from one process for use in another process. If the two processes are identified as separate processes, this would be considered out-of-process recycling or reuse. If the products and/or raw materials are similar (see discussion on grouping in Section 1.A. of this pre-proposal) the facility could group these processes together into a single process. The question raised at the workshops is whether it is appropriate to allow such grouping to change the recycling activity from out-of-process to in-process.

Response

The Department does not plan to allow grouping to be used to change the classification of activities as in-process recycling. The Department has developed a proposed definition of in-process recycling which excludes the activities described above from being counted as pollution prevention.

c. Comment

Another commenter suggested that the Department use the definition for "closed loop" adopted under the Federal Resource Conservation and Recovery Act (RCRA), found in 40 CFR Section 264(a)(8).

Response

The Department is proposing that the definitions under the Act will be used only for the purposes of pollution prevention reporting. RCRA definitions for classifying solid and hazardous wastes will be separate definitions. Therefore, the Department is proposing not to adopt any existing RCRA definitions in the pollution prevention program requirements.

d. Comment

Several environmental groups suggested that some recycling activities that are not closed loop should qualify as in-process recycling. They suggested that the following criteria be used to evaluate recycling activities for the in-process definition: solely dedicated, physically integrated, no added worker handling or exposure, closed and fixed, no storage and reclamation processes and original reuse.

Response

The Department has considered the suggested criteria in developing a proposed definition of in-process recycling. Many of these criteria are incorporated in the proposed definition.

e. Comment

A few companies indicated that although pollution prevention is the preferred method, the Department should also acknowledge the benefits of out-of-process recycling and provide guidance on the preferred hierarchy of waste management.

Response

The Department acknowledges that industries' implementation of pollution prevention techniques will not by itself meet all environmental objectives and that other environmental management techniques must be relied upon. Pollution prevention is the first and preferred step in a recognized waste management hierarchy which consists of: 1) pollution prevention; 2) recycling; 3) treatment; and 4) disposal.

The next step in the hierarchy is recycling. Recycling options also provide significant environmental and economic benefits. These options are strongly encouraged by the Department. The Department will propose that certain out-of-process recycling activities be eligible for an industry self-certification exemption. This issue is discussed in detail in the recommendation below.

C. Summary of Response: Department Recommendation

The Department, industry and the public have identified the definition of "in-process recycling" as a key issue in implementation of the pollution prevention program. The Act defines pollution prevention to include in-process recycling activities, but does not contain a definition of in-process recycling. Therefore, the definition of in-process recycling will determine what industrial activities will be considered pollution prevention activities and what industrial activities will be considered recycling activities and, as such, will not typically be included in a pollution prevention plan. The Department has currently identified three possible options for how it could define in-process recycling. A description of each option is presented below. The Department encourages comment on the implications of each of these options or on other possible options that the Department should consider.

Option 1: The Department could adopt a very strict definition of in-process recycling that would disallow any type of recycling other than closed-loop recycling. This would be responsive to the input the Department received from commenters from environmental groups, who believe that the Act did not intend to allow recycling activities other than closed-loop recycling to be counted as pollution prevention.

Option 2: The Department could adopt a very broad definition of in-process recycling that would allow a certain class of recycling as in-process recycling. That allowable class would include reuse of raw materials within the same or similar processes, generally in batch operations. This option would be responsive to the input that the Department received from commenters from industry, who believe that the Act intended pollution prevention to include these activities.

Option 3: The Department could adopt a "compromise" approach to defining in-process recycling. In this option, the Department would adopt a strict definition of in-process recycling as described in Option 1 above, but would also provide a self-certification for the class of recycling described in Option 2 pursuant to the recycling exemption at N.J.S.A. 13:1D-41(f). This option requires further clarification to be viable.

The recycling exemption allows the Department to authorize an owner or operator to include out-of-process recycling in a pollution prevention plan and a pollution prevention plan summary if the Department determines that pollution prevention strategies are not reasonably available to the owner or operator. The Department proposes to establish a separate reporting category in plan summaries and progress reports to track this exempted class of recycling. The exempted recycling activity would not be part of the pollution prevention goal but the facility would be able to report their achievements in the pollution prevention plan summary and progress report.

The Department is considering the following criteria for defining the class of recycling activities where a facility may self-certify that no pollution prevention options are available for the process:

1. The material is a substitute for a raw material;
2. The material is a chemical input (that is, reactant, or formulation component);
3. The material is returned to the same process where it was generated; and
4. There is no increased risk resulting from the recycling activity, including risks to workers.

The Department is also considering establishing criteria which must be met by the facility for self-certifying that there are no pollution prevention options reasonably available for the process. These criteria are intended to ensure that a facility has prepared an adequate pollution prevention plan as required by the Act, but are not intended to set specific decision-making requirements for the facility. The facility would be required to self-certify that it has:

1. Completed Part I of a pollution prevention plan for the process;
2. Identified and described available pollution prevention options for targeted processes;
3. Conducted a feasibility analysis of available options; and
4. Described valuation methods used to determine not to install available pollution prevention options.

7. Intermediate Product Definition

A. Summary of Issue

This issue was not included in the January pre-proposal but is directly related to the NPO and in-process recycling issues.

The definition of "product" in N.J.S.A. 13:1D-37 requires that a product be "used as a commodity in trade in the channels of commerce by the general public." It is unclear whether this definition allows an isolated intermediate from one process in a facility to be processed in subsequent processes without identifying the intermediate as NPO for the first process.

B. Comments and Responses

a. Comment

One commenter expressed concern that the definition of "product" does not allow "non-product" streams to serve as a raw material in a second process.

Response

For planned intermediate products the Department is planning to adopt a new definition for "intermediate product" which would eliminate these streams from the NPO definition. For other "unplanned" streams the Department will propose that these streams be identified as NPO.

b. Comment

One commenter expressed concern over the definition of "product" in the Act and suggested that the Department broaden the definition to include "a desired result or results of a process, or commodities which have market value." A specific example presented by the commenter described an intermediate product that could be stored for a period of a year or more before being processed in a subsequent step into the final product for sale to the general public.

Response

The definition of intermediate product discussed below should address many of these issues.

c. Comment

Comments from several companies suggested that "secondary products" which are not the primary aim of a process be excluded from the definition of NPO and be counted as part of the product from the process. The commenters contended that if secondary markets are found for these materials the quantities sold should count toward pollution prevention goals and NPO reduction goals.

Response

The Department is planning to propose that secondary products or "co-products" be identified as NPO. If the stream is not the "primary" product and a secondary market is found, the Department intends to consider this activity a form of recycling or reuse depending on the specific circumstances.

C. Summary of Responses: Department Recommendation

To address the questions raised concerning the definition of "product," the Department is developing a definition of "intermediate product." This definition is intended to apply to isolated intermediates which are the planned result of a process at the facility where the intermediate is further processed into a final product at the facility. The suggested definition is as follows:

> "Intermediate product" means a desired result of a production process that must be further processed in a subsequent production process at the same industrial facility before it is used as a commodity in trade in the channels of commerce by the general public. An intermediate product shall not be considered non-product output.

This definition is not intended to encompass "secondary products" which are not the primary focus for the process.

8. Reporting Threshold

A. Summary of Issue

Under N.J.S.A. 13:1D-40(d), the Department has the authority to establish for any hazardous substance a facility-wide threshold of up to 10,000 pounds. If a facility uses or manufactures this hazardous substance in a quantity below the threshold, then information on the substance does not have to be included in the pollution prevention plan, pollution prevention plan summary, or pollution prevention progress report.

B. Comments

Several commenters requested that the Department exercise its discretion by establishing a 10,000 pound threshold for each hazardous substance on a facility-wide basis. Several reasons were cited for this suggestion, as follows:

i. Using this threshold would ease dovetailing the pollution prevention program with the Federal Right-to-Know program and increase compliance with the New Jersey Right-to-Know law;

ii. Using this threshold would make grouping sources and substances unnecessary; and

iii. Using this threshold would make the application of the Act more practical since many facilities use the covered hazardous substances in small quantities and would be unduly burdened by reporting requirements.

C. Department Recommendation

The Department intends to establish a facility-wide threshold of 10,000 pounds for each covered hazardous substance used and/or manufactured at a priority industrial facility. Information on hazardous substances used in quantities below the threshold would not have to be included in the pollution prevention plan, pollution prevention plan summary, or pollution prevention progress report.

The present threshold for reporting under 42 U.S.C. §11023 (SARA section 313) on Form R applies to any hazardous substance which is either used in annual quantities above 10,000 pounds or is manufactured in annual quantities above 25,000 pounds. If a 10,000 pound threshold is implemented under the Act, pollution prevention planning requirements will apply to hazardous substances that are manufactured in quantities above 10,000 pounds yet below the Form R reporting threshold of 25,000 pounds.

This threshold level would not impact facilities which are not presently covered under the Act as priority industrial facilities. A facility which does not currently report under 42 U.S.C. §11023 (SARA section 313) on Form R, or is not otherwise designated by the Department as a priority industrial facility (see N.J.S.A. 13:1D-37) is not required by the Act to develop a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report, even if the facility uses or manufactures a covered hazardous substance above this 10,000 pound threshold. See N.J.S.A. 13:1D-40(d).

9. Confidentiality

A. Summary of Issue

In the January pre-proposal, the Department requested comments on the types of information that should or should not be considered confidential for pollution prevention planning purposes.

B. Comments

Several commenters recommended that the following types of information be considered confidential in the pollution prevention process:

- Information that indicates production volumes or operating efficiencies;
- Information regarding product formulations, manufacturing processes and raw material suppliers;
- All information beyond that required by current single-media permit statutes which is submitted to the Department in support of single-media permit applications;

- Changes or improvements in the manufacture of proprietary products/processes; and
- Operating costs and efficiency.

C. Department Recommendation

Based on a comparison between the items listed above and the items specifically required by the Act to be reported in pollution prevention plans, summaries and progress reports, it appears that there may be disagreement among the Department, environmental groups, and industry groups about what information should be considered confidential under the Act. Therefore, the Department plans to work with representatives of all groups involved to establish a "confidentiality task force" to discuss this topic further. Although the Department believes that this task force will need to remain small to be effective, the Department invites the public to identify groups who believe that they are not currently represented in this process.

(a)

ENVINRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Transportation Use Policies

Proposed Amendments: N.J.A.C. 7:7E-7.5

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1D-1 et seq. and 12:19-1 et seq.
DEPE Docket Number: 017-92-05.
Proposal Number: PRN 1992-228.

A **public hearing** concerning the proposal will be held on Wednesday, June 17, 1992 at 10:30 A.M. at:

Atlantic City Free Public Library
1 North Tennessee Avenue
Atlantic City, New Jersey

Submit written comments by July 1, 1992 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) proposes to amend its Coastal Zone Management Rules concerning Transportation Use Policies, to allow alternative traffic reduction programs to be used in place of the employee intercept lot requirement for casinos located in Atlantic City (N.J.A.C. 7:7E-7.5). Currently, N.J.A.C. 7:7E-7.5 provides that all casinos located in Atlantic City must furnish employee intercept parking space off Absecon Island at a rate of one space per five employees. This policy is intended to help reduce air pollution and reduce traffic congestion.

The proposed change would provide the flexibility for casino developers to comply with the existing policy by offering alternative measures that are equally or more effective in reducing vehicle miles travelled and peak hour employee travel demand than the intercept parking space requirement. This change would encourage the exploration and incorporation of alternative modes of transportation as options and reduce use of private automobiles. These measures include, for example, subsidizing employees to commute by train or bus, to use van pools or to ride bicycles.

In addition, the proposed change would clarify that the amount of intercept parking hotel-casino operators are required to provide is to be sufficient to provide intercept spaces for 20 percent of the employees. Because hotel-casinos operate on several shifts, each intercept space can be used by several employees. The current rule could be interpreted to require a number of intercept spaces equal to 20 percent of the total number of hotel-casino employees, which was not the intention of the policy.

In addition, the proposed change would change the calculation for the number of required intercept spaces by excluding Atlantic City residents from the count. The reason for this change is that Atlantic City residents would create more traffic and air pollution by driving off island to an intercept lot than by travelling directly to the hotel-casino.

The proposed amendments also delete a sentence from N.J.A.C. 7:7E-7.5(d)3, which states that the construction of intercept parking facilities along the main access routes to major urban centers and the barrier islands and bay islands is encouraged. This deletion does not reflect a change in Department policy; the Department continues to encourage such facilities. However, except as specifically provided in the rule, the Department does not require the construction of such facilities. Therefore, the deleted provision does not prescribe a legal standard or directive, and need not be set forth in a rule.

Social Impact

This change would directly affect the Atlantic City casino developers/owners, their employees, and the City of Atlantic City. The Department anticipates that this change will have a positive social impact because it will allow greater flexibility in meeting an existing requirement and stimulate the development of alternative modes of transportation for the benefit of the casino employees as well as other commuters to and from the City.

Economic Impact

The proposed amendments may have a positive economic impact upon some casino developers, and may have a negative economic impact upon the Atlantic City Expressway Authority and the City of Pleasantville. The proposed amendments provide an additional method by which casino developers can serve the goal of reducing vehicle miles travelled and peak-hour employee travel demand. It is likely that this alternative will be less expansive than providing intercept parking, because a casino developer will not incur the cost of purchasing the land for the intercept parking, developing the parking lot, and operating a shuttle between the lot and the casino-hotel. However, even if the alternative is not less expensive (for example, if the costs associated with the alternative, such as employee subsidies for bus, rail transit, van pools, or bicycle programs makes it more expensive than providing intercept parking), the proposed amendments will not have a negative economic impact because the casino developer still can choose to provide intercept parking instead. The change would also give the City of Atlantic City greater opportunities to attract casino employees to downtown shopping.

The proposed amendments may have a negative economic impact upon the Atlantic City Expressway Authority because it would be likely to lose users and revenue from the intercept lots it now operates. In addition, one developer who had proposed to build an intercept parking facility, and the City of Pleasantville, where the proposed lot was to be located, would be negatively affected because the availability of alternatives under the proposed amendments is likely to reduce the demand for that intercept parking.

Environmental Impact

The Department anticipates that this change will have a positive impact on the environment. Alternatives to the intercept parking requirement are intended to promote greater use of public transportation and less dependency on private automobiles, in a manner which does not require the construction of additional intercept parking lots. This will result in a reduction in the generation of air and water pollution, and a reduction in energy consumption. It will also result in a reduction in paved roadway and parking facilities, which adversely affect the water and aesthetic quality of the coastal environment.

Regulatory Flexibility Statement

The proposed amendments potentially apply to a very limited number of "small businesses" as defined in the Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. Presently, there are 12 casinos in Atlantic City, none of which qualifies as a "small business." The operators of small parking lots and of small stores in Atlantic City may benefit from the amendments if, as a result, more employees patronize downtown.

Because the proposed change will provide options to an existing requirement, instead of replacing or altering it, no additional cost or burden will be imposed by the Department as a result of its implementation. Therefore, no special considerations were given for small businesses in developing these amendments.

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

7:7E-7.5 Transportation Use Policies

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

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all **of the following:**

i. Any parking [facilities, in part or wholly] **facility of which any part is** within the area subject to the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.)[, and elsewhere];

ii. Any parking facility for 300 or more cars and related access, of which any part of the facility or related access is located in the coastal zone [to parking facilities for 300 or more cars and related access]; or

iii. [to paving of an] **Any paved** area **of which any part is located in the coastal zone, which area is** equal to or greater than three acres excluding access drives.

2. (No change.)

3. [The construction of intercept parking facilities along the main access routes to major urban centers and the barrier and bay islands is encouraged.] **Each hotel-casino facility located in Atlantic City shall furnish** employee intercept parking space [must be furnished] at a [minimum] rate [of one space per five employees for all casino facilities located in Atlantic City and] **sufficient to provide one of every five non-Atlantic City resident hotel-casino employees with an intercept space. This intercept parking space** shall be located off Absecon Island. If off-island sites are not available, temporary use of the other sites is conditionally acceptable **if an applicant can demonstrate that they will be able to move to on off-island site within one year.**

i. Alternatives that would reduce vehicle miles travelled and peak hour employee travel demand may be substituted for employee intercept parking space requirements for casino facilities. The Department will review proposed alternatives in consultation with the Department of Transportation. The Department will approve alternatives which it determines will reduce vehicle miles travelled and peak-hour employee travel by at least as much as would result from furnishing intercept parking as described above. Acceptable alternatives include, but are not necessarily limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

ii. Alternative scheme proposals must include documentation indicating the existing travel patterns and mode of travel characteristics of employees. This information shall be provided to the DEPE along with the necessary data used to establish the vehicle miles travelled and peak hour employee travel demand with and without the proposed traffic reduction program. All proposals shall also include a monitoring system designed to collect data that will be submitted to the DEPE to verify the success of the proposed traffic reduction program and serve as a basis for future adjustments if necessary.

4. Rationale: See OAL Note at the beginning of the subchapter.

(**OAL Note:** The following amendment is a change to the rationale for N.J.A.C. 7:7E-7.5(d) which, as explained in the Code, is not published as part of the Code.)

4. Parking facilities are a necessary part of a transportation system and are encouraged when they are developed as ancillary facilities to public transportation systems. **Intercept lots, park and ride lots, and other transportation facilities or programs designed to reduce vehicle miles travelled, peak hour travel demand, air pollution and energy consumption are encouraged.**

(a)

WASTEWATER FACILITIES

Regulation Program

Standards for Individual Subsurface Sewage Disposal Systems

Proposed Amendments: N.J.A.C. 7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, Appendix A, Appendix B

Proposed Repeals: N.J.A.C. 7:9A-12.2, 12.3, 12.4, 12.5, 12.6

Proposed Repeal and New Rule: N.J.A.C. 7:9A-3.14 and Appendix A, Figure 16

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 58:11-23 et seq., 58:10A-1 et seq., including 58:10A-16 et seq., 13:1D-1 et seq., and 26:3A-21 et seq.

DEPE Docket Number: 019-92-05.

Proposal Number: PRN 1992-230.

A **public hearing** concerning this proposal will be held on Wednesday, June 24, 1992 at 10:00 A.M., at:

Department of Environmental Protection and Energy
First Floor Hearing Room
401 East State Street
Trenton, New Jersey

Submit written comments by July 1, 1992 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Standards for the construction of individual subsurface sewage disposal systems were first promulgated in 1954 pursuant to the Realty Improvement Sewerage and Facilities Act ("RISF Act"), N.J.S.A. 58:11-23 et seq. On July 28, 1989, the Department of Environmental Protection and Energy (Department) repealed these standards (N.J.A.C. 7:9-2) and adopted the new standards (N.J.A.C. 7:9A). The new standards became operative approximately five months later on January 1, 1990. The new standards were developed to reflect current scientific knowledge and engineering practice in order to not only protect public health and safety, as originally intended through the RISF Act, but also to include provisions for prevention of water pollution and protection of the environment through the authority of the New Jersey Water Pollution Control Act ("WPC Act"), N.J.S.A. 58:10A-1 et seq. The new standards implemented major revisions to both the administrative and technical aspects of the repealed standards. The format alone was significantly changed as a result of the increase in size and complexity of the new standards.

During development of the new standards, the Department endeavored to balance social and economic considerations with the protection of public health and safety and the environment. Because the new standards implemented major revisions to the repealed standards, their everyday use dictated that adjustments and refinements be made to facilitate their implementation and use. This became evident with the large number of letters received by the Department from present and prospective homeowners, developers, engineers, local health departments and elected governmental officials identifying many problems associated with the new standards and their implementation. The Department has previously proposed and adopted certain amendments to the new standards to address issues of immediate concern involving N.J.A.C. 7:9A-3.2 and 3.16 (see 24 N.J.R. 202(a) and 1491(a)).

The amendments included herein were developed by the Department in conjunction with an ad-hoc committee comprised of professional engineers, health officers, sanitarians, members of the environmental community, builders, realtors, soil scientists and others with knowledge

and experience related to the use of septic systems in different parts of the State. Proposal of these amendments is made in accordance with the recommendations of the Statutory Advisory Committee appointed by the Commissioner pursuant to N.J.S.A. 58:11-35 and represents a consensus of the committee on the provisions of the new standards proposed to be amended. The Department, in conjunction with the Statutory Advisory Committee, continues to identify other provisions in the standards for which revisions may be needed and will address them appropriately. The proposed amendments involve not only administrative and technical provisions of the standards, as suggested by the Statutory Advisory Committee, but the Department has taken the opportunity to correct some grammatical and typographical errors along with any inconsistencies between sections in the new standards. The proposed amendments are briefly described below.

Proposed Amendments to Administrative Provisions

Under the proposed amendment to N.J.A.C. 7:9A-1.6, the prohibition against the construction and installation of cesspools has been broadened to include the prohibition against the correction of existing cesspools by means of a repair pursuant to N.J.A.C. 7:9A-3.3(d). Because cesspools do not include the use of a septic tank as a pretreatment mechanism, cesspools must serve the dual purpose of solids retention and degradation, along with effluent discharge. From a wastewater treatment and hydraulic perspective, both of these functions cannot effectively coexist within a single passive vessel such as a cesspool. The amendment to N.J.A.C. 7:9A-1.6 proposes that the repair or alteration of cesspools must include, at a minimum, the installation of a septic tank preceding the cesspool. The placement of a septic tank prior to the cesspool would prevent solids, grease and fats from entering the cesspool which otherwise, over time, would reduce the infiltration of wastewater into the underlying soil. Generally, this may not enhance the level of wastewater treatment achieved because of limited infiltrative area and lack of a clear aerobic zone associated with the design limitations of cesspools; but from the perspective of hydraulic performance, the installation of a septic tank, which is properly operated and maintained, will reduce the possibility of further hydraulic malfunction in the future.

The proposed amendments delete N.J.A.C. 7:9A-1.7(b) and (c), which provide for civil penalties of up to $50,000 for a violation of N.J.A.C. 7:9A, and list examples of such violations. The Department recognizes that these provisions, in conjunction with the complexity of the new standards and increased delegation to local authorities, have created apprehension among the local officials and other professionals subject to the requirements of N.J.A.C. 7:9A. The Statutory Advisory Committee and other persons involved with septic systems have advised the Department that this apprehension has hampered the everyday decision making activities associated with septic system design, review, approval, construction and installation. In deleting N.J.A.C. 7:9A-1.7(b) and (c), the Department intends to remove some of this apprehension, and alleviate the related fear that any violation of the standards, regardless of nature and severity, will result in the assessment of the maximum civil penalty of $50,000 per violation. Deletion of N.J.A.C. 7:9A-1.7(b) and (c), in itself, does not change the penalty provisions of the Water Pollution Control Act. However, by removing specific examples the Department seeks to make it clear that the Water Pollution Control Act and the penalty rules at N.J.A.C. 7:14-8 allow the Department discretion in its enforcement actions for violations of the new standards.

The involvement of licensed professional engineers, with regard to alterations to existing septic systems, has been clarified in these proposed amendments. Instead of requiring that all alterations to existing septic systems, as defined at N.J.A.C. 7:9A-2, be performed in conformance with plans and specifications prepared by a licensed professional engineer, an amendment to N.J.A.C. 7:9A-3.3 is being proposed which states that alterations need only be performed in conformance with plans and specifications prepared by a licensed professional engineer if and when the scope of the alteration is such that it involves the practice of engineering as defined by N.J.S.A. 45:8-28(b). It is anticipated that as a result of this amendment, there will be fewer incidents of property owners failing to report malfunctioning systems or proceeding illegally with corrective measures without first notifying the administrative authority. Additionally, the Department is proposing corresponding amendments to N.J.A.C. 7:9A-3.4 and 3.5, as well as language which clarifies the responsibilities of both the licensed professional engineer and land surveyor regarding preparation of design plans. The amendments to N.J.A.C. 7:9A-3.7, 3.9 and 3.10 are proposed only to make these provisions consistent with other provisions of the standards that have been amended.

The period of time for which the administrative authority may approve the temporary use of a sewage holding tank is proposed to be extended from 60 days to 180 days through an amendment to N.J.A.C. 7:9A-3.12. This amendment will allow additional time for obtaining any additional permits which may be required for permanent means of sewage disposal in instances of severely malfunctioning septic systems that cannot be adequately rehabilitated.

The proposed amendments to N.J.A.C. 7:9A-3.14 repeal the requirement for the administrative authorities to issue a "license to operate" to owners of newly constructed or altered septic systems. The Statutory Advisory Committee recommended this repeal, and the Department agreed. The requirement was originally intended to incorporate certain mandatory provisions in the standards regarding system operation and maintenance; however, it fails to fully serve this purpose because it applies only to newly constructed or altered septic systems, and does not cover the majority of the existing septic systems which could potentially malfunction. In addition, local officials opposed the requirement because of the additional cost and resources which the administrative authorities would have to incur to implement the mandatory licensing program.

The proposed amendments replace the "license to operate" requirement with a Statewide notification program for septic system operation and maintenance. The notification includes information concerning recommended frequency of septic tank pumping, disposal field maintenance, materials and substances which should not be or are prohibited from being discharged into the septic system, indicators of septic system failure, and appropriate corrective measures for septic system failure. The proposed amendment requires the administrative authorities to provide the notification to each property owner issued approval after January 1, 1990 for the design, construction, installation or repair of an individual subsurface sewage disposal system. The administrative authorities must reissue the notification every three years.

In contrast to the "license to operate" requirement, the notification requirement is intended to bring about proper operation and maintenance of septic systems through education instead of additional regulatory requirements. In the Department's experience in other areas, such as solid waste recycling, this approach has proved successful.

The inclusion of newly repaired systems in the notification program will enable the administrative authorities to educate and inform a greater percentage of the septic system owners throughout the State regarding proper operation and maintenance of their septic systems. The Department also encourages and supports those municipalities and administrative authorities who elect to go beyond the notification requirements proposed herein and notify all existing facilities served by septic systems within their jurisdiction. However, this is not being mandated at this time in view of the extensive records collection efforts that such a mandate would require.

Proposed Amendments to Technical Standards

The amendments being proposed to the technical provisions of the new standards are to either facilitate the use of the new standards or to reduce the costs associated with septic system design and construction without compromising the proper functioning of septic systems.

A significant change proposed at N.J.A.C. 7:9A-5.8 concerns the criteria for determining depth to seasonal high water table which in turn is used to determine the presence of soil limiting zones such as regional or perched zones of saturation. The methodology in the current standards for determining the upper surface of a zone saturation is segregated into two categories. One involves relying on static groundwater elevations observed during the wet season and the other involves the use of Soil Conservation Service County Soil Survey reports. Both of these options are currently available only when no mottling is observed within the soil profile. Mottling is defined in the standards as a soil color pattern observed in the soil consisting of blotches or spots of contrasting color which is indicative of seasonal or periodic and recurrent saturation. When mottling is observed in the soil profile, the standards state that the upper surface of the zone of saturation is the highest elevation at which such mottling is observed in the soil profile. However, at times, there are other conditions under which a soil may exhibit blotches or spots of contrasting color which in no way are indicative of saturated conditions, but may be a soil color feature resulting from physical organization properties in the soil such as cemented bodies, nodules, concretions or weathered rock fragments. Because of the present definition of mottling

in the standards, both septic system designers and the administrative authorities must consider any blotch or spot of contrasting color in the soil to be a mottle and therefore, an indication of seasonal or periodic and recurrent saturation at that elevation in the soil. This has resulted in septic system designers having no option but to design mound, or mounded soil replacement disposal fields for sites which are otherwise well drained but exhibit any of the above noted soil conditions or to apply to the Department for treatment works approval pursuant to N.J.A.C. 7:9A-3.9 for authorization of alternate methods of determining depth to seasonal high water table. The proposed change will make it possible for the administrative authorities to allow the use of alternate methods available for determining depth to seasonal high water under those circumstances where adequate information is submitted to demonstrate that blotches or spots of contrasting color in a soil profile are not indicative of saturated conditions in the soil.

The proposed amendment to N.J.A.C. 7:9A-9.3 will change the minimum diameter of delivery pipes which discharge effluent from dosing chambers from three inches to 1½ inches. This amendment will not affect the design adequacy of dosing systems since all such designs must quantify, and account for friction losses in the delivery pipe. Additionally, since pressure dosed disposal fields must dose a volume of wastewater which is 10 times the volume of the distribution network in order to maintain pressurized conditions, an oversized delivery pipe can result in needlessly large dose volume which, in turn, requires a larger and more expensive pump. Because solids from septic tanks are sometimes carried over into dosing chambers, the minimum 1½-inch diameter is specified to prevent possible clogging which could otherwise occur.

The proposed amendment of N.J.A.C. 7:9A-9.5 and 9.6 will reduce the number of inspection ports currently required within disposal fields. The number of inspection ports required will be reduced from one at the end of every lateral, to a minimum of four inspection ports to be located in each corner of each disposal bed. The amendment is proposed since the present requirement is unnecessary. Inspection ports located in each corner of a disposal bed will allow for the monitoring of the water levels within the gravel envelope as satisfactorily as having inspection ports at the end of each lateral since, over time, water will seek its own level within the entire disposal field and will be relatively level throughout.

The amendments to N.J.A.C. 7:9A-8.2 and 9.2 pertain to manholes and manhole covers. The standard presently require that all septic tanks and dosing tanks must have a manhole extended to finished grade to provide access and that the manhole must be constructed of cast iron and be locked and bolted. The basis for this requirement was that by extending the manhole to grade, its location would always be known to the homeowner which will facilitate system maintenance such as pumping. The locked and bolted cast iron cover was required simply to prevent access by children and to eliminate the potential for accidents. The amendments modify the requirement that manholes for septic tanks and dosing tanks be extended up to the finished grade. Under the proposed amendments, the manholes must be extended to within six inches of finished grade at a minimum. Also, rather than requiring that the manhole covers be constructed only of cast iron, the proposed amendments provide that in cases where manholes are not extended to finished grade, the covers may be constructed of reinforced concrete, fiberglass, polyethylene or other suitable material and their location marked by a permanent, non-corrosive marker. The amendments are proposed to reduce some avoidable costs associated with septic system construction while maintaining the Department's objective of homeowners knowing the location of and having an easy access to their septic or dosing tank.

With the proposed amendments to N.J.A.C. 7:9A-9.7, a greater degree of flexibility in designing and reviewing pressure dosed disposal fields will be achieved by allowing the use of supplemental information for the hydraulic design of pressure dosed disposal fields. In the present standards, the Department provides nomographs and hydraulic tables for the purpose of designing pressure dosed disposal fields. These nomographs and tables place certain limitations on lateral length and manifold length, along with the flow rate. In some circumstances, professional engineers have had to manipulate field size, orifice spacing and dosing rate in order to design a pressure dosing system within the limits of the tables. The amendment will allow practicing engineers to use other methods to hydraulically evaluate the adequacy of proposed pressure dosed disposal systems when the nomographs and tables provided in these standards cannot be used. This can only be done with the approval of the administrative authority.

The amendments to N.J.A.C. 7:9A-6.1 and 10.2 will eliminate the required 25 percent overdesign in disposal field sizing when based upon percolation test results. This overdesign provision in the standards was originally included to serve as a safeguard to account for the inherent inconsistency and lack of reproducibility associated with the percolation tests. However, the overdesign factor was not derived scientifically and its use has resulted in unnecessarily and inappropriately large disposal fields. The Department believes that in view of the extended pre-soak requirements which now exist for the percolation test procedure along with the inherent conservatism in the design flow criteria, the 25 percent overdesign requirement is unjustifiable and its removal will not adversely impact the hydraulic performance of septic systems.

The purpose of the change to Figure 15 of Appendix A is to state the method the Department used to calculate the numbers in the table at Figure 15. The additional information will be useful in designing septic systems where the disposal field configuration is beyond the limits in the table. The method actually used must be approved by the administrative authority, as required by N.J.A.C. 7:9A-9.7(a)5.

The revisions to Figure 16 of Appendix A provide a broader range of flow rates, making the figure more useful in determining the friction loss for various pipe diameters.

Social Impact

The Department expects that the proposed amendments will facilitate the implementation of the new standards, thereby enhancing protection of public health and safety and the environment while reducing the risk of septic system failure. Through the mandatory notification program, not only will the property owners of the 5,000 to 10,000 newly constructed or altered septic systems a year throughout the State be educated in the proper use of their septic systems, but the owners of the approximately 7,500 septic systems which are repaired throughout the State every year will also be included in this program as a result of the proposed amendment to repeal the "license to operate" requirement and its replacement with the mandatory notification program.

The Department expects that by educating not only the property owners with newly constructed or altered septic systems but also those property owners with existing septic systems that require repairs, it will be causing a positive impact for many more property owners throughout the State who had their septic systems approved prior to the adoption of the new standards. By educating property owners regarding the proper operation and maintenance practices of their septic systems, the Department expects that the likelihood of some septic system malfunctions will be greatly reduced.

Economic Impact

After the new standards became effective, the Department received a large number of letters and telephone calls stating that the new standards have resulted in substantially increased costs associated with the location, design and construction of septic systems and stating that some of these increased costs are unnecessary. One of the purposes of developing the proposed amendments to the new standards was to reduce any undue negative economic impact of the new standards without compromising their ability to protect public health and safety and the environment. Overall, the amendments will have positive economic impact on the general public and administrative authorities.

The proposal for replacement of the "license to operate" requirements with the Statewide notification program for septic system operation and maintenance will not have any significantly different economic impact upon property owners with newly constructed or altered septic systems. With the exception of removing the triennial $15.00 license renewal costs associated with the "license to operate," the proposed Statewide notification program for septic system operation and maintenance will basically result in the same economic impact as the "license to operate" since the intention of both of these programs is to convince property owners of the need to periodically inspect and pump their septic systems. Although the three year frequency of septic tank inspection and/or pumping is no longer mandated by the standards, the Department believes that most of the property owners will take these actions at an appropriate frequency if they are made aware of the probability of more expensive corrective work that will become necessary when the system malfunctions due to improper operation and maintenance. This amendment will have a positive economic impact on the administrative authorities because the additional burden of tracking and enforcing the "license to operate" requirements, imposed by the new standards, will be substantially reduced.

A positive economic impact to property owners with existing septic systems will result from the proposed amendment to N.J.A.C. 7:9A-3.3 regarding alterations to existing systems. In some circumstances, the administrative authorities will be able to allow alterations to existing septic systems to be performed by septic system installers or contractors without the involvement of a licensed professional engineer.

The technical changes to the standards, which are proposed as a result of comments received by the Department concerning unnecessary or unjustifiable excessive costs associated with the design and construction of septic systems pursuant to the new standards, will reduce these costs without compromising system performance. The proposed amendment to N.J.A.C. 7:9A-1.6, requiring the installation of a septic tank as a condition of any alteration, repair or correction of a cesspool, will initially have a negative economic impact upon the owner of the cesspool. However, the Department believes that incurring this initial cost of approximately $2,000 for each septic tank will reduce the cost of correcting future malfunctions and is necessary to protect the environment.

Environmental Impact

The proposed amendments will maintain the overall positive environmental impact which resulted from the promulgation of the new standards. The proposed technical changes to the standards such as disposal field sizing (based upon percolation test results) and construction specifications have been formulated in a manner which will not adversely impact public health and safety, the ground water of the State or the environment. The Department also believes that replacing the "license to operate" requirement with the notification requirement will have a positive environmental impact. Because the notification requirement applies to a broader class of persons than the "license to operate" requirement, the proposed amendment will result in more persons being informed about septic system operation and maintenance. The amendment requiring that the correction of any cesspools include, as a minimum, the placement of a septic tank before the cesspool, will substantially reduce future malfunctions of cesspools and will have a positive environmental impact.

The amendment that empowers the administrative authorities to allow an extended use of temporary sewage holding tanks (from 60 to 180 days) under circumstances where the malfunctioning septic system is being repaired or corrected, will also have a positive environmental impact as it will facilitate a more thorough evaluation of malfunctioning septic systems to develop long term corrective solutions while the discharge to ground water is stopped.

Regulated Flexibility Analysis

The proposed amendments and new rule do not impose any additional 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., except as discussed below. The proposed amendments and new rule delete rather than add reporting, recordkeeping and other compliance requirements. The mandatory notification program does not impose additional requirements on small businesses since the notification program is to be implemented by the administrative authorities and does not mandate any such action by small businesses.

A small business served by an individual subsurface sewage disposal system which utilizes a cesspool would be required to install a septic tank as a condition of any alteration, repair or correction of the cesspool. The initial cost of such installation would be approximately $2,000, which may be offset by future savings due to fewer system malfunctions needing correction. However, because this requirement is necessary to protect the environment, no exceptions based on business size can be provided.

Full text of the rules proposed to be repealed can be found in the New Jersey Administrative Code at N.J.A.C. 7:9A-12.2, 12.3, 12.4, 12.5, 12.6 and Appendix A, Figure 16.

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

7:9A-1.1 Purpose

(a) The purpose of this chapter is to:

1. (No change.)

2. Provide standards for the proper location, design, construction, installation, alteration, **repair and** operation [and maintenance] of individual subsurface sewage disposal systems;

3.-5. (No change.)

7:9A-1.2 Scope

(a) This chapter prescribes standards for the location, design, construction, installation, alteration, **repair and** operation [and maintenance] of individual subsurface sewage disposal systems.

(b) (No change.)

7:9A-1.6 General prohibitions

(a) A person shall not install, construct, alter or [operate] **repair** an individual subsurface sewage disposal system without first obtaining the necessary permits, approvals[,] **or** certifications [or licenses] as required by this chapter.

(b) An administrative authority shall not issue an approval, permit[,] **or** certification [or license] for installation, construction, alteration or [operation] **repair** of an individual subsurface sewage disposal system where such installation, construction, alteration or [operation] **repair** will violate or otherwise not be in compliance with the requirements of this chapter.

(c) (No change.)

(d) Individual subsurface sewage disposal systems shall not be located, designed, constructed, installed, altered, **repaired** or operated in a manner that will allow the discharge of effluent onto the surface of the ground or into any water course.

(e)-(f) (No change.)

(g) The construction or installation of cesspools is prohibited. **Alterations, repairs, and/or corrections to cesspools shall, at a minimum, include placement of a septic tank sized in conformance with N.J.A.C. 7:9A-8.2 before the point of discharge into the cesspool.**

(h)-(j) (No change.)

7:9A-1.7 Penalties

[(a)] Violation of any provision of this chapter shall be a violation of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the violator shall be subject to assessment of civil administrative penalties pursuant to the provisions of N.J.A.C. 7:14-8.

[(b) Pursuant to N.J.S.A. 58:10A-10(a), the Commissioner may assess a civil penalty of not more than $50,000 for each violation, and each day during which such violation continues shall constitute an additional, separate, and distinct offense.

(c) Examples of violations of the requirements of this chapter which are subject to the assessment of civil administrative penalties pursuant to the provisions of N.J.A.C. 7:14-8 include but are not limited to:

1. Installing, constructing, altering or operating an individual subsurface sewage disposal system without first obtaining the necessary permits, approvals, certifications or licenses as required by this chapter;

2. Issuance by an administrative authority of a permit, approval, certification or license for installation, construction, alteration or operation of an individual subsurface sewage disposal system where such installation, construction, alteration or operation will violate the requirements of this chapter;

3. Discharge of industrial wastes into an individual subsurface sewage disposal system without a valid NJPDES permit issued by the Department pursuant to N.J.A.C. 7:14A;

4. Distribution, sale, offer or exposure for sale, or use of any sewage system cleaner containing restricted chemical materials, as defined in N.J.S.A. 58:10A-17;

5. Failure of the facility owner to report to the administrative authority any expansion or change in use of a facility which may result in an increase in the volume of sanitary sewage discharged into the individual subsurface sewage disposal system; or

6. Failure of the applicant, or applicant's agent, to provide complete and accurate information to the administrative authority or its authorized agent, or to the Department, in conformance with the requirements of this chapter.]

7:9A-2.1 Definitions

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

. . .

"Mottling" means a color pattern observed in soil consisting of blotches or spots of contrasting color. The term "mottle" refers to an individual blotch or spot. Mottling **usually** is an indication of seasonal or periodic and recurrent saturation.

...

7:9A-3.3 Existing systems

(a) (No change.)

(b) When an expansion or a change in use of a building or facility served by an individual subsurface sewage disposal system is proposed and this expansion or change will result in an increase in the volume of sanitary sewage (determined as prescribed at N.J.A.C. 7:9A-7.4) or a change in the type of wastes discharged, the administrative authority shall not approve such an expansion or change unless all aspects of the location, design, construction, installation[,] **and** operation [and maintenance] of the system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with this chapter.

(c) Alterations made to a system for reasons other than a change of use or expansion as described in (b) above may be approved by the administrative authority provided that all of the following conditions are met:

1. [Alterations are made in conformance with plans and specifications prepared by a licensed professional engineer. All plans shall be signed and sealed by the licensed professional engineer.] **If the scope of the alteration is such that it constitutes the practice of professional engineering according to N.J.S.A. 45:8 and the rules adopted pursuant to the same, then such alterations shall be made in conformance with plans and specifications signed and sealed by a licensed professional engineer.**

2.-3. (No change.)

(d) Repairs may be made in the same manner as in the original system**, with the exception of cesspools which shall be corrected as prescribed at N.J.A.C. 7:9A-1.6(g),** provided that all repairs are approved by the administrative authority.

(e)-(f) (No change.)

7:9A-3.4 Malfunctioning systems

(a) (No change.)

(b) When an individual subsurface sewage disposal system has been determined to be malfunctioning, the owner shall take immediate steps to correct the malfunction. When it becomes necessary to repair or replace one or more system components or to make alterations to a system, all of the following requirements shall be met:

1. (No change.)

2. Alterations made to correct a malfunctioning system shall meet the requirements of N.J.A.C. 7:9A-3.3(c)[,]**.** [except that in] **In** cases where the alteration [is relatively minor, and] does not involve the practice of engineering as defined by N.J.S.A. 45:8-28(b), the administrative authority or its authorized agent may approve plans and specifications prepared by a septic system installer rather than a licensed professional engineer.

3. (No change.)

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

7:9A-3.5 Permit to construct or alter

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

(c) The applicant shall submit a complete, accurate and properly executed application to the administrative authority. All soil logs, soil testing data, design data and calculations, plans and specifications, and other information submitted in connection with the subsurface sewage disposal system design shall be signed and sealed by a licensed professional engineer **except where N.J.A.C. 7:9A-3.3(c)1 allows otherwise.** The application shall include the following information:

1. (No change.)

2. A site plan [signed and sealed by a licensed land surveyor and]**, prepared in accordance with N.J.A.C. 13:40-7 and** drawn at a scale adequate to depict clearly the following features within a 150 foot radius around the proposed system:

i.-xi. (No change.)

3.-8. (No change.)

(d) (No change.)

7:9A-3.7 Modification of plans

(a) Modification of plans or specifications for an individual subsurface sewage disposal system made subsequent to approval of the plans shall not be carried out unless the revisions are **in conformance with the requirements of this chapter and** noted on a revised set of plans which have been signed, sealed and dated by a licensed professional engineer and approved by the administrative authority or its authorized agent.

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

7:9A-3.9 Treatment works approval[s]

(a) A treatment works approval issued by the Department is required for any subsurface sewage disposal system other than a system serving a single dwelling unit, building, commercial unit or other realty improvement, located on a single property, generating less than 2,000 gpd of sanitary sewage only, which is designed, constructed[,] **and** operated [and maintained] in conformance with this chapter.

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

7:9A-3.10 NJPDES permits

(a) Individual subsurface sewage disposal systems which serve single family dwelling units and which are located, designed, constructed, installed, altered, **repaired and** operated [and maintained] in conformance with the requirements set forth in these standards are exempt from NJPDES permit requirements in accordance with N.J.A.C. 7:14-5.1(b)2ii.

(b) Subsurface sewage disposal systems which serve facilities other than single family dwelling units and which are located, designed, constructed, installed, altered, **repaired and** operated [and maintained] in conformance with the requirements set forth in this chapter, and N.J.S.A. 58:11-43 et seq. where these restrictions are applicable, are authorized by rule.

(c) (No change.)

7:9A-3.12 Holding tanks

(a) The administrative authority may approve the use of a sewage holding tank in lieu of an individual subsurface sewage disposal system, as a temporary means of waste disposal, for a period not to exceed [60] **180** days, where alteration or repair of an existing system is being [completed] **implemented** as approved by the administrative authority.

(b) (No change.)

7:9A-3.14 [License to operate] **Notification of proper operation and maintenance practices**

[(a) The administrative authority or its authorized agent shall issue a "license to operate" and a copy of the Department's operation and maintenance manual to the permittee at the time that a certificate of compliance is issued.

(b) The "license to operate" shall expire three years after issuance. The applicant shall be notified by the administrative authority or its authorized agent before the license expires and shall be directed to apply for a renewal of the license. The administrative authority shall not renew the license unless the licensee has submitted the following to the administrative authority:

1. Evidence that the necessary maintenance has been performed as prescribed in N.J.A.C. 7:9A-12.3;

2. A system inspection report, prepared by a licensed health officer, licensed professional engineer, licensed sanitarian, or other person acceptable to the administrative authority, indicating that the system has been maintained and is functioning in conformance with the requirements of this chapter; and

3. Payment of any fees which are required by a local ordinance.

(c) The license shall be transferable upon change of ownership of the property which is served by the system for which the license was issued.

(d) The administrative authority or its authorized agent may suspend or revoke the "license to operate" in the following circumstances:

1. It has been determined that the system is malfunctioning based upon criteria at N.J.A.C. 7:9A-3.4(a) and the licensee fails to take steps to correct said malfunction as directed by the administrative authority or its authorized agent;

2. The owner or occupant of the premises served by the system violates any provision of this chapter with respect to operation and maintenance of the system; or

3. The owner or occupant of the premises served by the system denies right of entry to the administrative authority or its authorized agent, or the Department, as required at N.J.A.C. 7:9A-3.19, or in any way interferes with the administration or enforcement of this chapter.]

(a) The administrative authority shall notify each property owner issued approval for the design, construction, installation, alteration or repair of an individual subsurface sewage disposal system after January 1, 1990 of the proper operation and maintenance practices.

(b) Written notification of the proper operation and maintenance practices shall initially be issued to the applicant with the approval for the location, design, construction, installation, alteration or repair of the individual subsurface sewage disposal system and reissued on a triennial basis to the present property owner. For approvals issued before the effective date of this amendment, the notification shall be accomplished within six months of the amendment's effective date and reissued on a triennial basis, thereafter.

(c) The written notification shall inform the present property owner how to properly operate and maintain an individual subsurface sewage disposal system and include the following at a minimum:

1. A general outline of how an individual subsurface sewage disposal system works and the potential impact of improper operation and maintenance on system performance, ground and surface water quality, and public health;

2. The recommended frequency of septic tank and grease trap pumping to prevent over-accumulation of solids, and methodology for inspection to determine whether pumping is necessary;

3. A list of materials containing toxic substances which are prohibited from being disposed of into an individual subsurface sewage disposal system;

4. A list of inert or non-biodegradable substances which should not be disposed of within an individual subsurface sewage disposal system;

5. Proper practices for maintaining the area reserved for sewage disposal;

6. Impacts upon system performance resulting from excessive water use; and

7. Warning signs of poor system performance or malfunction and recommended or required corrective measures.

(d) The written notification may be developed by the administrative authority, or the administrative authority may distribute copies of an operation and maintenance manual made available by the Department.

7:9A-3.15 Records

(a) The administrative authority or its authorized agent shall maintain records and shall keep on file copies of the following documents:

1.-5. (No change.)

[6. Applications, inspection reports, forms and information connected with licenses to operate individual subsurface sewage disposal systems or license renewals; and]

[7.] **6.** (No change in text.)

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

7:9A-5.8 Criteria for recognition of zones of saturation

(a) (No change.)

(b) The upper limit of the zone of saturation, which is the seasonally high water table, shall be determined by one of the following means:

1. Where mottling is observed, at any season of the year, the seasonally high water table shall be taken as the highest level at which mottling is observed, except: [when the water table is observed at a level higher than the level of mottling.]

i. When the water table is observed at a level higher than the level of mottling; or

ii. When adequate information is provided to the satisfaction of the administrative authority demonstrating that such mottling is not indicative of seasonal or recurrent and periodic saturation but rather is a soil color feature related to concretions, cemented bodies, zones of weathered rock fragments, filled animal burrows and root channels or other soil morphological phenomena not associated with seasonal or recurrent and periodic saturation and the criteria in (d), (e) and (f) below does not apply. In such cases, the criteria in (b)2i and (b)2ii below, or other means as deemed acceptable by the administrative authority, may be used.

2.-3. (No change.)

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

7:9A-6.1 General provisions for permeability testing

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

(c) The type of tests which may be used shall be determined based upon the purpose of the test and the soil conditions at the depth of the test as shown in Table 6.1 below.

Table 6.1 Type of Test

Test Options:
1—Tube Permeameter Test
2—Soil Permeability Class Rating Test[t]
3—Percolation Test[tt]
4—Basin Flooding Test
5—Pit-bailing Test
6—Piezometer Test

Purpose of Test and Soil Conditions at Depth of Test	Acceptable Test Options
(No change in text.)	(No change.)

[t]This test shall not be used in soil horizons or substrata containing coarse fragments in excess of 50 percent by volume or 75 percent by weight.

[[tt]When the percolation test is used as a basis of design, a 25 percent increase in the minimum required disposal field size shall be required as a factor of safety to compensate for the poor reliability of this test method.]

(d)-(k) (No change.)

7:9A-8.2 Septic Tanks

(a)-(k) (No change.)

(l) Access openings for septic tanks shall meet the following requirements:

1. (No change.)

2. All manholes **at a minimum** shall be extended [flush with] **to within six inches of** finished grade by means of a riser fitted with a removable watertight cover. [Covers] **Where manholes are extended flush with finished grade, covers** shall be bolted or locked to prevent access by children[. Covers] **and** shall be of cast iron when a concrete riser is used. **When manholes are not extended to finished grade, covers shall be constructed of precast reinforced concrete, fiberglass, polyethylene or other materials as specified by a licensed professional engineer and approved by the administrative authority. The location of the manhole shall be marked on the ground surface by means of a permanent, non-corrosive marker a minimum of three inches in diameter.**

3.-4. (No change.)

(m) (No change.)

7:9A-9.2 Dosing tanks

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

(d) All dosing tanks shall meet the following requirements regardless of whether a pump or siphon is used.

1.-6. (No change.)

7. Dosing tanks shall be readily accessible for service and repair. A removable watertight cover or a manhole with a removable watertight cover shall be provided. Manholes shall be a minimum of 24 inches in diameter or 24 inches square and shall be located directly over the pump or siphon. [The top of the tank or manhole riser

shall be extended to or above finished grade and the cover shall be bolted or locked to prevent access by children. When a concrete riser is used, the cover shall be cast iron.] **The top of the tank or manhole riser, at a minimum, shall be extended to within six inches of finished grade and be equipped with a watertight cover. Where manholes are extended flush with finished grade, the cover shall be bolted or locked to prevent access by children and shall be of cast iron when a concrete riser is used. When the top of the tank or manhole is not extended to finished grade, covers shall be constructed of precast reinforced concrete, fiberglass, polyethylene or other materials as specified by a licensed professional engineer and approved by the administrative authority. The location of the manhole shall be marked on the ground surface by means of a permanent, non-corrosive marker a minimum of three inches in diameter.**

8. (No change.)

(e)-(f) (No change.)

7:9A-9.3 Connecting and delivery pipes

(a) Connecting pipes between pretreatment units and dosing tanks, distribution boxes or distribution networks, and delivery pipes discharging effluent from dosing tanks shall be of such size as to serve the connected fixtures but in no case less than [three] **one and one half** inches in diameter. Delivery pipes from dosing tanks using siphons shall be one nominal size larger than the siphon to facilitate venting.

(b)-(f) (No change.)

7:9A-9.5 Laterals; gravity distribution

(a) Gravity flow networks and gravity dosing networks may consist of a single distribution lateral, two or more laterals connected by means of elbows or tees, or two or more separate distribution laterals connected independently to a distribution box. Distribution laterals shall meet all the following requirements:

1.-5. (No change.)

6. An inspection port shall be provided [near the end of each lateral or near corners] **in each corner** of the [distribution network where the laterals are joined in a loop] **disposal bed or at each end of a disposal trench**. Inspection ports shall consist of a perforated pipe with a removable cap, extending from the level of infiltration to finished grade.

(b) (No change.)

7:9A-9.6 Pressure dosing networks

(a) Pipe networks for pressure dosing systems shall consist of two or more distribution laterals connected to a central or end manifold. The following requirements shall be met:

1.-6. (No change.)

7. An inspection port shall be provided [near the end of each lateral] **in each corner of a disposal bed or at each end of a disposal trench**. Inspection ports shall consist of a perforated pipe with a removable cap, extending from the level of infiltration to finished grade.

8. (No change.)

7:9A-9.7 Design procedure for pressure dosing systems

(a) The following procedure shall be used for disposal fields consisting of a disposal bed or disposal trenches which are at equal elevations.

1.-2. (No change.)

3. Step Three: Based upon the hole diameter and the hole spacing selected and the length of the laterals, determine the required diameter of laterals using Figure 14 of Appendix A. **If the disposal field configuration is such that it is beyond the applicable limits of Figure 14, other methods of hydraulically evaluating adequate lateral diameter may be used subject to prior approval by the administrative authority.**

4. (No change.)

5. Step Five: Based upon the number of laterals and the lateral spacing, determine the manifold length. Based upon the manifold length, the lateral discharge rate and the number of laterals, using Figure 15 of Appendix A, determine the required manifold diameter. **If the disposal field configuration is such that it is beyond the applicable limits of Figure 15, other methods of hydraulically evaluating proper manifold diameter may be used subject to approval by the administrative authority.**

6. (No change.)

7. Step Seven: For pump systems, select the proper pump as follows:

i. Using Figure 16 of Appendix A, determine the friction head based upon the system discharge rate and the diameter and length of the delivery pipe. **If the system discharge rate is such that it is beyond the applicable limits of Figure 16, then other methods of determining friction head in the delivery pipe may be used subject to approval by the administrative authority.**

ii-iii. (No change.)

8. (No change.)

(b) (No change.)

7:9A-10.2 Disposal field sizing requirements

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

TABLE 10.2(b) MINIMUM REQUIRED DISPOSAL FIELD TRENCH LENGTH PER GALLON OF DAILY SEWAGE VOLUME, L/Q (ft/gal per day)

(No change in text.)

TABLE 10.2(c) MINIMUM REQUIRED DISPOSAL FIELD BOTTOM AREA PER GALLON OF DAILY SEWAGE VOLUME, A/Q (ft^2/gal per day)

(No change in text.)

---

[1]Additional Requirements

a. Where garbage disposal units are installed or proposed, the value obtained from this table shall be increased by a factor of 25 percent for use in disposal field sizing.

[b. When the size of the disposal field is determined based upon the results of a percolation test, the value obtained from this table shall be increased by a factor of 25 percent as a design safety factor to compensate for the inherent inaccuracy of the test method.]

7:9A Appendix A

Figures 1-14 (No change.)

Figure 15: Required manifold diameters for various manifold lengths, number of laterals and lateral discharge rates

(No change in table.)

Computed for plastic pipe only. The Hazen-Williams equation was used to compute headlosses through each segment (Hazen-Williams C = 150). The maximum manifold length for given lateral discharge rate and spacing was defined as that length at which the difference between the heads at the distal and supply ends of the manifold reached 10 percent of the head at the distal end.

Figure 16 **(Agency Note: Current Figure 16 in the New Jersey Administrative Code is proposed for deletion and replacement with proposed Figure 16 as shown below)**

FRICTION LOSS IN SCHEDULE 40 PLASTIC PIPE, C = 150
(ft/100 ft)

Flow (gpm)	Pipe Diameter (in) 1	1¼	1½	2	2½	3	4	6	8	10
2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
4	1.01	.....	.....	.....	.....	.....	.....	.....	.....	.....
6	2.14	0.55	.....	.....	.....	.....	.....	.....	.....	.....
8	3.63	0.97	0.46	.....	.....	.....	.....	.....	.....	.....
10	5.50	1.46	0.70	0.21	.....	.....	.....	.....	.....	.....
12	5.64	2.09	1.01	0.30	0.12	.....	.....	.....	.....	.....
15	11.75	3.06	1.45	0.44	0.18	0.07	.....	.....	.....	.....
18		4.37	2.07	0.62	0.25	0.10	.....	.....	.....	.....
20		5.23	2.46	0.73	0.31	0.12	.....	.....	.....	.....
25		7.89	3.72	1.10	0.46	0.16	.....	.....	.....	.....
30		11.10	5.22	1.55	0.65	0.23	.....	.....	.....	.....
35			6.95	2.06	0.87	0.30	0.07	.....	.....	.....
40			8.90	2.62	1.11	0.39	0.09	.....	.....	.....
45			11.06	3.29	1.38	0.48	0.12	.....	.....	.....
50			13.45	3.98	1.68	0.58	0.16	.....	.....	.....
55			16.04	4.75	2.00	0.70	0.18	.....	.....	.....
60			18.85	5.58	2.35	0.81	0.21	.....	.....	.....
65			21.86	6.47	2.72	0.95	0.25	.....	.....	.....
70				7.43	3.13	1.08	0.28	.....	.....	.....
75				8.44	3.55	1.12	0.33	.....	.....	.....
80				9.51	4.00	1.38	0.37	.....	.....	.....
85				10.64	4.49	1.55	0.41	.....	.....	.....
90				11.83	4.98	1.73	0.46	.....	.....	.....
95					5.50	1.91	0.49	.....	.....	.....
100					6.05	2.09	0.55	0.07	.....	.....
110					7.22	2.51	0.67	0.09	.....	.....
120					8.48	2.94	0.78	0.11	.....	.....
130						3.42	0.91	0.12	.....	.....
140						3.92	1.04	0.14	.....	.....
150						4.45	1.17	0.16	.....	.....
200							2.02	0.28	0.07	.....
250							3.05	0.41	0.11	.....
300								0.58	0.16	.....
350								0.78	0.20	0.07
400								0.99	0.26	0.09
450								1.22	0.32	0.11
500									0.38	0.14
600									0.54	0.18
700									0.72	0.24
800										0.32
900										0.38
1000										0.46

Figure 16. Friction Loss in Schedule 40 Pipe

Figures 17-26 (No change.)

7:9A Appendix B

STANDARD FORMS FOR
SUBMISSION OF SOILS/ENGINEERING DATA

COUNTY/MUNICIPALITY

...

[APPLICATION FOR LICENSE TO OPERATE AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 1. General Information

1. Municipality_____ Block No.__ Lot No._____
2. Name of Applicant (print):
3. Applicant's Address:
4. Applicant's Phone Number:
5. Certificate of Compliance: Date of Issuance_____
   If No Certificate Was Issued, Indicate Approximate Age of System_____
6. Type of Facility: ____ Residential—Indicate Number of Occupants_____
   ____ Commercial/Institutional—Specify Type of Establishment
7. Type of Wastes Discharged: ____ Sanitary Sewage Only ____ Industrial Wastes
   ____ Other—Specify Type_____
8. Volume of Wastes: Ave. Flow, gal/day_____ Max. Daily Flow, gal_____
   ____ Based On Water Meter Data
   ____ Assumed Based On Data Related to Water Usage—Show Data Below:
   —Number of Users (Patrons, Guests, Visitors, etc.) per Day____
   —Number of Employees____ Total Employee Hours per Day____
   —Number of Fixtures____, Specify Type_____
   —Size of Building, ft²_____
   —Other—Specify_____
9. Indicate System Components, Provide What Information is Available:
   ____ Grease Trap: Capacity, gals____
   ____ Septic Tank: Capacity, gals____ No. of Compartments____
   ____ Dosing Tank: Capacity, gals____

Dosing Device: ___ Pump ___ Siphon

___ Disposal Bed: Area, ft² ___

___ Disposal Trenches: Width, ft ___ Number ___ Total Length, ft ___

___ Seepage Pits: Number ___ Diameter, ft ___ Depth, ft ___

___ Dry Well for Separate Disposal of Gray Water

___ Interceptor Drain

___ Other—Specify ___

10. I hereby certify that the information furnished on Form 1 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed at N.J.A.C. 7:14-8.

Signature of Septic System Inspector ___ Date ___

FOR AGENCY USE ONLY

___ Application Denied—State Reason for Denial ___

___ Application Approved—License Number ___

Date of Action ___ Signature of Authorized Agent ___

Name and Title ___]

[RENEWAL OF LICENSE TO OPERATE AN INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM

Form 1—Report of Septic System Inspection/Maintenance

1. Municipality ___ Block No. ___ Lot No. ___
2. Name of Applicant (print): ___
3. Applicant's Address: ___
4. Applicant's Phone Number: ___
5. Expiration Date of Current License ___ License Number ___
6. Maintenance Performed at Time of Inspection: ___ Septic Tank Pumped

   ___ Other—Specify ___
7. If the Septic Tank Was not Pumped, Provide Following Information:

Date of Last Pump Out ___	1st Comp	2nd Comp	3rd Comp
Record Vertical Distance in inches:			
Bottom of Scum Layer to Bottom of Outlet Baffle	___	___	___
Top of Sludge Layer to Bottom of Outlet Baffle	___	___	___

8. Indicate Problems Identified During Inspection:

___ Septic Tank Not Accessible	___ Solids in D-Box
___ Inlet Baffle Needs Repair	___ D-Box Not Level
___ Outlet Baffle Needs Repair	___ Hydraulic Failure of Disposal
___ Effluent Backs-Up into Septic Tank	___ Field or Seepage Pit
___ Septic Tank Leaks	___ Settlement or Improper Grading
___ Dosing Tank Not Accessible	___ Enroachments in Disposal Area
___ Dosing Tank Leaks	___ Improperly Directed Drainage
___ Solids in Dosing Tank	___ Physical Condition of Seepage Pit
___ Operation/Condition of Pump,	___ Other—Specify ___
___ Switches, Alarm, Siphon, etc.	___

9. Observed Malfunctions:

   ___ Back-up into Plumbing ___ Seepage of Sewage/Effluent into Bldg.

   ___ Surface Break-out or Ponding ___ Contamination of Well Water

   ___ Odors

   ___ Other—Specify ___

10. I hereby certify that the information furnished on Form 1 of this application (and attachments thereto) is true and accurate. I am aware that falsification of data is a violation of the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and is subject to penalties as prescribed at N.J.A.C. 7:14-8.

Signature of Septic System Inspector ___ Date ___

FOR AGENCY USE ONLY

___ Renewal of License Denied—Reason for Denial: ___

___ Approval Pending Completion of Repairs—Description of Repairs Required:

___ License Renewed—Expiration Date of New License ___]

...

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Types; Interdistrict and Intradistrict Solid Waste Flow

Proposed Amendment: N.J.A.C. 7:26-1.4, 2.13 and 6.3

Proposed New Rule: N.J.A.C. 7:26-6.8

Authorized By: Scott A Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1E-1 et seq., 13:1D-1 et seq. and 48:13A-1 et seq.

DEPE Docket Number: 021-92-05.

Proposal Number: PRN 1992-232.

A **public hearing** concerning this proposal will be held on Monday, June 29, 1992 at 3:00 P.M. at:

Department of Environmental Protection and Energy
First Floor Hearing Room
401 East State Street
Trenton, New Jersey

Submit written comments by July 1, 1992 to:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing amendments and new rules concerning the residue generated from the operations of scrap metal shredding facilities. Scrap metal shredding facilities process automobiles and white goods (that is, appliances such as refrigerators, ovens, and water heaters) to recover recyclable ferrous and nonferrous metals. Ferrous and non-ferrous metals represent approximately 80 percent by weight of the materials these facilities process. The remainder or by-product of the shredding process is a residual solid waste commonly referred to as auto shredder residue (ASR). ASR consists of the non-metallic portions of the processed automobiles and white goods. ASR is primarily comprised of plastics but also contains cloth, fiber, rubber, glass and dirt.

The residual solid waste generated by the shredder facilities is dry industrial solid waste, ID 27. Under the existing rule at N.J.A.C. 7:26-6.3, this type of waste is subject to the interdistrict and intradistrict solid waste flow rules at N.J.A.C. 7:26-6 (waste flow rules).

The proposed amendments conditionally exclude the residue from the operations of scrap metal shredding facilties from the waste flow rules. In addition, under the proposed new rule, a solid waste district which hosts a shredder facility can establish a rate to recover its reasonable costs of monitoring the generation and disposal of this residue. The proposed amendments also clarify N.J.A.C. 7:26-6.3 to reflect previous revisions to the waste type designations and to make this section consistent with existing provisions.

The conditional exclusion of scrap metal shredding residue from waste flow regulation is in response to a petition for promulgation of a rule proposal pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 7:1-1.2 submitted on behalf of the New Jersey Auto and Metal Recyclers Association (NJ-AMRA) (see 23 N.J.R. 2187(c) and 2428(b)). NJ-AMRA is a New Jersey trade association that represents the three companies in the State which process and recycle scrap metal. These three companies are Camden Iron and Metal Inc. of Camden, NIMCO Shredding Co. of Newark, and Polerized Schiabo Neu Co. of Jersey City.

NJ-AMRA requested that the Department amend its rules to exempt ASR from the waste flow rules, and to classify ASR as a distinct solid waste type separate from all other classified solid waste types, with a separate solid waste ID number under N.J.A.C. 7:26-2.13. While the Department is proposing to conditionally exclude ASR from waste flow regulation, the proposed amendments do not change the classification of ASR, which will continue to be considered ID 27. The Department has determined that it would be inappropriate to change the classification of ASR, because ASR exhibits all the characteristics of a dry industrial waste. Furthermore, ASR can be exempted from the waste flow rules without reclassifying it; accordingly, this portion of the rulemaking requested by NJ-AMRA is unnecessary.

In deciding to exempt ASR from the waste flow rules, the Department considered that the scrap metal shredding industry is a significant and unique recycler of solid waste. The three existing New Jersey shredder facilities process approximately 850,000 vehicles annually, of which approximately 550,000 are generated in New Jersey; the remainder come from the New York-Pennsylvania market. The total vehicles processed represents approximately 1,000,000 tons or 18,000,000 cubic yards of material which otherwise would be destined for disposal as solid waste. From this quantity, approximately 780,000 tons of metals are recovered and reused. If this material were not recovered, it would add significantly to the waste stream for disposal. According to Governor Florio's 1990 Emergency Solid Waste Assessment Task Force Preliminary Report, the 550,000 vehicles represent approximately 99 percent of the discarded automobiles in the New Jersey solid waste stream. These 550,000 vehicles represent approximately 650,000 tons of solid waste generated for disposal, of which 507,000 tons of ferrous and nonferrous metals are recovered and recycled. In addition, these facilities process a significant quantity of the white goods discarded in New Jersey.

The remaining residue from the discarded and processed vehicles represents 22 percent of the weight of the vehicle or 220,000 tons annually. This residue is four percent of the initial volume of the incoming volume or 720,000 cubic yards. In terms of New Jersey's waste stream, the residual waste is approximately 143,000 tons or 468,000 cubic yards.

The Department has determined that if ASR is subject to the waste flow rules, the recycling performed by these scrap metal shredding facilities would be substantially reduced or would not occur at all, because the economic viability of this industry depends on the cost-effective management of its residual waste stream.

A more detailed explanation of the proposed amendments and new rule follows:

N.J.A.C. 7:26-1.4 Definitions

The proposed amendment to N.J.A.C. 7:26-1.4 defines "scrap metal shredding facility" as an industrial facility which receives and stores motor vehicles, appliances, and/or source separated, non-putrescible ferrous and non-ferrous metals, reduces these materials by mechanical shredding, and returns the extracted ferrous and non-ferrous metals to the economic mainstream for sale or reuse. This definition includes the facilities represented by NJ-AMRA.

N.J.A.C. 7:26-2.13 Solid waste facilities; records

The proposed amendment to N.J.A.C. 7:26-2.13 revises the description of dry industrial waste, ID 27, to specifically state that the residue from the operations of a scrap metal shredding facility is included within this class of solid waste. Accordingly, ASR will continue to be considered dry industrial waste, ID 27.

The proposed amendments also clarify the description of animal and food processing wastes, ID 25, to state that this class of solid waste includes animal manure when intended for disposal and not for reuse. When not utilized for land application or as composted material, this material is a solid waste. The Department supports and promotes the maximum reuse of this type of waste. However, if the material is discarded and intended for disposal, because of its biological characteristics, this waste category has historically been managed as ID 25. Specifically, this type of waste exhibits biological oxygen demand (BOD) equivalent to that exhibited by other types of waste included in waste type ID 25. The inclusion of this material in solid waste ID type 25 is clarification of existing Departmental provisions and practices and results in no substantive change.

N.J.A.C. 7:26-6.3 Types of waste covered

In reaching its decision on the NJ-AMRA petition, the Department required NJ-AMRA to submit detailed sampling and analytical data in order to determine definitively whether ASR is hazardous waste. NJ-AMRA submitted a sampling and analytical plan for the testing of their ASR to determine its hazardous/non-hazardous characteristic. The Department approved the plan with conditions.

Based upon the analytical results of the ASR sampling and analytical plan, the Department has determined that the properties of the waste are generally nonhazardous in nature. However, the Department's evaluation determined that the waste material exhibits properties that, if not properly managed at the facility, could result in an exceedance of one of the characteristic tests set forth in N.J.A.C. 7:26-8 and thereby be classified as a hazardous waste.

The proposed amendments to N.J.A.C. 7:26-6.3 exempt the residue from the operation of scrap metal shredding facilities from the waste flow rules. However, to qualify for the exemption, the facility must satisfy the following conditions intended to ensure proper management of the residue at the facility:

1. The facility operator must obtain the Department's approval of a quality control plan. The purpose of the plan is to ensure that before shredding the materials it receives, the facility removes certain components. If these components were not removed before shredding, the residue from the shredding process would be more likely to be hazardous waste. The facility is considered the generator of these components, and is required to dispose of these components in accordance with all applicable laws, orders and regulations (including the hazardous waste regulations at N.J.A.C. 7:26-8, if applicable).

2. The facility operator must obtain the Department's approval of a sampling and analytical plan for the residue. The facility's implementation of the sampling and analytical plan will establish whether the residue is hazardous waste. If the residue is classified as hazardous waste, the facility would be the generator of that hazardous waste, and subject to the applicable hazardous waste regulations at N.J.A.C. 7:26.

3. The facility operator must submit a monthly report to the solid waste district in which the facility is located, detailing the amount of material the facility receives, and the amount of metals and residue it generates. This reporting requirement enables the host solid waste district to continue to fulfill its responsibilities for planning for the disposal of solid waste generated within the district.

4. The scrap metal shredding facility must either maintain a scale certified under N.J.A.C. 13:47B-1 and provide specific truck load weigh data to the district in which the facility is located, or transport the residue through the district's weighing facilities to be weighed before the residue is transported for disposal.

If the facility does not satisfy these requirements, the residue from its operations is subject to the waste flow rules.

The proposed amendments to N.J.A.C. 7:26-6.3 also clarify what other types of solid waste are excluded from the waste flow rules, by making the language of these exclusions consistent with other provisions of N.J.A.C. 7:26. These other amendments have no substantive effect upon those exclusions.

Specifically, the proposed amendments delete oil spill clean-up waste and infectious waste from the list of exceptions at N.J.A.C. 7:26-6.3, and revise the solid waste type relating to recyclable materials. These revisions make the solid waste types in N.J.A.C. 7:26-6.3 consistent with existing waste type definitions under N.J.A.C. 7:26-2.13 and with current Department practice.

The deletions of infectious waste and oil spill clean-up waste reflect previous amendments to N.J.A.C. 7:26-2.13, which was previously amended to consolidate these waste categories into other waste types. Infectious waste is managed in accordance with Regulated Medical Waste rules set forth at N.J.A.C. 7:26-3A, and was therefore deleted from N.J.A.C. 7:26-2.13 and is no longer an exempted waste type. Therefore, deleting infectious waste from the exception listed in N.J.A.C. 7:26-6.3 will result in no substantive change.

N.J.A.C. 7:26-2.13 was also previously amended to provide that depending upon the level of contamination, oil spill clean-up waste is either ID type 27 dry industrial waste or hazardous waste. If the concentration of contaminants in the oil spill clean-up waste is such that the waste

is classified as non-hazardous, it is managed as an ID type 27. If there is an option for reuse of the waste, it can be exempted from the requirements of subchapter 6 as a source separated class B recyclable material as defined in N.J.A.C. 7:26A. If the concentration of contaminants in the oil spill clean-up waste is such that the material is classified as hazardous waste, the movement of hazardous waste is exempted from the requirements of subchapter 6.

N.J.A.C. 7:26-6.3 currently exempts from the waste flow rules all nonhazardous materials separated at the point of generation for sale or reuse. The proposed amendments revise this terminology to make it consistent with the recently adopted recycling regulations, N.J.A.C. 7:26-2A. The recycling regulations define Class A recyclable materials and Class B recyclable materials. This amendment clarifies and revises this waste type to be consistent with the existing regulations regarding source separated recyclable materials.

N.J.A.C. 7:26-6.8 Procedure for applying for a rate for planning related to dry industrial waste, ID type 27, which is residue from a scrap metal shredding facility

The proposed new rule at N.J.A.C. 7:26-6.8 would allow the host district, in which a scrap metal shredding facility is located, to apply to the Department for the establishment of a rate to recover its reasonable costs for monitoring the generation and disposal of ASR. The district would follow the procedure set forth in N.J.S.A. 48:13A-1 et seq. to apply for the establishment of the rate. The rate reflects the costs the host district incurs for continued long term planning and management of this solid waste stream within the district's overall solid waste management system. These costs include the recordkeeping costs incurred as a result of the shredding facilities' reporting of the amount and type of materials received, the amount of residue generated, and the amount of metal remaining after shredding. The Department, in accordance with the procedures in N.J.S.A. 48:13A-1 et seq. will evaluate the request and establish a rate and funding structure. The rate may also include the cost of redirecting the residue through the district's facilities for the purpose of weighing the residue, as well as the cost of weighing, unless the scrap metal shredding facility maintains its own scale and provides specific truck load weigh data to the district.

Social Impact

The proposed amendments and new rule will have a positive net social impact. The amendments and rule will assist in the continued financial viability of the scrap metals processing facilities in New Jersey. These facilities are a critical factor in the attainment of the State's 60 percent recycling goal. The combined projected recycled tonnage of white goods and junked automobiles represents 11 percent of the total projected goal for 1995.

The legislative mandates of N.J.S.A. 13:1E-1 et seq. and 48:13A-1 et seq. require the State and district governments to provide for a comprehensive solid waste management plan which meets the needs of all municipalities, provides for input by the general public and expands and strengthens the relationship between government and private industry in the overall management of solid waste. By mandating reports to the host solid waste district and allowing districts to recover costs to continue to plan for the management of this waste type within their overall solid waste management systems addresses the continued compliance with the legislative mandates in N.J.S.A. 13:1E-1 et seq. and 48:13A-1 et seq. to insure the efficient and reasonable collection and disposal of solid waste.

Economic Impact

The Department expects that the proposed amendments and new rules will have a positive net economic impact. The 507,000 tons of recycled metals processed by the NJ-AMRA represents approximately 11 percent of the total recycling tonnage in New Jersey. This represents one of the largest recycling industries in the State. In addition, the metals recycled by the members of NJ-AMRA account in part for one of the major exports from New Jersey's ports, representing approximately 20 percent of the recycled scrap being exported. If the financial viability of the members of NJ-ARMA is threatened, not only will New Jersey's overall recycling program be negatively impacted, but New Jersey's and our national exports markets will likewise be negatively impacted.

Based on the average New Jersey sanitary landfill tipping fee of $66.00 per ton, disposal of the 550,000 discarded automobiles would annually cost New Jersey taxpayers approximately $36,300,000 if these automobiles were not sent to scrap metal shredding facilities. In addition to the disposal tipping fees, New Jersey vehicle owners would bear the cost of transporting discarded automobiles for disposal. Assuming transportation costs of approximately $1.00 per ton mile, the Department estimates that the cost for the average New Jersey car owner to dispose of a vehicle in New Jersey would be approximately $116.00 (assuming a 25 mile trip to the sanitary landfill).

The Department has also determined that providing the scrap metal shredding industry with the ability to control its own residue disposal costs is necessary to preserve the financial viability of the industry in New Jersey. A 1989 report prepared for the Department (Little, "Marketing Development Strategies for Recyclable Materials—Batteries, Waste Paper, Plastics, Ferrous Auto Scrap, and Tires") stated that the principal economic barrier which the industry faces is the cost associated with disposal of residue. The price of the shredded scrap metal is governed by demand from domestic and international markets; as a result, the member facilities of NJ-AMRA cannot pass their residue disposal costs along to their customers through increased prices. Therefore, the combination of substantial disposal cost increases and declines in the market price of shredded scrap metal could threaten the viability of these facilities. Conversely, as NJ-AMRA points out in its petition, if the market price for shredded scrap metal becomes sufficiently high, out-of-State shredders with access to cheaper disposal costs can compete for material in the New Jersey market because of the increased disposal costs faced by New Jersey facilities. If the price then falls, reducing the incentive for these out-of-State shredding facilities to compete for New Jersey materials, New Jersey could be left without a viable system for recycling these materials locally. Accordingly, by assisting in keeping New Jersey's scrap metal shredding facilities financially viable, the proposed amendments and new rule will reduce disposal costs which would otherwise be imposed upon New Jersey's taxpayers.

The scrap metal shredder facility will incur a negative economic impact resulting from the cost of developing and implementing the quality assurance plan, the sampling plan and analytical plans, and in complying with the requirement for monthly reporting to the host solid waste district. The Department anticipates the costs for development of the quality assurance and sampling/analytical plans to range from $3,000 to $30,000 and the annual cost for implementing these plans to be approximately $50,000 to $100,000 (including the cost of reporting analysis results to the Department). However, NJ-AMRA has stated that the three existing facilities are already engaged in the quality control of their incoming products and monitoring of their residual waste stream. The added costs would be in establishing the administrative report of the information and to expand the program to include additional parameters. The Department expects that each facility will incur annual costs of less that $1,000 in preparing the monthly reports to the host district.

One potential negative economic impact upon the shredding facilities is the possibility that the facility could incur liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). However, the proposed amendments are intended to minimize or avoid this negative impact, by imposing the conditions for quality control plans and sampling and analytical plans discussed above.

The proposed new rule at N.J.A.C. 7:26-6.8 is intended to minimize or avoid a potential negative economic impact upon the district disposal facilities which would receive ASR if it were subject to the waste flow rules. This provision allows the district to apply to the Department for a rate to recover its costs of planning for the long term management of this waste stream, and its costs associated with recordkeeping for that waste stream. The Department expects that the shredding facilities will be paying approximately $1.00 to $3.00 per ton toward these costs, resulting in a total annual payment of approximately $143,000 to $429,000. In addition, the proposed amendments and new rule will lengthen the useful life of the solid waste sanitary landfill at which ASR would otherwise be disposed, by diverting the waste away from that facility. As a result, in the long term the cost of replacing such sanitary landfills will be delayed.

Environmental Impact

The proposed amendments will have a positive net environmental impact. The three scrap metal processing facilities remove approximately 780,000 tons of metal from the landfill disposal stream. This translates into a savings of 7,200,000 cubic yards of landfill volume, assuming a bulk density for automobiles of 216 pounds per cubic yard. In terms of the New Jersey discarded auto stream these facilities recover approximately 507,000 tons of material. This represents a savings of 4,700,000 cubic yards of landfill volume annually as well as a subsequent reduction in leachate generation. Landfill space is conserved and the resultant leachate production reduced by assuring the viability of this recycling industry.

The recycling of scrap metal by these facilities and its subsequent reuse in the production of steel provides for a reduction in air and water pollution at steel manufacturing facilities. The production of steel from scrap or recycled metals also conserves energy in the production process. This in turn results in a reduction in air emissions, water and fuel use. An EPA publication, "Assessment of the Impact of Resource Recovery on the Environment" prepared by the Mitre Corporation dated August 1979, finds there is a 94 percent reduction in particulates and a 74 percent energy reduction for steel production from recycled scrap metal over metal produced from raw ores. In addition the Mitre study found a 76 percent reduction in particulate emission in the production of aluminum from recycled aluminum over that generated in aluminum produced from raw ores.

The proposed amendments and new rule minimize the possible negative environmental impact of disposing of ASR in out-of-State landfills. Landfills in some other states may not be subject to standards for design, construction, operations, maintenance and closure requirements for sanitary landfills equivalent to those applicable in New Jersey. However, the requirements for the sampling plan and analytical plan are intended to minimize the possibility that the ASR will be hazardous waste, thereby minimizing this potential negative environmental impact. These requirements will provide the Department with information about the quality of the shredder operations and of the residuals.

Regulatory Flexibility Analysis

The proposed amendments and new rule impose recordkeeping, reporting and compliance upon the three scrap metal shredding facilities in New Jersey, all of which are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Under the proposed amendments, facilities invoking the exemption of ASR from the waste flow rules will be required to develop and implement a quality control plan for the materials they receive, and a sampling and analytical plan for the residue they generate. In addition, these facilities will be required to submit monthly reports to the host district, and pay the host district any rate it obtains to cover its recordkeeping and planning costs. The cost for the development and implementation of these plans is discussed in the Economic Impact statement above; however, NJ-AMRA has advised the Department that its member facilities have already developed and are implementing such plans; the added costs will be in making any changes necessary to obtain the Department's approval of the plans, and in developing the reporting systems, making the reports, and paying the host district's rate.

However, as discussed in the Economic Impact statement above, the requirements for the quality control plan and sampling and analytical plan are necessary for the protection of the environment, and to assist these facilities in minimizing or avoiding potential CERCLA liability. The cost of reporting to the host district, and paying the rate to the host district, is more than offset by the economic benefit resulting from the exemption from the waste flow rules, which allows these facilities to seek lower cost disposal options while maintaining continued long term planning for their waste stream within the district.

For these reasons, the Department has not provided any reduced requirements for small businesses in the proposed amendments and new rule.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:26-1.4 Definitions

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

. . .

"Scrap metal shredding facility" means an industrial facility which:

1. Receives and stores motor vehicles, appliances, and/or source separated, non-putrescible ferrous and non-ferrous metals;

2. By mechanical shredding, reduces materials listed in paragraph 1 above in volume and alters the physical characteristics of such materials; and

3. Transfers the ferrous and non-ferrous metals remaining after shredding of materials listed in paragraph 1 above, for reintroduction into the economic mainstream for sale or resue.

SUBCHAPTER 2. DISPOSAL

7:26-2.13 Solid waste facilities; records

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

(g) Waste identification and definition of solids [include] **includes** the following:

1. Solid wastes; waste ID number and definitions[;]**:**

i.-iv. (No change.)

v. 25 Animal and food processing wastes: Processing waste materials generated in canneries, slaughterhouses, packing plants or similar industries**, including animal manure when intended for disposal and not reuse**. Also included are dead animals.

vi. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, [and] asbestos-containing waste managed in accordance with 40 CFR 61 and N.J.A.C. 7:26-2A.8(1)**, and residue from the operations of a scrap metal shredding facility.**

(h)-(i) (No change.)

SUBCHAPTER 6. INTERDISTRICT AND INTRADISTRICT SOLID WASTE FLOW

7:26-6.3 Types of waste covered

(a) This subchapter [shall apply] **applies** to all solid waste, as defined in N.J.A.C. 7:26-2.13, with the exception of [liquid waste, sewage sludge, hazardous waste, oil spill clean-up waste, infectious waste and all nonhazardous material separated at the point of generation for sale or reuse] the following:

1. Bulk liquid and semi-liquids, ID type 72;

2. Septic tank clean-out wastes, ID type 73;

3. Liquid sewage sludge, ID type 74;

4. Dry sewage sludge, ID type 12;

5. Dry industrial waste, ID type 27, but only if such waste is residue from the operations of a scrap metal shredding facility, provided that the operator of the scrap metal shredding facility satisfies the requirements of (a)2i through iii below:

i. The operator of the scrap metal shredding facility shall obtain the Department's approval of a quality control plan for the facility, which ensures that before shredding the motor vehicles, appliances, and/or source separated, non-putrescible ferrous and non-ferrous metals received by the facility, the facility removes components that could affect the non-hazardous characteristics of the residue from the operations of the facility. The facility is considered the generator of these components, and shall dispose of these components in accordance with all applicable laws, orders and regulations (including N.J.A.C. 7:26-8, if applicable). The components to be removed include, without limitation, the following:

(1) Batteries and cable ends;

(2) Gas tanks;

(3) Catalytic converters;

(4) Unspent airbag canisters;

(5) Transformers;

(6) PCB capacitors; and

(7) Fluorescent lighting fixtures;

ii. The operator of the scrap metal processing facility shall obtain the Department's approval of a sampling and analytical plan which insures monitoring of the characteristics of the residue from the operations of the facility, as set forth in N.J.A.C. 7:26-8 and the most recent edition of the USEPA publication SW-846 "Test Methods for Evaluating Solid Waste-Physical/Chemical Methods," incorporated herein by reference. The operator shall perform sampling and analysis quarterly, including without limitation the Toxicity Characteristic Leaching Procedure (TCLP) parameter as set forth in N.J.A.C. 7:26-8.12, Total Polychlorinated biphenyls (PCB) as set forth in N.J.A.C. 7:26-8.20(b), and Total Petroleum Hydrocarbon Content as set forth in N.J.A.C. 7:26-8.20(a)5. The operator shall submit the analysis performed in accordance with the approved

sampling to the Division of Environmental Regulations, Bureau of Advisement and Manifest for classification;

iii. On the twentieth day of every month, the operator of the scrap metal shredding facility shall submit to the solid waste district in which the facility is located, a monthly report including the following information:

(1) The total amount of each type of materials which the facility received in the calendar month preceding the due date of the report;

(2) The total amount of residue generated at the facility; and

(3) The total amount of ferrous and non-ferrous metal remaining after shredding; and

iv. The scrap metal shredding facility either maintains a scale certified under N.J.A.C. 13:47B-1 and provides specific truck load weigh data to the district in which the facility is located, or transports the residue through the district's weighing facilities to be weighed before the residue is transported for disposal;

6. Source separated Class A recyclable material and Class B recyclable material, as such terms are defined at N.J.A.C. 7:26A-1.3; and

7. Hazardous waste, as defined at N.J.A.C. 7:26-8.

7:26-6.8 Procedure for applying for a rate for planning related to dry industrial waste, ID type 27, which is residue from a scrap metal shredding facility

(a) The solid waste district in which one or more scrap metal shredding facilities is located may, in accordance with the procedure set forth in N.J.S.A. 48:13A-1 et seq., apply to the Department for the establishment of a rate to recover the reasonable costs of monitoring the generation and disposal of the residue from the operations of such facilities, consistent with the district's interest in planning for the disposal of waste generated within the district. This reasonable rate shall reflect such costs, which include, without limitation, the cost of performing the following activities:

1. Recordkeeping concerning the amount and type of materials received by scrap metal shredding facilities, the amount of residue generated by these facilities, and the amount of ferrous and non-ferrous metal remaining after the shredding process; and

2. Developing a 10 year planning forecast for the future disposal of the residue.

(b) If the scrap metal shredding facility maintains a scale certified under N.J.A.C. 13:47B-1 and provides specific truck load weigh data to the district in which the facility is located, the district's application for a reasonable rate shall not include either the cost of redirecting the residue through the district's facilities solely for the purpose of weighing and recording the residue or the cost of weighing the residue.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Notice of Proposed Amendment and Postponed Operative Date

Compliance Monitoring Fees for Thermal Destruction Facilities

Proposed Amendment: N.J.A.C. 7:26-4.3

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy

Authority: N.J.S.A. 13:1E-18.

DEPE Docket Number: 016-92-04.

Proposal Number: PRN 1992-219.

Submit written comments by July 1, 1992 to:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

On July 15, 1991, the Department of Environmental Protection and Energy ("Department") promulgated amendments to its solid waste fee rules at N.J.A.C. 7:26-4.3, 4.4 and 15.6 (the "1991 fee rule"). The 1991 fee rule established fees for the Department's activities under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. (the "Act"), based upon the duration and complexity of the Department's activities.

The 1991 fee rule established an annual compliance monitoring fee of $390,874 for a thermal destruction facility operating at 9.6 tons per day or more, and $26,058 for a thermal destruction facility operating at less than 9.6 tons per day. For the reasons discussed below and in the adoption of the 1991 fee rule, the Department has determined that those fees no longer accurately reflect the necessary duration and complexity of the Department's compliance monitoring activities; reduced fees are necessary to reflect the Department's determination that it can reduce the level of its on-site monitoring without impairing its ability to ensure the environmentally sound operation of these facilities. Therefore, the proposed amendments reduce the annual compliance fees to $26,058 for facilities operating at 100 tons per day (tpd) or more (a reduction of $364,816 from the fee provided in the 1991 fee rule); to $13,029 for facilities operating at 9.6 tpd or more, but less than 100 tpd (a reduction of $377,845); and to $6,013 for facilities operating at no more than 9.6 tpd (a reduction of $20,045). The Department notes that it postponed the operative date of the increase in these compliance monitoring fees, to at least July 1, 1992, to allow time to reduce them through an amendment to the fee rule (see 24 N.J.R. 584(a)); the Department intends to adopt these amendments before allowing the increases to become operative. **By this notice, the amendments are currently scheduled to become operative on October 1, 1992.**

In public hearings concerning permits for thermal destruction facilities operating at 9.6 tons per day or more, the Department has stated that it would perform continuous compliance monitoring of such facilities. In calculating the compliance monitoring fee, the Department assumed that it would continuously monitor a facility by having its personnel present at the facility 24 hours per day, five days per week, 52 weeks per year.

However, the Department is able to continuously monitor emissions from these thermal destruction facilities through telemetry, without the need to station its personnel at the facility for this purpose. Given the availability of continuous emissions monitoring data, the Department can continuously monitor the facilities' compliance with the laws and regulations governing air pollution control, without having its personnel at the facility 24 hours per day. Based on its experience in continuously monitoring emissions from off-site using the telemetry technology, the Department has determined that there is no additional benefit in having its personnel at the facility at all times. In addition, the Department is now able to monitor through telemetry certain aspects of the facilities' compliance with the laws and regulations governing solid waste management, such as temperature data, weight data, and data concerning the lime feed for control of acid gas and particulates, thereby further reducing the need for on-site monitoring.

The Department notes that the availability of continuous emissions monitoring information cannot completely obviate the need for on-site compliance monitoring inspections. These compliance monitoring inspections collect information unavailable from telemetry, such as that which is necessary to ensure compliance with the operations and maintenance manual, checking operating parameters on facility computer equipment, checking incoming vehicles to confirm registration for disposal of waste at the facility, ensuring against the possibility of illegal waste storage or acceptance of improper wastes, and inspecting overall facility operations at the following locations: tipping floor, ash handling area (to ensure that ash is handled in a totally enclosed manner and that the ash handling equipment is functioning properly), ash load-out area (to ensure that ash is loaded into watertight containers), and ash storage area (to ensure that ash containers are not leaking and are not being spilled during pickup.

In addition, after the Department promulgated the 1991 fee rule, Governor Florio implemented Reorganization Plan No. 002-1991. The Reorganization Plan consolidates and integrates solid waste functions formerly administered by the Board of Public Utilities with the Division of Solid Waste Management in the Department; as a result of the reorganization, the Department has been able to consolidate previously duplicated functions, thereby reducing its costs and increasing its efficien-

cy. The consolidation of the Department's compliance monitoring activity within its Office of Enforcement Policy also has contributed to this increased efficiency. The increased efficiency contributes to the reduction in fees.

After considering all of these factors, the Department has reevaluated the frequency and duration of on-site compliance monitoring inspections necessary to monitor all aspects of facility operations described above, and is proposing to amend the compliance monitoring fee accordingly. The Department had determined that the continuous on-site monitoring anticipated under the 1991 fee rule would require a total of 28.8 hours of staff time each day, reflecting the 24 hours spent at the facility, and 4.8 hours attributable to supervisory, clerical and administrative time related to the monitoring. The Department has now determined that it can serve the purposes described above with eight hours for each day of inspection, which includes actual on-site presence and travel time. In addition, 1.6 hours will be required for supervisory, clerical and administrative time related to monitoring.

Based upon its previous experience in compliance monitoring of thermal destruction facilities, the Department has determined how frequently it must inspect each type of facility to adequately monitor compliance with applicable solid waste law, regulations and permit conditions. These frequencies are discussed in detail below. The Department has been performing compliance monitoring at those frequencies for the past 18 months, and determined that while that level of monitoring is necessary to adequately monitor compliance, more frequent monitoring would not discover a materially greater number of violations.

N.J.A.C. 7:26-1.4 defines "small scale solid waste facility" as a facility which is limited by its permit to a capacity of less than 100 tons per day. For a thermal destruction facility operating at 100 tons per day or more (a "large facility"), an average of one on-site inspection each week is necessary to monitor facility operations as described above. These large facilities require such extensive monitoring for several reasons. They involve highly complex designs and construction, and generally operate 24 hours a day seven days a week. Perhaps more importantly, if operational problems at a large facility went undiscovered as a result of less frequent monitoring, and it became necessary to shut down the facility temporarily, the shutdown would seriously disrupt the flow of solid waste for disposal.

The 1991 fee rule also provided for an annual fee of $26,058 for a facility operating at less than 9.6 tons per day (a "small facility"), based upon anticipated weekly inspections. The Department has determined that one on-site inspection each month is sufficient, and is adjusting the fee accordingly. Generally, small facilities are relatively simple package plants, subject to simplified Department permitting requirements under N.J.A.C. 7:26-2.4(c)2. Their operations are usually limited to no more than eight hours a day, five days a week. The shutdown of a small facility would not severely disrupt solid waste flow.

For a facility operating at 9.6 tons per day or more, but less than 100 tons per day (a "mid-sized facility"), an average of one on-site inspection every two weeks will be sufficient. Mid-sized facilities involve a smaller scope of operations and a less complex design and construction than large facilities. Generally, a mid-sized facility consists of a number of package plants linked together. In addition, because a mid-sized facility is generally less central to a district solid waste management plan, a temporary shutdown of such a facility would be less disruptive to solid waste flow.

The following table shows the calculation of the annual compliance monitoring fee for each of these types of facilities:

Type of facility	**Hours required annually**	**Annual fee**
Small	115.2	$ 6,013
Mid-sized	249.6	$13,029
Large	499.2	$26,058

The Department also notes that it expects to continue to improve its efficiency and effectiveness by expanding its monitoring by remote telemetry to include monitoring of facility operations, as well as emissions. As a result, the Department may be able to further reduce these fees in the future.

Social Impact

The Department expects no positive or negative social impact to result from the proposed amendments. As discussed above, based on its experience in continuously monitoring emissions from off-site using the telemetry technology, the Department has determined that it is not necessary to have its personnel at the facility at all times. In addition, the Department is now able to monitor through telemetry certain aspects of the facilities' compliance with the laws and regulations governing solid waste management, further reducing the need for on-site monitoring. Therefore, the Department believes that the proceeds of the reduced fees will be sufficient to support the activities which the Department performs under the Solid Waste Management Act.

Economic Impact

The proposed amendment will have a positive economic impact upon the permittees of thermal destruction facilities. The annual fee of $26,058 in the existing rules will be reduced to $6,013 for small facilities. The annual fee of $390,874 in the existing rules will be reduced to $13,029 for mid-sized facilities, and $26,058 for large facilities.

Environmental Impact

The Department expects no positive or negative environmental impact to result from the proposed amendments. The reduction in fees will not impair the Department's ability to ensure that solid waste is disposed of in an environmentally sound manner, because the level of activity funded by the reduced fees is sufficient to preserve that ability. As discussed above, the Department's experience has shown that it can effectively monitor the operations of thermal destruction facilities without having its personnel present at the facility at all times.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will not impose recordkeeping or reporting requirements on small businesses. In addition, the reduction of certain of the fees provided in the 1991 fee rule will reduce compliance requirements on small businesses affected by those fees. Therefore, no regulatory flexibility analysis is necessary.

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

Agency Note: The text of the provisions of N.J.A.C. 7:26-4.3(b) set forth below is as currently effective. This current text is reflected in a notice of administrative correction published elsewhere in this issue of the New Jersey Register.

7:26-4.3 Fee schedule for solid waste facilities

(a) (No change.)

(b) The permittee of a solid waste facility shall pay the annual fees listed in the following table for compliance monitoring services. The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year.

Type of Facility	Compliance Monitoring Fee
. . .	
[Resource Recovery] **Thermal Destruction Facilities**— operating at [9.6]**100** tons per day or more	[$500.00 per day that an inspector is on the premises] **$26,058**
Thermal Destruction Facilities— operating at 9.6 tons per day or more, but less than 100 tons per day	**$13,029**
[Resource Recovery] **Thermal Destruction Facilities**— operating at less than 9.6 tons per day	[$270.00 per site visit] **$6,013**
[Resource Recovery under construction or expansion	$270.00 per day that an inspector is on the premises]

(c)-(h) (No change.)

(a)

HAZARDOUS WASTE REGULATION

Annual Adjustment of Hazardous Waste Fees

Proposed New Rule: N.J.A.C. 7:26-4A.6

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 13:1E-18.
DEPE Docket Number: 018-92-05.
Proposal Number: PRN 1992-229.

Submit written comments by July 1, 1992 to:
Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

On February 3, 1992, the Department of Environmental Protection and Energy (Department) promulgated amendments to its hazardous waste fee rules at N.J.A.C. 7:26-4A ("the 1992 fee rule"). The 1992 fee rule established fees based upon the duration and complexity of the Department's activities, as required by the Solid Waste Management Act, N.J.S.A. 13:1E-18. The fee for each activity was calculated by multiplying the hourly rate associated with the activity by the time required to perform each activity. That hourly rate was based upon the average salary of employees working in the Department's hazardous waste management program assigned to the activity, fringe benefits, indirect costs, operating expenses and the cost of legal services.

The Department has recognized that additional changes are necessary in the fee schedule to more accurately reflect the costs associated with timely responses to environmental problems.

The Department will review its fee schedule each year, based upon changes in its costs in performing activities for which fees are charged. Several factors may increase or decrease costs, including, but not limited to, changes in the amount of time the Department requires to perform activities, and changes in the level of compensation of employees working in the Department's hazardous waste management program. The proposed new rule provides the Commissioner with the ability to implement the annual change through the publication of a report, which will set forth any revised fees and which will describe the changes in the Department's costs upon which the revisions will be based.

The fees for each activity under the annually revised schedule will continue to be calculated as the number of hours required to perform an activity, multiplied by the hourly rate. The determination of the number of hours required to perform an activity will be based upon the Department's timekeeping records for the period which is the subject of the report described above. However, if the Department has not performed an activity often enough within that period to provide sufficient data to support the determination, the Department may base its determination on data from previous years.

The proposed new rule also provides for additional factors to be considered in the Department's adjustment of fees assessed for activities which are to be performed more than once in the period covered by the fee (in contrast to permitting fees which are assessed for the performance of a single step in the permitting process for a single application). For example, the Department assesses inspection fees for hazardous waste management facilities under N.J.A.C. 7:26-4A.3(c)1, 2 and 3. Some facilities, notably major hazardous waste facilities, may be inspected more than once in the fiscal year.

In some cases, the Department may show a decrease in billable hours due to a shortage of staff. In such a case, the Department may assess fees which will support a level of staffing which is adequate to perform the amount of work which it is expected to perform.

Under the proposed new rule, the hourly rate is based upon the average salary of a Department employee working in the hazardous waste program assigned to the particular activity for which the fee is to be assessed (similar to the method used under the 1992 fee rule), fringe benefits, indirect costs, operating expenses, and the cost of legal services rendered in connection with the hazardous waste program. Fringe benefits are calculated as a percentage of the average salary. That percentage rate is set by the Department of the Treasury, based on costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave and the employer's share of FICA. Indirect costs are those costs incurred for a common or joint purpose, benefitting more than one cost objective and not readily assignable to the cost objective specifically benefitted, without effort disproportionate to the results achieved. Indirect costs consist of Department management salaries and operating expenses, divisional indirect salaries and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the State Department of the Treasury. The rate is negotiated annually between the Department and the United States Environmental Protection Agency. Operating expenses include costs incurred in connection with the hazardous waste program for items such as postage, telephone, training, travel, supplies, equipment maintenance, vehicle maintenance and data system management.

Legal services costs are based upon the budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the Department's hazardous waste activities. The Department has assumed that the number of person-hours spent in rendering legal services in connection with each of the types of activities for which fees are assessed is proportional to the number of person-hours which the hazardous waste program spends on such activities. The 1992 rules apportioned the total cost of legal services in accordance with these proportions and that cost will continue to be so apportioned under these rules.

To arrive at the hourly rate, the total annual per-employee costs are divided by the average employee's annual "billable hours." This figure is the number of hours which Department employees working in the hazardous waste program spend annually performing "billable" work for which fees are to be collected under N.J.A.C. 7:26-4A.3.

Social Impact

The Department expects that the proposed new rule will have a positive social impact, because the annual review of the hazardous waste program's fees should increase the accountability of all levels of the Department's management for efficiency in the performance of the activities for which these fees are assessed.

Economic Impact

The economic impact of the procedure for annual review of the Department's fees will depend upon the results of that review each year. Various factors may increase or decrease the fees, including, but not limited to: improvements in the time the Department requires to perform activities, changes in the average level of compensation of Department employees, and changes in the regulatory requirements of the hazardous waste program. As a result, the Department cannot determine the economic impact of this portion of the proposed new rule at this time.

Environmental Impact

The Department expects that the proposed new rule will continue the positive environmental impact of the 1992 fee rule. By annually reviewing the hazardous waste program's fees, the Department will be able to maintain a level of fees adequate to pay the costs of the Department's efforts to ensure that hazardous waste is disposed of in an environmentally sound manner.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rule will not impose recordkeeping or reporting requirements on small businesses (as defined in the Regulatory Flexibility Act). However, if the adjustment of the fees in any year under the proposed new rule results in an increase of any fee, the result would be an increase in compliance requirements for small businesses. The extent of that increase, and the number of small businesses affected, would depend upon the results of each year's adjustment.

The Department believes that exempting small businesses from all or part of a fee increase would undermine the ability of the Department to carry out its duties under the Solid Waste Management Act and would be detrimental to the environment. However, the Department has established graduated fees, where possible, and in those instances has imposed proportionally lower fees upon smaller entities, which are generally less able to bear an increase in costs. For example, the Department assesses reporting fees for hazardous waste generators based on the tonnage of waste manifested by the particular generator.

Full text of the proposed new rule follows:

7:26-4A.6 Annual adjustment of fees

(a) The Department shall adjust the fees for each activity described in N.J.A.C. 7:26-4A.3 annually, based upon the following formula:

Fee = (hours required) × (hourly rate)

where "hours required" and "hourly rate" are as set forth in the Annual Hazardous Waste Fee Schedule Report as provided in (b) below.

(b) Each year, the Department shall prepare an Annual Hazardous Waste Fee Schedule Report. This report shall include the following:

1. The Department's estimate of the number of hours which will be required to perform each type of activity for which fees are assessed under N.J.A.C. 7:26-4A.3. In formulating the estimate, the Department shall consider the following factors:

i. The Department's timekeeping records for a period of at least nine months, ending no more than six months before the completion of the report;

ii. The Department's timekeeping records from previous years, if the Department determines that it does not have sufficient data to reliably determine the number of hours required to perform the activity;

iii. Any other factors relevant to the estimate, provided that the report explains any such other factors, and explains how such factors support the estimate;

iv. If the Department determines that the creation of additional classifications of regulated entities or activities would result in a substantially more equitable assessment of fees, the Department may establish such additional classifications, and will report them in the Annual Hazardous Waste Fee Schedule Report. The Department's determination shall be in its reasonable discretion, based upon its review of the data upon which the report is based. In the report, the Department shall set forth the hours required to perform an activity for such additional classes. This subparagraph provides only for the creation of additional classifications of types of facilities or activities for which fees are assessed under the Department's rules, and shall not be construed to provide for the assessment of fees for types of facilities or activities not already contained in the Department's rules; and

v. If the Department reports a decrease in the number of hours spent performing an activity, compared with the expected level of activity, and such decrease is due solely or in part to a lack of Department staff sufficient to perform the activity, the Department may set the fee at the level necessary to defray the cost of sufficient staff to perform the expected activity; and

2. A statement of the hourly rate for calculating fees. The hourly rate for an activity is the average cost of one hour of the Department's hazardous waste program's staff time needed to perform the activity, calculated according to the following formula:

$$\frac{(AS + FB + IC + OE + LS)}{BH}$$

where:

i. AS equals the average salary of a full-time Department employee working in the Department's hazardous waste program assigned to the activity;

ii. FB equals the fringe benefits of a full-time Department employee working in the Department's hazardous waste program assigned to the activity, calculated as a percentage of the average salary. The percentage is set by the New Jersey Department of the Treasury, and is based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. IC equals indirect costs attributable to a fulltime Department employee working in the Department's hazardous waste program assigned to the activity, calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the sum of AS and FB;

iv. OE equals operating expenses (including without limitation: postage, telephone, travel, supplies, clerical support, other support staff and data system management) attributable to a full-time Department employee working in the Department's hazardous waste program assigned to the activity;

v. LS equals the budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the Department's hazardous waste activities, divided by the total number of Department employee positions which the Department projects will be funded by the revised fee schedule; and

vi. BH equals the average number of hours which each Department employee working in the Department's hazardous waste program spends annually performing activities for which fees are imposed under N.J.A.C. 7:26-4A.3.

(c) Promptly after completing the report described in (b) above, the Department shall provide a copy of the report to each person required to have paid a fee under N.J.A.C. 7:26-4A.3 above within the one-year period covered by the report.

(d) Promptly after making the adjustment to the fees pursuant to the report described in (b) above, the Department shall publish a notice of administrative change in the New Jersey Register pursuant to N.J.A.C. 1:30-2.7(c), setting forth adjusted fees, in N.J.A.C. 7:26-4A.3 and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.

(a)

HAZARDOUS WASTE REGULATION

Notice of Reopening of Public Comment Period Hazardous Waste Manifest Discrepancies

Proposed Amendments: N.J.A.C. 7:26-5.4, 7.4, 7.6, 9.4 and 12.4

Take notice that the Department of Environmental Protection and Energy is reopening until July 10, 1992 the comment period of the proposed amendments published at 23 N.J.R. 3607(a) on December 2, 1991 (DEPE Docket Number: 043-91-10). The comment period originally ended January 31, 1992. Notice of the proposal and the reopened comment period will appear in the Newark Star Ledger and the Trenton Times newspapers. The proposed amendments specify the reporting of hazardous waste manifest discrepancies and variations in bulk weight which trigger a manifest discrepancy inquiry.

A summary of the proposal follows here:

The amendment at N.J.A.C. 7:26-7.6(a)4 specifies that bulk weight discrepancy reports shall only be submitted if the discrepancy cannot be resolved by the generator and transporter within one week. This will prevent unnecessary filings. The amendment also changes the discrepancy trigger from one percent to 10 percent to avoid reporting of insignificant discrepancies.

The amendment at N.J.A.C. 7:26-12.4(a)17 brings the trigger amount into agreement with changes at N.J.A.C. 7:26-7.6.

The amendment at N.J.A.C. 7:26-7.6(f)2iv requires a facility to describe any and all significant discrepancies, both resolved and reported, as part of the annual report.

The amendment at N.J.A.C. 7:26-7.4(k) requires generators using out-of-State designated facilities to immediately report significant manifest discrepancies.

The amendment at N.J.A.C. 7:26-9.4(i)10 specifies what manifest discrepancy information a facility operator must maintain as part of the facility's operating record.

The amendment at N.J.A.C. 7:26-5.4 will reflect the proposed changes to N.J.A.C. 7:26-7.6 and 9.4.

The amendment at N.J.A.C. 7:26-7.6(a)3 will replace a penalty designation with a cross-reference to related requirements.

The amendment at N.J.A.C. 7:26-12.4 reiterates the permittee's requirement to report unresolved manifest discrepancies.

The amendment at N.J.A.C. 7:26-12.4(a)17 deletes this paragraph since it will be recodified at 7.6(a)4.

Submit comments, identified by the Docket Number, by July 10, 1992 to:

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

(a)

HAZARDOUS WASTE REGULATION

Notice of Reopening of Public Comment Period
Hazardous Waste Criteria: Identification and Listing
Proposed Amendment: N.J.A.C. 7:26-8.16

Take notice that the Department of Environmental Protection and Energy is reopening until July 10, 1992 the comment period of the proposed amendment published at 23 N.J.R. 3093(b) on October 21, 1991 (DEPE Docket Number: 037-91-09). The comment period originally ended November 20, 1991. Notice of the proposal and the reopened comment period will appear in newspapers of general circulation in New Jersey. The proposed amendment corrects the hazardous constituents list at N.J.A.C. 7:26-8.16.

Submit comments, identified by the Docket Number, by July 10, 1992 to:

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

(b)

SITE REMEDIATION

Notice of Additional Public Hearing and Extension of Public Comment Period
Cleanup Standards for Contaminated Sites
Proposed New Rules: N.J.A.C. 7:26D

Take notice that on Monday, February 3, 1992, the New Jersey Department of Environmental Protection and Energy (NJDEPE) proposed new rules in the New Jersey Register at 24 N.J.R. 373(a). These rules, N.J.A.C. 7:26D entitled "Cleanup Standards for Contaminated Sites," are designed to resolve questions regarding to what degree sites contaminated with hazardous materials must be cleaned in order to protect both human health and the environment. The rules include numeric standards for several exposure pathways, that have specifically been developed to be protective of human health. These pathways include exposures resulting from the ingestion and inhalation of contaminated surface soils, the potential for contaminated surface and subsurface soils to impact potable groundwater resources, ingestion of contaminated groundwater and exposures resulting from ingestion, dermal absorption and inhalation of contaminants from building interior surfaces and air. Additionally a mechanism has been included in the rules that will allow the development of non-human cleanup criteria based upon consideration and evaluation of impact hazardous substances to sensitive ecological habitats.

An additional public hearing has been scheduled, to allow for further direct public involvement and comment on this proposal. The public hearing will be held at 10:00 A.M. on Friday, June 19, 1992, at:

Department of Environmental Protection and Energy
First Floor Hearing Room
401 E. State Street
Trenton, New Jersey

Take further notice that the Department is extending until June 24, 1992 the comment period for the proposed new rules. Submit written comments by June 24, 1992, to:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

HEALTH

(c)

HEALTH FACILITIES EVALUATION AND LICENSING

Good Drug Manufacturing Practices
Proposed New Rules: N.J.A.C. 8:21A

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.
Authority: N.J.S.A. 24:5-1 et seq., especially 24:5-1, and 24:2-1.
Proposal Number: PRN 1992-217.

Submit comments by July 1, 1992 to:

Lucius A. Bowser, R.P., M.P.H.
Chief, Drug Control Program
CN 367
Trenton, NJ 08625-0367

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:21A expired on April 1, 1990. The Department of Health has reviewed the rules as required by the Executive Order and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated, and is proposing the expired rules as new. The Department of Health is also proposing new rules, N.J.A.C. 8:21A-3, to bring the Good Drug Manufacturing Practices rules into conformity with the Federal rules cited at 21 CFR 211. N.J.A.C. 8:21A-3 will encompass tamper-resistant packaging requirements and the labeling of tamper-resistant packaging to ensure that products for over-the-counter consumer use are safe.

The expired rules proposed as new set forth the minimum good manufacturing practice methods to be used in, and the facility controls over, the manufacturing, processing, packing, holding, and labeling of a drug to ensure such drug meets the requirements of N.J.S.A. 24:1-1 et seq. The proposed rules contain requirements for identity, strength, quality and purity of a drug, as well as requirements for safety in packaging, including safety/tampering closures to be used to prevent accidental ingestion or contamination.

The expired rules were proposed for readoption as new in the October 15, 1990 New Jersey Register at 22 N.J.R. 3189(a), with a comment period ending November 14, 1990, and later the comment period was extended to April 17, 1991 because there was some question concerning the manner and extent of notification of interested parties. The date for the readoption as new rules passed without action being taken and is now being re-submitted as proposed new rules.

N.J.A.C. 8:21A-1.1 through 1.3 describe the purposes and applicability of the good manufacturing practices, as well as defining words and terms used in the chapter.

N.J.A.C. 8:21A-2.1 identifies the scope of subchapter 2.

N.J.A.C. 8:21A-2.3 through 2.5 describe the qualifications and responsibilities of personnel and consultants used by a drug manufacturer.

N.J.A.C. 8:21A-2.6 through 2.13 contain requirements for physical plant construction and lighting; ventilation/heating/cooling, air filtration; plumbing, sewerage and refuse maintenance; washing/toilet facilities; general sanitation; and repair maintenance.

N.J.A.C. 8:21A-2.14 through 2.18 contain requirements for equipment design, size, location; construction; cleaning and maintenance and use of automated, mechanical and electronic equipment, and filter systems.

N.J.A.C. 8:21A-2.21 through 2.25 cover all the aspects of product components, containers and closures; their use, testing and rejection.

N.J.A.C. 8:21A-2.26 establishes requirements for written procedures and deviations from such procedures.

N.J.A.C. 8:21A-2.27 contains requirements for drug production methods, including receiving, identifying, weighing, measuring of ingredients and the identifying of batches and containers.

N.J.A.C. 8:21A-2.28 sets forth procedures for the calculation and yield of products to be produced.

N.J.A.C. 8:21A-2.29 outlines procedures of equipment identification to ensure proper use, cleaning and maintenance.

N.J.A.C. 8:21A-2.30 through 2.36 control the in-process sampling and testing of product; controls for microbiological contamination; the methods for reprocessing batches and lots of products after production; and examination of all materials used in, and labels used on, drug products.

N.J.A.C. 8:21A-2.37 contains requirements for product inspection and recordkeeping during and at the end of production to ensure that the product is what it is purported to be.

N.J.A.C. 8:21A-2.38 establishes methods for determining and using expiration dates on products to ensure stability, and includes exceptions for specified products.

N.J.A.C. 8:21A-2.39 and 2.40 set forth procedures to be followed in warehousing, storing and distributing drug products.

N.J.A.C. 8:21A-2.41 through 2.45 contain requirements for laboratory control methods, general testing, stability testing, special testing of drug products and reserve samples.

N.J.A.C. 8:21A-2.46 sets for the criteria for use and care of animals used in drug production studies and processes.

N.J.A.C. 8:21A-2.47 outlines procedures to control for possible penicillin contamination of drug products.

N.J.A.C. 8:21A-2.48 through 2.55 establish requirements for records and reports; equipment cleaning and use log; components, containers, closures and labeling; production, master and batch records; and laboratory and distribution records.

N.J.A.C. 8:21A-2.56 specifies the procedures for handling drug products that may specify the procedures and records necessary to handle complaints on any drug product.

N.J.A.C. 8:21A-2.57 and 2.58 control procedures for handling drug products that may be returned, and methods for and records kept on drug product salvaging operations.

N.J.A.C. 8:21A-3, the proposed new rules, will establish the criteria for the use of tamper-resistant packaging for over-the-counter human drug products.

Social Impact

The expired rules proposed as new, which cover good drug manufacturing practices, and the proposed new rules on safety/tampering resistant packaging for over-the-counter human drug products, will ensure that all drug products are produced safely and packaged for the protection of all citizens. These proposed new rules will affect drug product manufacturers and afford them greater protection from lawsuits and product liability claims. Citizens can be assured that every drug product meets high standards of quality, purity and potency and are labeled as the drug they purport to be.

Economic Impact

The proposed new rules are expected to have no discernible new economic impact upon the regulated pharmaceutical and drug industry. The impact on the drug industry results from the mandate of the Food and Drug Administration, cited as 21 CFR 210 and 211, setting forth precisely how drug products are to be manufactured and packaged to ensure safety and effectiveness. These rules duplicate Federal requirements. No data is currently available on the total economic impact of the proposed rules. The proposed new requirements for safety/tampering packaging for over-the-counter human drug products should have no additional impact on drug manufacturers, since the same safety/tampering packaging requirements are well established in Federal regulations. There is no readily available data on the amount of the additional costs to the pharmaceutical and drug industry made necessary by these rules.

Regulatory Flexibility Analysis

The expired and proposed as new rules on good drug manufacturing practices and the proposed new rules on safety/tampering resistant packaging will affect approximately 110 manufacturers of drug products in New Jersey, of whom some 15 can be considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, these small businesses are already subject to the Federal Food and Drug Administration regulations cited as 21 CFR 210 and 211 as to records, production procedures, labels, and packaging and these rules would have no added impact. The Department is not able to establish differential requirements based on business size, since to do so would be contrary to applicable Federal laws and regulations.

Full text of the expired rules proposed as new may be found in the New Jersey Administrative Code at N.J.A.C. 8:21A.

Full text of the proposed new rules follows:

SUBCHAPTER 3. TAMPER-RESISTANT PACKAGING REQUIREMENTS FOR OVER-THE-COUNTER HUMAN DRUG PRODUCTS

8:21A-3.1 Penalties, definitions, packaging and labeling

(a) An over-the-counter (OTC) human drug product (except a dermatological, dentrifice, insulin, or lozenge product) for retail sale that is not packaged in a tamper-resistant package or is not properly labeled under this section shall be considered adulterated or misbranded or both. Penalties may be imposed pursuant to N.J.S.A. 24:17-1.

(b) For purposes of this subchapter, the following definitions shall apply, unless specifically defined otherwise within the subchapter:

1. "Aerosol product" means a product which depends upon the power of a liquified or compressed gas to expel the contents from the container.

2. "Distinctive design" means the packaging cannot be duplicated with commonly available materials or commonly available processes.

3. "Tamper-resistant package" means a packaging having an indicator or barrier to entry, which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred.

(c) Each manufacturer and packer who packages an OTC drug product (except dermatological, dentrifice, insulin or lozenge product) for retail sale shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. To reduce the likelihood of substitution of a tamper-resistant feature after tampering, the indicator or barrier to entry is required to be distinctive by design (for example, an aerosol product container) or by the use of an identifying characteristic (for example, a pattern, name, registered trade-mark, logo or picture). A tamper-resistant package shall be one of the following: an immediate container or closure system, or a secondary container or carton system, or any combination of systems intended to provide visual indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution and retail display.

(d) Each retail package of an OTC drug product covered by (b) and (c) above, except ammonia inhalent in crushable glass ampoules, aerosol products as defined in (b) above or containers of compressed medical oxygen, is required to bear a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package. The labeling statement is also required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-resistant feature chosen to meet the requirements of (b) and (c) above is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band may state the following: "For your protection, this bottle has an imprinted seal around the neck."

8:21A-3.2 Requests for exemptions from packaging and labeling requirements

(a) A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for exemption is required to be submitted in a form of a citizen petition to the U.S. Food and Drug Administration and should be clearly identified on the envelope as a "Request for Exemption from Tampering-Resistant Rule." The petition shall contain the following:

1. The name of the drug product or, if the petitioner seeks an exemption for a drug class, the name of the drug class, and a list of all products within that class;
2. The reasons that the drug product's compliance with tampering-resistant packaging or labeling requirements of this section is unnecessary or cannot be achieved;
3. A description of alternative steps that are available, or that the petitioner has already taken, to reduce the likelihood that the drug product or drug class will be subject to malicious adulteration; and
4. Any other information justifying an exemption.

8:21A-3.3 OTC drug products subject to approved new drug applications

Holders of approved new drug applications for OTC drug products are required, by 21 CFR 314.70 to provide changes in packaging, and labeling to comply with the requirements of this subchapter.

8:21A-3.4 Poison Prevention Packaging Act of 1970

This subchapter does not affect any requirement for "special packaging" as defined in 21 CFR 310.3(1) and required under the Poison Prevention Packaging Act of 1970 regulations, 16 CFR 1700.

8:21A-3.5 Effective dates

(a) Pursuant to 21 CFR 211, the packaging requirements in N.J.A.C. 8:21A-3.1(a) became effective on February 7, 1983 for each affected OTC drug product (except oral or vaginal tablets, vaginal and rectal suppositories, and one piece soft gelatin capsules) packed for retail sale on and after that date, except for the requirement for a distinctive indicator or barrier to entry.

(b) Pursuant to 21 CFR 211, the requirement of N.J.A.C. 8:21A-3.1(b) became effective on May 5, 1983 for each OTC drug product that is an oral or vaginal tablet, a vaginal or rectal suppository, or one piece soft gelatin capsule packaged for retail sale on or after that date.

(c) Pursuant to 21 CFR 211, the requirement of N.J.A.C. 8:21A-3.1(c) that the indicator or barrier to entry be distinctive by design and the requirement in N.J.A.C. 8:21A-3.1(d) for a labeling statement became effective May 5, 1983 for each affected OTC drug product packaged for retail sale on or after that date, except that the requirement for a specific label reference to any identifying characteristic became effective on February 6, 1984 for each affected OTC drug product packaged for retail sale on or after that date.

(d) Pursuant to 21 CFR 211, the tamper-resistant packaging requirement of N.J.A.C. 8:21A-3.1(c) above became effective February 6, 1984 for each affected OTC drug product held for sale on or after that date that was packaged for retail sale before May 5, 1983. This does not include the requirement in N.J.A.C. 8:21A-3.1(d) that the indicator or barrier to entry be distinctive by design. Products packaged for retail sale after May 5, 1983 are required to be in compliance will all aspects of the requirements without regard to the retail level effective date.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Regionalized Perinatal Services

Prposed New Rules: N.J.A.C. 8:33C

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health, with approval of the Health Care Administration Board.

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

Proposal Number: PRN 1992-223.

Submit comments by July 1, 1992 to:

Pamela Dickson, M.B.A.
Assistant Commissioner
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:33C, Perinatal Services, expired on July 17, 1991. These proposed new rules will replace the expired rules. These proposed new rules are part of the Department of Health's continuing effort to improve infant and maternal health through the creation of a linked network of care. This network will focus on prevention, case finding and appropriate referral of pregnant women and high risk infants. It has a goal of intervening during early pregnancy, identifying and eliminating gaps in care, and structuring a care system for the individual patient. This system will build on past efforts to regionalize perinatal and neonatal services in New Jersey.

In February 1978, the Department of Health established rules to govern the planning, certification of need, and designation of perinatal services. These rules were the result of an extensive planning process which began in 1973 when the New Jersey State Health Planning Council listed the reduction of infant mortality as its highest priority goal. Following a comprehensive planning effort, a system of regionalization for perinatal services was recommended, involving the establishment and designation of three distinct levels of care.

The purpose of the 1978 rules remains to establish a means for the Department to:

1. Promote delivery of the highest quality of care to all pregnant women and newborns;
2. Maximize utilization of highly trained perinatal personnel and intensive care facilities;
3. Promote cost effectiveness throughout the system; and
4. Emphasize a coordinated and cooperative prevention-oriented approach to perinatal services.

The 1978 rules established a planning process, a designation and certification of need review process, and criteria and standards for delivery of care at the three defined levels. The perinatal planning and designation process was implemented by the Department in 1981, and all New Jersey hospitals with obstetrical services were designed under the level of care concept. The rules were re-adopted with amendments in August of 1984, in order to continue the regionalized approach in New Jersey for perinatal services. In August of 1989, the rules were temporarily readopted for two years with the understanding that the Department would review the current perinatal system.

In July of 1989, the Commissioner of Health convened the Perinatal Technology Advisory Committee. The Perinatal Technical Advisory Committee was charged by the Commissioner to examine New Jersey's planning and regulatory requirements for the provision of the total range of perinatal services. In December of 1989, the "Proposal for a System of Perinatal Care" was circulated to all perinatal providers in New Jersey. A public hearing was held December 13, 1989 and the Perinatal Technical Advisory Committee report was revised and finalized February 14, 1990.

The Perinatal Technical Advisory Committee report recommended that there be two levels of care: the Regional Perinatal Center and the Community Perinatal Center. A dilemma faced by the Perinatal Technical Advisory Committee was the ambiguity relative to the delineation of care provided by a Regional Perinatal Center versus a Community Perinatal Center. The Regional Perinatal Center certainly distinguishes itself with perinatology, regional activities and care of very low birth weight infants (less than 1500 grams) with competence. Community Perinatal Centers have been progressively able to provide many of the services related to neonatal intensive care thus creating facilities with an array of capabilities on the neonatal side.

In order to achieve New Jersey's Year 2000 maternal and child health objectives, the emphasis must not only be on the prevention of low birth weight births but also on access to preventive primary care for children and adolescents as well as women in their reproductive years. The proposed rules establish a planning process, and a designation and certification of need process through Regional Maternal and Child Health Consortia for perinatal and pediatric services. The proposed rules will focus on the perinatal system. Subsequent rules will address the details of pediatric services. The proposed perinatal system emphasizes early and adequate appropriate prenatal care and maternal referrals or transports to the Regional Perinatal Centers when needed. In the realm of neonatal services, Community Perinatal Centers are allowed the flexibility which current and new technology affords them. The specifics regarding personnel and services for the Regional Perinatal Centers and Community Perinatal Centers are documented in N.J.A.C. 8:43G-19 but are summarized in the matrix which follows.

PERINATAL FACILITY MATRIX

	CPC-Brth. Ctr.	CPC-Basic	CPC-Inter.	CPC-Inten.	RPC	Child. Hosp.
Personnel:						
Maternal-Fetal:						
Obstetrician	Coverage	Coverage	Coverage	Coverage	In-House	N/A
Perinatologist	No	No	No	Coverage	Coverage	N/A
Newborn/Neonatal:						
Pediatrician	Coverage	Coverage	Coverage	*In-house	*In-house	Coverage
Neonatologist	No	No	*Coverage	Coverage	Coverage	In-house
Nursing Staff Ratio:						
Intermed. & Int.	No	No	1:3	1:2	1:2	1:2
Normal Newborn	No	1:8	1:8	1:8	1:8	N/A
CNM	Coverage	Optional	Optional	Optional	Optional	N/A
Services:						
Maternal-Fetal Transport Team	No	No	No	No	Yes	N/A
Neonatal Trans. Team	No	No	No	Optional	Yes	Yes
Neonatal Resus.	Yes	Yes	Yes	Yes	Yes	Yes
Neonatal Vent. Support	No	No	≤5 days	>5 days	>5 days	>5 days
Neonatal TPN	No	No	No	Yes	Yes	Yes
Neonatal Surg.	No	No	No	Optional	Yes	Yes
High Risk Infant Follow-up	No	No	No	Yes	Yes	Yes

*In-house/*Coverage—Pediatrician with 1 year training in neonatology

The Perinatal Technical Advisory Committee further recommended that initially there be no more then seven perinatal regions. These regions should be established voluntarily and be based on the seven regions formed as result of funding from the Robert Wood Johnson Foundation through its "Program to Improve Maternal and Infant Health in New Jersey."

Social Impact

Maternal and child health continues to be a concern for the State of New Jersey, especially the health status of infants and small children. In 1981, the State's infant mortality rate was 11.5 deaths per 1000 live births. In 1989, it had dropped to 9.3. The white infant mortality rate decreased from 9.3 in 1981 to 7.0 in 1989, while the non-white infant mortality rate decreased from 21.2 to 19.6 deaths per 1000 live births. This improvement in health indicators can be largely attributed to the development of a regionalized hospital based improvement of perinatal care. Despite these improvements, much more remains to be done. The State has not reached the 1990 target set in "Objectives for the Nation" for overall infant mortality (9.0 deaths per 1000 live births), or the target for nonwhite infant mortality (12.0 deaths per 1000 live births). The State's very low birth weight (below 1500 grams) rate actually increased from 1.24 percent to 1.40 percent with the non-white rate (2.8 percent) being almost three times the white rate (0.96 percent).

There is a wide recognition that further substantial gains cannot be accomplished through further emphasis on costly technological improvements. By the mid 1980s, studies showed that the improvements in outcomes achieved by neonatal intensive care nurseries had plateaued. In order to make additional progress towards reducing the infant mortality rate, the focus must shift to prevention of low birth weight, often a consequence of preterm delivery, and pre-pregnancy health and habits. Effective outreach and education programs, focused on pre-pregnancy health and habits that facilitate positive pregnancy outcomes, need to be implemented.

Many of the factors which are known to be associated with infant mortality are reflections of poverty and its social effects. Another important factor that should be considered in an effort to reduce infant mortality is excess fertility, that is, unwanted and unplanned pregnancies. Creative strategies must be implemented to address this problem.

In 1985, after a decade of progress in preventing maternal deaths, there was an increase in the number of maternal deaths in New Jersey. In 1988, the rate was 33.2 deaths per 100,000 live births—double the rate of the early 1980's. *Healthy New Jersey 2000* defines strategies for improving maternal and infant outcomes as primarily focused on low cost prevention efforts. These emphasize accessible prenatal care and primary pediatric services in addition to outreach, education and home support. Women with high risk pregnancies need to be identified and specialized services for the management of these pregnancies need to be developed.

Economic Impact

The development of hospital-based regionalized neonatal intensive care nurseries has occurred without a coordinated system for managing high risk maternal cases. Maternal-fetal medicine has only recently come to the forefront in the realm of preventing low birth weight births. Conversely, hospitals have become extremely sophisticated in the provision of neonatal intensive care. The rate of very low birth weight infants remains unchanged. These infants typically require intensive care in the hospital immediately after birth, and frequently require costly intervention and maintenance throughout their lives. In 1989, the average hospital charge in New Jersey for caring for an infant weighing less than 750 grams and discharged alive was $70,000. According to the Codman Research Group, Inc., the number of low birth weight infants exceeding the state's average in 1989, was greater than thirty million dollars. The total cost of intensive care for all low birth weight infants was greater than eighty-five million dollars. This exceeds the lifetime costs of disability in these infants who survive. Only with the prevention of low birth weight through adequate and timely prenatal care can further savings in health care expenditures be realized.

The proposed new rules govern the development and operation of seven cooperative consortia to oversee and monitor the provision of regionalized perinatal care services in order to assure the efficacious utilization of health care resources.

The savings that are anticipated from the prevention of low birth weight infants and maternal morbidity should more than offset the anticipated costs of the development of the perinatal cooperative consortia. Therefore, the anticipated short term increases in cost to the overall health care system should result in greater long term savings.

Regulatory Flexibility Analysis

The proposed new rules at N.J.A.C. 8:33C create and regulate Maternal and Child Health Consortia. As defined at N.J.A.C. 8:35-1.2, the consortia are voluntarily formed non-profit organizations which con-

sist of all inpatient, ambulatory and perinatal care providers and related community organizations in a maternal and child health service region.

The rules require each component of a consortium, and the consortium, to conform to application, staffing, planning, community education, service and coordination standards. These standards may involve consultation with professionals, such as attorneys or financial advisers; however, such consultation is not required by the rules. The consortia are expected to have no more than three staff members. Acute care hospitals, members of the consortia, all have more than 100 employees. Some ambulatory and perinatal care providers, such as birthing centers, may be small businesses. Standards have been proposed for community centers and for regional centers which take into account the level of care to be provided. Since most of the small businesses regulated by this chapter are community centers, the rules provide a differentiation, generally, between large and small businesses. However, this differentiation is based on function, not on business size, and, due to the issues of public health and safety involved, the Department has determined that any differentiation based solely on business size would be inappropriate.

Full text of the proposal follows:

CHAPTER 33C
CERTIFICATE OF NEED: REGIONALIZED PERINATAL SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

8:33C-1.1 Scope and Purpose

The New Jersey Department of Health currently licenses and regulates inpatient and outpatient providers of obstetric and pediatric services in licensed general acute hospitals and freestanding ambulatory care centers throughout the State. The effort to lower infant and maternal mortality and improve child health requires that these services be linked into organized regional service delivery networks. The purpose of this chapter is to establish criteria and standards for review of certificate of need applications from Regional Maternal and Child Health Consortia, to designate Perinatal Centers within each region, to specify the requirements for regional perinatal needs assessment and planning, to specify criteria for regional prevention activities, and to specify the minimum utilization required to assure quality perinatal services.

8:33C-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Central service facility" means a health care facility, regulated by the Department of Health, providing essential administrative and clerical support services to two or more direct providers of health care services in a region which may also include some direct provision of health care services.

"Certified nurse midwife" means a registered professional nurse, licensed as such by the New Jersey State Board of Nursing, who is also a graduate of an accredited school certified by the American College of Nurse Midwives, and licensed as such by the New Jersey Board of Medical Examiners.

"Clinical nurse coordinator or supervisor" means a registered professional nurse, currently licensed by the New Jersey State Board of Nursing, who has administrative responsibility over the areas of labor, delivery, recovery, the nurseries, postpartum and antepartum units.

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

"Community perinatal center" means any licensed facility providing preconceptional, prenatal, intrapartum, including delivery of the patient, and postpartum care to women.

"Consumer" means an individual who may receive specific health care services in a specific consortium region and who is not a health care provider and has no fiduciary interest in a health care service.

"High risk" means any patient identified with a medical/obstetrical condition requiring more than routine medical or surgical intervention.

"High risk infant follow-up" means a system of screening and tracking infants with potentially serious health problems or at risk for developmental delays following discharge from the hospital.

"Hospital provider" means an individual who is a direct provider of a health care service or has administrative responsibility for a health care facility which is a licensed acute care hospital.

"Infant" means a child from the period from birth to one year of age.

"In-hospital coverage" means a system whereby an individual is physically present in the hospital.

"Intensive care" means a hospital unit in which are concentrated special equipment and skilled personnel for the care of seriously ill patients requiring immediate and continuous attention.

"Intermediate care" means a hospital unit in which special equipment and personnel are available to care for stable, though ill, patients.

"Intermediate birth weight" means any neonate weighing between 1500 and 2500 grams at birth.

"Intrapartum" means the period occurring during childbirth or delivery.

"Letter of agreement" means the document signed by both the Regional Perinatal Center and the Community Perinatal Center which defines the relationship between the two centers and specifies all tasks to be provided. If there is more than one hospital within the region able to meet the qualifications of a Regional Perinatal Center, then the Regional Perinatal Centers first develop cooperative letters of agreement with each other; then with the Community Perinatal Centers within the region, facilitated by the Regional Maternal and Child Health Consortia. The letters of agreement are then submitted by the Regional Maternal and Child Health Consortia as part of the certificate of need application.

"Low birth weight" means any neonate weighing less than 2500 grams at birth.

"Maternal and child health service region" means the perinatal and pediatric service delivery area. Contained within each region is at least one Regional Perinatal Center, one Regional Pediatric Center and the balance, Community Perinatal Centers.

"Maternal-fetal transport" means the transport of the high risk patient for maternal management.

"Mid-level practitioner" means a certified nurse midwife or a nurse practitioner.

"Neonatal (newborn)" means the period up to 28 days after birth.

"Neonatologist" means a physician who is board certified in pediatrics with a certification in neonatology from the American Board of Pediatrics, Sub-Board of Neonatal/Perinatal Medicine or the American Osteopathic Board of Pediatrics, Sub-Board of Neonatology.

"Non-hospital provider" means an individual who is a health care provider or has administrative responsibility for health care facility but is not employed by, and does not provide care at, a hospital.

"Nurse practitioner" means a registered professional nurse with a current New Jersey license who has completed an accredited nurse practitioner certification program and is certified by a national professional organization.

"Obstetrician" means a physician who is certified, or eligible for certification, by the American Board of Obstetrics and Gynecology, Inc. or the American Osteopathic Board of Obstetrics and Gynecology.

"On-call coverage" means a system whereby an individual is readily available to be at the facility within 30 minutes of initial contact.

"One-stop shopping" means the integration of all services for the purpose of primary care access at a single site.

"Pediatrician" means a physician who is certified or eligible for certification by the American Board of Pediatrics or the American Osteopathic Board of Pediatrics.

"Perinatal" means the period before and after birth; defined in New Jersey and generally accepted as week 20 of gestation through the neonatal period.

"Perinatal clinical nurse specialist" means a registered professional nurse, licensed as such by the New Jersey State Board of Nursing,

who provides in-hospital and regional professional education as well as perinatal clinical expertise in consultation with bedside providers.

"Perinatologist" means a physician who is board certified in obstetrics/gynecology with additional certification in maternal-fetal medicine from the American Board of Obstetrics and Gynecology, Inc., Division of Maternal-Fetal Medicine or the American Osteopathic Board of Obstetrics, Sub-Board of Maternal-Fetal Medicine.

"Physician" means a person who is licensed or authorized as such by the New Jersey State Board of Medical Examiners.

"Postpartum" means the period up to six weeks following birth.

"Preconceptional care" means assessing an individual for risk factors and counseling the individual prior to pregnancy.

"Prenatal (antepartal)" means the period occurring prior to birth, with reference to the fetus.

"Provider" means an individual who is a provider of health care either directly through the provision or administration of health services or indirectly by having a fiduciary interest in such services.

"Public health nursing home visits" means visits made or supervised by a licensed registered professional nurse who is employed by a local health department or home health agency. This includes those visits made by the nurse or by a community outreach worker or volunteer under the direction of the nurse.

"Referral" means the process whereby the attending physician at the Community Perinatal Center transfers the responsibility of the patient's care to a physician specializing in either neonatal or maternal-fetal medicine at the Regional Perinatal Center. This can consist of consultation only with transfer back to the care of the attending physician or continued follow-up by the Regional Perinatal Center through delivery.

"Regional perinatal activities" means the activities of the Regional Maternal and Child Health Consortia which include the development of the regional perinatal plan, the development of a region wide system for total quality improvement, the development of a plan for perinatal transport, the provision of regional professional education and the development of a system to resolve conflicts.

"Regional Perinatal Center" means a licensed perinatal care facility able to provide a full range of perinatal services to its own patient population and support to its own regional affiliates.

"Regional Maternal and Child Health Consortium" means a voluntarily formed non-profit organization, incorporated under Section 501(c)(3) of the Internal Revenue Code, consisting of all inpatient, ambulatory perinatal and pediatric care providers and related community organizations in a maternal and child health service region, licensed as a central service facility by the Department of Health.

"Regional perinatal plan" means the plan developed by the Regional Maternal and Child Consortia which describes how prenatal, intrapartum, newborn and infant follow-up services are delivered in the region. The plan is submitted to the Department of Health as part of the certificate of need application.

"Regionalization" means the planning and delivery of services within a specific geographic zone for the best use of financial and medical resources such as staffing, equipment, facilities, education, and expertise to coordinate appropriate quality health care to a specific population.

"Total quality improvement program" means the process designed to review quality of care and perinatal outcomes. Total quality improvement is an activity of the individual facilities and the Regional Maternal and Child Health Consortia.

"Transport" means the process whereby the attending physician at the Community Perinatal Center assesses that the status of the patient has become acutely high risk and arranges for the transfer of the care of the patient to the specialist at the Regional Perinatal Center via moving the patient with an emergency vehicle.

"Unit nurse manager" means a registered professional nurse currently licensed by the New Jersey State Board of Nursing who has administrative responsibility over an individual hospital care unit.

"Ventilatory support" means the application of positive pressure ventilation and oxygen through mechanical devices to include continuous positive airway pressure (CPAP).

"Very low birth weight" means any neonate weighing less than 1500 grams at birth.

8:33C-1.3 Submission of Certificate of Need applications

(a) Applications for the establishment of Regional Maternal and Child Health Consortia to service specific maternal and child health regions shall be batched and reviewed in accordance with N.J.A.C. 8:33.

(b) Individual requests for designation of Regional Perinatal Centers and Community Perinatal Centers shall only be accepted as part of the certificate of need application of a Regional Material and Child Health Consortium.

(c) Certificate of Need applications for Regional Perinatal Centers and Community Perinatal Centers shall be submitted to the Local Advisory Boards and the Department of Health and shall be completed in accordance with the prescribed certificate of need rules at N.J.A.C. 8:33.

8:33C-1.4 Maternal and child health service regions

(a) A maternal and child health service region is a service area containing the full spectrum of care for the purpose of providing accessible and effective comprehensive, risk-appropriate care to all pregnant women and their infants, children, including children with special health care needs, and adolescents. The maternal and child health service region shall consist of perinatal and pediatric service regions.

(b) To be designated as a maternal and child health service region for the purposes of this chapter, the certificate of need application shall specify that (using data provided by the Department for 1990, or for a three-year average of 1988, 1989 and 1990) in the proposed region there are sufficient hospital members, with a three year documented history of transfer relationships, to deliver a minimum of 10,000 women a year or provide risk-appropriate care to 100 very low birth weight neonates a year. (As the number of low birth weight infants changes, the Department shall revise the minimum of 100 accordingly, in accordance with the requirements of the Administrative Procedure Act, (N.J.S.A. 52:14B-1 et seq.) and N.J.A.C. 1:30.) The certificate of need application shall further specify that service regions shall have a geographic distribution which enables the development of a rational and cohesive network of services, recognizing existing transportation and patient referral patterns.

(c) The Commissioner may, at his or her discretion, grant a waiver to the delivery requirement of 10,000 women a year, if the applicant has been able to provide quantifiable evidence of severe problems of access to needed perinatal services due to geographic isolation. In no case may the number of deliveries be below 8,000 women per year.

(d) At least one facility which is currently willing and able to meet the qualifications for a Regional Perinatal Center shall be listed as such in the Certificate of Need application. If there is more than one facility which is willing and able to meet the qualifications for a Regional Perinatal Center, then those facilities shall develop cooperative letters of agreement with each other. The Regional Perinatal Centers shall then develop letters of agreement with the Community Perinatal Centers, facilitated by the Regional Maternal and Child Health Consortium.

8:33C-1.5 Service evaluation

All applicants for Regional Maternal and Child Health Consortia, Regional Perinatal Centers and Community Perinatal Centers shall agree to make their staff and records available for evaluation of the effectiveness of their perinatal services by staff of the New Jersey Department of Health or its designee. This evaluation and its outcome shall be a requirement of continued reimbursement through the rates. Such an evaluation shall measure effectiveness and shall be in addition to the inspection of basic compliance with licensing requirements.

SUBCHAPTER 2. REGIONAL MATERNAL AND CHILD HEALTH CONSORTIA

8:33C-2.1 Membership

(a) The perinatal and pediatric facilities within the proposed service region shall form a Regional Maternal and Child Health Consortium. Applicants for the Regional Maternal and Child Health Consortium shall be an association which shall include all agencies in the region involved in the delivery of perinatal and pediatric health services. Specifically, the Regional Maternal and Child Health Consortium shall include, but not be limited to, as general members:

1. All licensed acute care hospitals with obstetric and/or pediatric services and birthing centers;

2. All licensed ambulatory care facilities which provide prenatal care and care to infants and families with children up to age 18;

3. Professional organizations, non-profit organizations, and local or county governmental agencies concerned with the needs of families with infants, children and adolescents, including those with special health care needs, for example, community health centers, local health departments, Women, Infants and Children (WIC) and family planning agencies, local advisory boards, and Human Services Advisory Councils; and

4. Voluntary and consumer organizations, such as Healthy Mothers, Healthy Babies Coalitions.

8:33C-2.2 Governance of the region

(a) All members of the maternal and child health service region which agree to associate and apply to become the Regional Maternal and Child Health Consortium shall formally establish a non-profit corporation consistent with the Internal Revenue Code Under Title 26 of the United States Code Section 501(c)(3).

(b) The non-profit organization established in accordance with (a) above shall develop by-laws, voted upon by the general membership, which will establish participatory governance by all member organizations and will define the specific composition of a Board of Directors. Each member agency shall have one membership vote in the organization.

(c) The Board of Directors shall be nominated from and voted upon by the general membership. The Board shall consist of 18 to 21 members, one-third hospital providers, one-third non-hospital providers and one-third consumers. The composition shall be such as to assure appropriate representation of agencies concerned with women's reproductive health and the needs of pregnant women, infants, young children, adolescents and children with special needs. At least two members shall be physicians, holding a current New Jersey license, one who is board eligible or certified in obstetrics, and one who is board eligible or certified in pediatrics. At least one member shall be a registered professional nurse, holding a current New Jersey license with a certification in maternal and child health nursing. At least one member shall be a health officer.

8:33C-2.3 Budget

The Regional Maternal and Child Health Consortium shall develop a budget plan which links all projected salary and non-salary costs, as described under N.J.A.C. 8:33C-2.5, to the regional perinatal plan. Subsequent to certificate of need approval, in order to receive funding under Chapter 83 reimbursement, the Regional Maternal and Child Health Consortium shall provide a budget assessment demonstrating that the benefits achieved justify the costs incurred. A projected budget and budget assessment shall be provided to the Department annually.

8:33C-2.4 Data reporting

(a) All Regional and Community Perinatal Center Applicants shall indicate their willingness to comply with the following data reporting:

1. B2 Quarterly Inpatient Utilization Report; and

2. New Jersey Department of Health Maternity and Newborn Services Reporting System.

(b) All Regional and Community Perinatal Center applicants shall provide, as requested by the Regional Maternal and Child Health Consortium and the Department of Health, individual patient data, compiled from the comprehensive patient record, for the purpose of regional and State total quality improvement program monitoring.

(c) The Regional Maternal and Child Health Consortia shall be required to comply with patient confidentiality requirements as specified in Hospital Licensing Standards N.J.A.C. 8:43G-4.1(a)21.

8:33C-2.5 Staffing requirements of the Regional Maternal and Child Health Consortia

The Consortia shall have staffing requirements in accordance with N.J.A.C. 8:35, Maternal and Child Health Consortium Licensing Standards.

8:33C-2.6 Functions of the Regional Maternal and Child Health Consortia

(a) Regional Maternal and Child Health Consortia applications shall describe their functions, which shall consist primarily of:

1. The development of a regional perinatal and pediatric plan;

2. The development of a region-wide system for total quality improvements;

3. The provision of regional professional education;

4. The development of a plan for a perinatal transport system;

5. The development of a plan for the provision of infant follow-up services; and

6. The development of a system to resolve conflicts within the region.

(b) The application shall also describe the responsibility of the regional board of directors in determining the manner in which each function will be accomplished.

8:33C-2.7 Regional perinatal plan

(a) The Regional Maternal and Child Health Consortia shall develop and submit a plan, to be called the regional perinatal plan, which describes how prenatal (specifically, community-based), intrapartum, newborn and infant follow-up services are to be delivered in the region. In addition, planned outreach and education activities shall be included. The regional perinatal plan shall be submitted to the Department of Health for approval as the basis for the certificate of need application which will designate individual hospitals as Regional Perinatal Centers or Community Perinatal Centers. Once the plan is approved, certificate of need applications for new, expanded, or replacement perinatal services will require compliance with this chapter, the regional perinatal plan, and the State Health Plan. The certificate of need may be denied if compliance is not demonstrated.

(b) The specific components of the regional perinatal plan shall include:

1. A needs assessment which describes the current status of the region with respect to the occurrence of infant mortality, low birth weight births, availability of preconceptional and prenatal care, and intrapartum, newborn, intermediate and intensive care services, proportion of women receiving risk appropriate prenatal care, fertility rates and social, cultural, economic and demographic factors influencing the perinatal needs of the communities served by the region;

2. A description of perinatal services in the region, in existence as of January 1, 1992. This description shall include a list, by county, of all of the following:

i. Currently practicing obstetric, prenatal care and family planning providers, specifying those providers who accept Medicaid and who are HealthStart certified;

ii. Currently practicing perinatal specialists, both nursing and medical;

iii. Currently practicing pediatric care providers, both primary and specialists, serving children under the age of two, specifying those providers who accept Medicaid and who are HealthStart certified;

iv. A list of sites, both licensed ambulatory and private practice, where family planning, genetic counseling, prenatal care, and pediatric primary care is provided;

v. A description, by hospital, of the existing inpatient maternity and newborn services to include:

(1) The number and occupancy rate of labor, delivery, recovery and postpartum beds;

(2) Normal newborn bassinet capacity and utilization;
(3) Intermediate care bassinet capacity and utilization;
(4) Intensive care bassinet capacity and utilization; and
(5) Documentation of coverage commitments by professional staff in each facility for ambulatory, emergency department and inpatient services;

vi. Existing maternal and newborn transport capabilities (include actual number of transports, sent or received in 1991); and

vii. The current number of at risk infant follow-up programs and the number of infants in follow-up for 1991;

3. An assessment of gaps in services developed by comparing the identified needs described in (b)1 above with the current resources described in (b)2 above. The Regional Maternal and Child Health Consortium shall develop a specific formula for estimating the annual needs in the region utilizing data from the preceeding two years and projecting the needs for the upcoming four years. This formula shall cover the maternal and child health service region's needs in the following areas:

i. Prenatal care services;
ii. Antepartum beds;
iii. Capacity to transport laboring mothers and sick neonates;
iv. Labor, delivery and postpartum beds;
v. Intermediate care bassinets; and
vi. Intensive care bassinets;

4. A demonstration of the overall need for intermediate and intensive care bassinets, utilizing the methodology contained in (b)4i and ii below. The overall need shall be based on data from the preceeding two years and a projection of the needs for the next four years. The number of births, the number of intermediate weight births, and the number of very low birth weight births shall be the same as those reported to the Department for the most recently available year. The Statewide average length of stay per birth weight category shall be determined by the Department every two years.

i. The total number of intensive care bassinets approved for all Regional and Community Perinatal Centers in each region shall be determined by the following formula:

$$\text{Intensive bassinets needed} = \frac{\text{(number of live births in the region)} \times \text{(the Statewide average intensive days per birth)} \times \text{(the ratio of the region's low birth weight to the State's low birth weight rate)}}{365 \times \text{the utilization factor of 85 percent occupancy or 1.18.}}$$

ii. The total number of intermediate bassinets approved for all Regional and Community Perinatal Centers in each region shall be determined by the following formula:

$$\text{Intermediate bassinets needed} = \frac{\text{(number of live births in the region)} \times \text{(the Statewide average intermediate days per birth)} \times \text{(the ratio of the region's low birth weight rate to the State's low birth weight rate)}}{365 \times \text{the utilization factor of 85 percent occupancy or 1.18.}}$$

iii. Regional Perinatal Centers shall be the preferred provider for rendering neonatal intensive care. In no case shall intermediate or intensive bassinets be approved at both Regional and Community Perinatal Centers which will duplicate the same need delineated by (b)4i above. The final allocation of such bassinets shall be made by the Commissioner, following the approval of the Regional Maternal and Child Health Consortia;

5. The minimum size of any intermediate or intensive neonatal care unit shall be six bassinets;

6. A definition of specific objectives, based on the assessment of gaps, using measurable outcome criteria, to address the gaps in existing hospital and community services within the region. For example, an objective could be lowering the very low birth weight rate by a specified percentage through several stated intervention approaches. Provider and patient behaviors which can result in poor utilization of services, non-participation in care, lack of coordinated services, and other perinatal service delivery problems shall also be addressed;

7. A plan to encourage the use of mid-level practitioners, such as obstetric and pediatric nurse practitioners, family planning nurse practitioners and certified nurse midwives, especially in areas of assessed provider shortages;

8. A prevention plan which describes both clinical (inpatient and ambulatory) and non-clinical services to be provided to mothers and families in the region (both at risk and general) to help reduce the incidence of identified, behaviorally based perinatal problems. This section shall include the need for improved coordination of services with emphasis on the "one-stop shopping" service integration concept. In addition, the prevention plan shall address outreach and education regarding nutrition, smoking, drug and alcohol consumption during pregnancy, availability and utilization of genetic services, family planning and preconception counseling. The plan shall also document involvement and participation of community based organizations already serving the at risk population and communities; and

9. The activities planned, by specific organization members, to achieve the described objectives. This plan should include specific patient care services and areas of planned expansion. The list of activities shall also include:

i. Specific letters of agreement, valid for at least four years, between each Community Perinatal Center and the Regional Perinatal Centers in the region as to the scope of services to be provided by each facility. If there is more than one hospital able to meet the qualifications of a Regional Perinatal Center, then the Regional Perinatal Centers shall first develop cooperative letters of agreement with each other, then with the Community Perinatal Centers in the region, facilitated by the Consortia.

8:33C-2.8 Regional professional education

(a) The Regional Maternal and Child Health Consortium application shall describe the organization's planned actions for providing or coordinating an ongoing area-wide program of professional education to all perinatal service providers in its region. These programs shall include joint input from neonatal/perinatal physicians and neonatal/perinatal clinical nurse specialists. Regularly scheduled regional conferences shall, at a minimum, cover the following areas:

1. Review and management of the major perinatal maternal illnesses occurring in the region;

2. Review and update for the identification and management of major neonatal conditions occurring in the region;

3. Development of appropriate hospital and community based linkages to insure maternal and newborn followup; and

4. Techniques and methods of risk assessment and providing culturally sensitive, risk appropriate prenatal care for antepartal women.

8:33C-2.9 Total quality improvement program

(a) The Regional Maternal and Child Health Consortium shall describe how it will meet its responsibility for establishing a total quality improvement process which covers all aspects of perinatal service. This process shall be managed by a specific subcommittee which shall meet at least quarterly and shall include all the components specified in N.J.A.C. 8:35.

(b) The Regional Maternal and Child Health Consortium application shall assure that each member hospital has a perinatal total

quality improvement system, in accordance with N.J.A.C. 8:35-3.1(f). The regional total quality improvement plan developed by the subcommittee shall be reviewed by the Department and shall receive Department approval prior to its implementation.

8:33C-2.10 Plan for a perinatal transport system

(a) The Regional Maternal and Child Health Consortia application shall assure the responsibility of the Regional Maternal and Child Health Consortia to develop or enhance a regional maternal and neonatal transport system in order to insure timely access by the patient to risk-appropriate care. The Regional Maternal and Child Health Consortium shall develop and submit a plan which describes the transport system for at-risk intrapartum women and neonates. The transport system plan shall include:

1. Documentation of current transport capabilities with appropriate data, based on 1991 actual transports;
2. Planned system, and needed enhancements to the system, to insure appropriate maternal and newborn transport for advanced levels of care;
3. Planned system, and needed enhancements for back (return) transports, of mothers or infants;
4. A written policy and procedure protocol for maternal and neonatal transports shall be developed by the Regional Maternal and Child Health Consortium. It shall be made clear in this protocol that the most at-risk infants and mothers shall be triaged and transported to the most advanced appropriate level of care within the region, in accordance with the letters of agreement.
5. Under circumstances where the proposed region does not have a bed or bassinet available to accommodate a transport, in accordance with the region's transport plan, the Regional Perinatal Center is responsible for making arrangements for transport to an adjacent Regional Perinatal Center.

8:33C-2.11 Infant follow-up

The Regional Maternal and Child Health Consortia shall assure that a system for appropriate discharge planning and infant follow-up exists, in accordance with N.J.A.C. 8:35.

8:33C-2.12 Conflict resolution

Each Regional Maternal and Child Health Consortium shall assure the development of a conflict resolution mechanism in accordance with N.J.A.C. 8:35.

SUBCHAPTER 3. COMMUNITY-BASED SERVICES

8:33C-3.1 Services; agencies

(a) As part of the certificate of need application, the Regional Maternal and Child Health Consortia shall document the involvement of community based services in the development of the regional perinatal plan. The eligible agencies shall include, but not be limited to, the following:

1. Local and/or county health departments;
2. Women, Infants and Children (WIC) agencies;
3. County Boards of Social Services;
4. March of Dimes;
5. Healthy Mothers, Healthy Babies Coalitions;
6. Family planning agencies;
7. Church or local community groups (such as urban leagues);
8. Home health agencies;
9. Alcohol and drug treatment agencies;
10. Community health centers;
11. Local advisory boards; and
12. Special Child Health Services County Case Management Units (when not administered by local health departments).

8:33C-3.2 Functions of community based service members

(a) The community based service members of the Regional Maternal and Child Health Consortium shall be primarily responsible for determining the medical/social maternal and child health needs of the community and for providing input into the prevention plan as part of the Regional Maternal and Child Health Consortium application. The prevention plan shall be incorporated in the regional perinatal plan as described in N.J.A.C. 8:33C-2.7(b)8. The component issues shall be addressed as follows:

1. Capacity of Services—The members should determine if there is an adequate number of providers/services to meet the maternal and child health needs of the community. They should also describe if the services accept Medicaid, are HealthStart certified, and the waiting time for first appointments.
2. Accessibility of Services—The members should describe the days and hours of operation, the location, transportation, child care availability, and service integration design.
3. Cultural Sensitivity—The members should assess the existing services to determine if they are sensitive to the cultural diversity of the community.
4. Outreach—Additional emphasis needs to be placed on outreach activities. As part of the regional perinatal plan, the members shall develop a plan to encourage women to seek early preconceptional and prenatal care, remain in prenatal care and return for preventive postpartum, family planning and pediatric services.

SUBCHAPTER 4. GENERAL REQUIREMENTS FOR FACILITIES WITH OBSTETRIC AND/OR NEWBORN SERVICES

8:33C-4.1 Application requirements

Individual Community Perinatal Center or Regional Perinatal Center applications shall be submitted as part of the Regional Maternal and Child Health Consortium's certificate of need application, by any licensed facility that provides or plans to provide prenatal, intrapartum, and postpartum care to women and their newborns. The requirements specified in N.J.A.C. 8:33C-4 through 6 shall be the basis for planning services.

8:33C-4.2 Compliance

(a) All Regional Perinatal Centers and Community Perinatal Centers shall demonstrate the ability to be in compliance with current hospital licensure standards, N.J.A.C. 8:43G-19.

(b) All Regional Perinatal Centers and Community Perinatal Centers shall document in the certificate of need application that ambulatory prenatal, postpartum, and normal newborn care is provided, and that these services are in accordance with the HealthStart Standards, N.J.A.C. 10:49-3, and the Standards for Obstetric-Gynecologic Services published by the American College of Obstetricians and Gynecologists. In the interest of continuity of care, all certified nurse midwives providing prenatal care shall be allowed delivery privileges. All physicians providing prenatal care shall be provided with the opportunity to deliver their patients, whenever possible.

8:33C-4.3 Comprehensive perinatal record

(a) As part of routine prenatal care, all providers within the region shall agree to use a comprehensive standardized perinatal record. This record shall include, at a minimum, a separate, identifiable section to assess for all risk factors. All antepartal patients shall be assessed for risk during the first prenatal visit and updated during subsequent visits. Additional sections of this comprehensive record shall include:

1. A complete reproductive and gynecologic history, history of medical illnesses and surgery, history of substance use (tobacco, alcohol and drugs), family illnesses, behavioral and environmental assessment, nutritional and social assessment, psychological history and risk status;
2. A complete physical exam;
3. A section for laboratory results and procedures; and
4. A plan of care.

8:33C-4.4 Consultation services

(a) Consultation services shall routinely be available from:

1. Registered dieticians or nutritionists;
2. Geneticists and genetic counselors;
3. Social workers;
4. Public health nurses;
5. Other physician specialties (medical, surgical, radiology, and pathology);

6. Pediatric subspecialists (infectious disease specialists, general surgeons, etc); and
7. Lactation consultants.

8:33C-4.5 Description of services provided

(a) Each Regional Perinatal Center and Community Perinatal Center application shall describe how it will provide services based on its capabilities and the needs described in the regional perinatal plan, and shall demonstrate in the certificate of need application that the following services, and personnel, are in existence at the time of application for the certificate of need:
1. Community Perinatal Center-Birthing Center;
2. Community Perinatal Center-Basic;
3. Community Perinatal Center-Intermediate;
4. Community Perinatal Center-Intensive;
5. Regional Perinatal Center; and
6. Designated Specialty Acute Care Children's Hospitals.

8:33C-4.6 Basis for provision of services

The services which any Community Perinatal Center is authorized to perform shall be based on the expressed interest of the facility, the needs of its community, as described in the regional perinatal plan, the capabilities of its staff and the facility's physical resources. The approved tasks may range from those performed by a birthing center, which provides non-surgical maternity care for low risk women and normal newborns, to the tasks of a facility which provides a specified range of neonatal special care services, but does not have the broad range of high risk maternal care and regional service responsibilities of a Regional Perinatal Center.

8:33C-4.7 Management of at-risk patients

All Community Perinatal Centers shall describe, in writing, the method of management for patients assessed to be at risk during the prenatal period, which should include referral to a provider with advanced capabilities in maternal-fetal medicine for initial consultation. After the initial consultation, management of the patient should be provided in accordance with N.J.A.C. 8:33C-9.4(a). Letters of agreement between all facilities within a region shall be specific regarding the coordination of services, transports, and referrals.

SUBCHAPTER 5. BIRTHING CENTERS

8:33C-5.1 Definition; affiliation required; care to be provided

A Community Perinatal Center-Birthing Center applicant shall consist of any licensed facility which provides routine intrapartum care to less than 500 uncomplicated maternity patients per year. Routine, uncomplicated intrapartum care is defined as care not requiring surgical intervention. At a minimum, birthing centers shall demonstrate an affiliation with a Community Perinatal Center-Intermediate facility or higher capability for obstetric and pediatric support. Prenatal, postpartum and newborn care shall be provided in accordance with N.J.A.C. 8:33C-4.

8:33C-5.2 Personnel

(a) The Community Perinatal Center-Birthing Center shall demonstrate that it has professional staff able to provide routine services to patients delivering at the center. This professional staff shall include, at a minimum, 24 hour a day, seven day a week on-call coverage of the center's services by:
1. A certified nurse midwife, in accordance with standards of the Board of Medical Examiners, as set forth in N.J.A.C. 13:35-2.6 through 2.12, or a physician with obstetrical training and experience;
2. A board eligible or certified obstetrician for consultation who has admitting privileges at a Community Perinatal Center-Intermediate maternity service hospital;
3. A board eligible or certified pediatrician; and
4. A registered nurse.

8:33C-5.3 Services

(a) Proposed routine intrapartum services shall be limited to:
1. Use of local anesthetics;
2. Performance of an episiotomy and repair;
3. Repair of lower third vaginal lacerations only; and
4. Systemic analgesia.

(b) The Community Perinatal Center-Birthing Center shall be prohibited from:
1. General and conduction anesthesia;
2. Inhibiting, stimulating or augmenting labor with chemical agents; and
3. The use of obstetric forceps or other surgical intervention.

8:33C-5.4 High risk mothers and neonates

Criteria for transfer of mothers and infants shall be in accordance with the standards of the Board of Medical Examiners governing solo management by certified nurse midwives as set forth in N.J.A.C. 13:35-2.6 through 2.12.

SUBCHAPTER 6. COMMUNITY PERINATAL CENTER-BASIC

8:33C-6.1 Definition; care to be provided

The Community Perinatal Center-Basic facility applicants shall consist of licensed hospitals which provide services primarily for uncomplicated maternity and normal newborn patients. They are characterized by physically separated facilities for labor and delivery with Cesarean section capability within the perinatal suite. They must also provide supportive care for infants returned from Regional or Community Perinatal Center-Intensive care facilities. These facilities shall provide care to patients expected to deliver neonates greater than 2499 grams and 36 weeks gestation. Any facility with less than 800 deliveries per year can not apply for a level greater than Community Perinatal Center-Basic. Prenatal, postpartum and newborn care is to be provided in accordance with N.J.A.C. 8:33C-4 and N.J.A.C. 8:43G-19.

8:33C-6.2 High risk mothers and neonates

(a) Community Perinatal Center-Basic applicants shall assure that maternal-fetal transports be made as soon as possible to the facility with advanced capabilities in accordance with the regional perinatal plan and letters of agreement between facilities.

(b) Community Perinatal Center-Basic applicants shall assure that any high risk neonate delivered at the Community Perinatal Center-Basic shall be immediately transported, following stabilization, to the facility with advanced capabilities as specified in the terms of the regional perinatal plan and letters of agreement.

SUBCHAPTER 7. COMMUNITY PERINATAL CENTER-INTERMEDIATE

8:33C-7.1 Definition; care to be provided

The Community Perinatal Center-Intermediate facility applicants shall meet all the requirements of routine prenatal care, postpartum, newborn, and Community Perinatal Center-Basic, as specified in N.J.A.C. 8:33C-4 and 6 and N.J.A.C. 8:43G-19. In addition, it shall also provide assurance for care for some complicated maternity patients and neonates. These facilities shall provide care to patients expected to deliver neonates greater than 1499 grams and 32 weeks gestation.

8:33C-7.2 High risk mothers and neonates

(a) Community Perinatal Center-Intermediate applicants shall assure that maternal-fetal transports shall be made as soon as possible to the facility with advanced capabilities in accordance with the regional perinatal plan.

(b) Community Perinatal Center-Intermediate applicants shall assure that any high risk infant anticipated as requiring ventilatory support longer than five days cumulatively or otherwise with needs exceeding the facility's capabilities as described in the letter of agreement shall be transported as soon as possible after delivery to the facility with advanced capabilities as specified in the terms of the regional perinatal plan and letters of agreement.

SUBCHAPTER 8. COMMUNITY PERINATAL CENTER-INTENSIVE

8:33C-8.1 Definition; care to be provided

The Community Perinatal Center-Intensive facility applicants shall meet all of the requirements as specified in N.J.A.C. 8:33C-4, 6 and 7 and N.J.A.C. 8:43G-19. Additionally, it shall also provide assurance

for care for complicated maternity patients and neonates in accordance with the scope of functions described in the regional perinatal plan. These facilities shall provide care to patients expected to deliver neonates greater than 999 grams and 28 weeks gestation.

8:33C-8.2 High risk mothers and neonates

(a) Community Perinatal Center-Intensive applicants shall assure that maternal-fetal transports, for patients exceeding its capability, will be made, as soon as possible, to the facility with advanced capabilities for care in accordance with the regional perinatal plan.

(b) Community Perinatal Center-Intensive applicants shall assure that any high risk infant delivered at the Community Perinatal Center-Intensive in need of specialized services or exceeding its capability must be transported to the facility with advanced capabilities as specified in the terms of the regional perinatal plan and letters of agreement.

(c) Community Perinatal Center-Intensive applicants shall assure that any high risk infant managed at the Community Perinatal Center-Intensive is followed in accordance with Department of Health, Special Child Health Services' standards for High Risk Infant Screening and Tracking or is referred to a Regional Perinatal Center for high risk infant screening and tracking services as specified in the letters of agreement.

SUBCHAPTER 9. REGIONAL PERINATAL CENTER

8:33C-9.1 Documentation of services

Regional Perinatal Center applicants shall document their ability to provide the full range of perinatal services defined for the Community Perinatal Center N.J.A.C. 8:33C-4, 6, 7 and 8 and N.J.A.C. 8:43G-19 as well as the tertiary services defined in N.J.A.C. 8:33C-9.2.

8:33C-9.2 Designation criteria

(a) The Regional Perinatal Center shall document that the following criteria were met in 1990 or for a three year average (1988, 1989, 1990) in order to be designated a Regional Perinatal Center:

1. Annual acceptance of over 80 maternal referrals or transports; and

2. Provision of full neonatal management to over 40 very low birth weight infants annually.

8:33C-9.3 Personnel

(a) The Regional Perinatal Center shall demonstrate that it has a full complement of professional staff who are able to provide advanced clinical services to patients treated at the Regional Perinatal Center, and who also have sufficient time and interest to provide regional consultation and training to insure regional access to risk appropriate perinatal expertise and staff development. Staffing qualifications and availability shall comply with N.J.A.C. 8:43G-19.

(b) The Regional Perinatal Center shall document that it has routinely available consultation services from other professionals, including, but not limited to:

1. A geneticist and genetic counselor;
2. A registered dietician;
3. Public health nursing; and
4. Pediatric subspecialists (that is, infectious disease specialists) and pediatric general surgeons and surgical subspecialists.

(c) In the interest of continuity of care, Regional Perinatal Centers shall allow staff privileges to obstetricians from the Community Perinatal Centers in their region.

(d) The Regional Perinatal Center shall document that all registered nurses have completed a continuing education course in maternal-fetal or neonatal nursing within one year of the application for the certificate of need.

8:33C-9.4 Services

(a) The Regional Perinatal Center shall document its ability to provide, on a continuous basis, care for high risk mothers who have a broad spectrum of conditions including preexisting maternal disorders such as significant heart, renal or metabolic diseases, chronic infectious diseases, substance abuse, as well as major complications of pregnancy. It must also document the ability to care for high risk newborns who may be very low birth weight in need of complex neonatal respiratory and metabolic support, or other infants in need of major or surgical intervention in accordance with N.J.A.C. 8:43G-19.

(b) The Regional Perinatal Center shall document its ability to provide the full range of prenatal, to include antenatal testing, postpartum and infant health services to families in the region. It shall have a distinct prenatal clinic service devoted to women identified as high risk. The perinatologist shall be responsible for the direction of care for the women in this service and available to provide consultation to the attending physicians.

(c) The Regional Perinatal Center shall agree to maintain, on a continuous basis, neonatal intensive care services, in order to assure the maintenance of appropriate skill levels and expertise of the staff.

8:33C-9.5 Consultation, referral, transport and follow-up

(a) The Regional Perinatal Center application shall document that the perinatologists at the Regional Perinatal Center shall be available on a 24 hour basis to provide consultation to the attending physicians at the Community Perinatal Centers. Consultation by the perinatologist may be provided by:

1. Provision of telephone consultation to the attending physician at the community based setting or Community Perinatal Center;

2. Co-management with the attending physician of the stabilized at risk patient at the community based setting or Community Perinatal Center. Ongoing consultation by the perinatologist shall be provided as needed for the duration of the patient's pregnancy; or

3. Total management of the high risk patient referred by the attending physician at the Community Perinatal Center to the perinatologist at the Regional Perinatal Center.

(b) The Regional Perinatal Center shall specify the conditions requiring maternal/fetal or neonatal transport.

(c) The Regional Perinatal Center shall also document that it receives the majority of transports for the region.

(d) The Regional Perinatal Center shall provide documentation that high risk infant follow-up services are provided in accordance with the guidelines established by the Department of Health, Special Child Health Services.

SUBCHAPTER 10. SPECIALTY ACUTE CARE CHILDREN'S HOSPITALS

8:33C-10.1 Services required

(a) The designated Specialty Acute Care Children's Hospitals, as specified in N.J.S.A. 26:2H-18a, shall be recognized for the provision of highly specialized regional neonatal care. They must meet all of the criteria for the neonatal services of the Regional Perinatal Center in N.J.A.C. 8:33C-9 but are not required to provide obstetric services. This shall include 24 hour a day, seven day a week in-hospital coverage by a neonatologist.

(b) These services shall include the capability of performing subspecialty surgical procedures. They shall document leadership in providing the latest technology in neonatal medicine and statewide consultation.

8:33C-10.2 Referrals and transports

(a) The letters of agreement between facilities shall specify that any patient requiring specialized perinatal care shall be referred to a provider with privileges at a Community Perinatal Center-Intensive or Regional Perinatal Center as specified in the letter of agreement and regional perinatal plan in accordance with N.J.A.C. 8:43G-19.

(b) Maternal-fetal and neonatal transports shall be provided by the Community Perinatal Center only if these services are approved activities delineated in the letter of agreement with the Regional Perinatal Center in accordance with N.J.A.C. 8:43G-19.

SUBCHAPTER 11. REVIEW CRITERIA

8:33C-11.1 Application review; general

Perinatal designations and certificate of need will be granted to Regional Maternal and Child Health Consortia for all facilities within their maternal and child health service region. Applications

from the Regional Maternal and Child Health Consortia must contain all the individual facility applications for perinatal services with their letters of agreement and be submitted as one package with the regional perinatal plan. Applications shall be reviewed by Local Advisory Boards and the Department of Health for compliance with the State Health Plan and in accordance with the certificate of need process.

8:33C-11.2 Maternal and Child Health Consortia application review criteria

(a) Applications for Regional Maternal and Child Health Consortia shall be reviewed on the basis of the following criteria:

1. Full compliance with all standards and guidelines in this chapter;

2. The appropriate plan for region wide access to preconceptional, prenatal, intrapartum, postpartum, family planning and pediatric services by all women and infants in the region including the medically indigent and those covered by Medicaid;

3. Development of the most cost effective linkages with existing providers of prenatal care; and

4. Content of plans to overcome existing gaps in and barriers to care.

8:33C-11.3 Regional and Community Perinatal Centers application review criteria

(a) Applications for Regional and Community Perinatal Centers will be reviewed for the following:

1. Community need for the services being proposed as stated in the regional plan;

2. Documentation that all facilities are in compliance with these rules;

3. The demonstration of effective linkages with other components in the proposed regional system of care; and

4. Documentation of the need for advanced maternal and newborn care in the region.

8:33C-11.4 Change in designation

Applications for a change in designation shall be considered a significant change in scope and shall follow the full certificate of need review process through the Regional Maternal and Child Health Consortia.

8:33C-11.5 Change in number of bassinets; renovation; construction

Applications submitted for a change in the number of bassinets, or renovation, or construction must be submitted separately, adhere to the certificate of need rules for such projects and initially be endorsed by the Regional Maternal and Child Health Consortia for comment and approval.

SUBCHAPTER 12. ENFORCEMENT AND SANCTIONS

8:33C-12.1 Participation

Facilities providing obstetric inpatient hospital services shall participate in a Regional Maternal and Child Health Consortia. Failure to participate shall be deemed as not providing an appropriate array of services and continuity of care. Such failure to participate may be cause for having obstetrical services excluded from the hospital reimbursement rates.

8:33C-12.2 Shift or change of participation

The shift of a facility participating in one Regional Maternal and Child Health Consortium to another shall occur without break in time and only on the express approval of the Department of Health once the facility had gone through the conflict resolution process as specified in N.J.A.C. 8:33C-2.12.

8:33C-12.3 Monitoring

The Department shall monitor compliance with the terms and conditions of approved applications for Regional Maternal and Child Health Consortia, Regional Perinatal Centers and Community Perinatal Centers. The Department will determine if operations of the Regional Maternal and Child Health Consortium or any of its component agencies materially complies with the presentations made in the Regional Maternal and Child Health Consortium's application for its certificate of need and all conditions assigned to its certificate of need approval.

8:33C-12.4 Reimbursement

Only those Regional Material and Child Health Consortia that have been approved through the certificate of need process shall have the Regional Maternal and Child Health Consortia's and their constituent hospitals' expenditures included in the hospital reimbursement rates.

8:33C-12.5 Penalties

Failure to document compliance with the certificate of need application and all conditions assigned them shall result in licensing sanctions and the disallowance of reimbursement for non-conforming practices.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need Policy Manual for Long-Term Care Services

Proposed Repeal and New Rules: N.J.A.C. 8:33H

Authorized By: Frances J. Dunston, M.D., M.P.H., State Commissioner of Health.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1992-224.

Submit comments by July 1, 1992 to:

Bruce Siegel, M.D., Executive Director
Office of Health Policy and Research
New Jersey State Department of Health
CN 360
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed new rules are intended to supplement the recently proposed N.J.A.C. 8:100-16, the Long-Term Care Chapter of the State Health Plan (see 24 N.J.R. 1164(a)). Specifically, N.J.A.C. 8:33H contains the Certificate of Need and planning requirements which are necessary, in part, to effectuate N.J.A.C. 8:100-16. The existing chapter N.J.A.C. 8:33H is concurrently proposed for repeal.

The over-arching goal of both the proposed new N.J.A.C. 8:100-16 and 8:33H is to create expanded alternatives that will give consumers a wider range of long-term care options, enhance the quality of their lives, and thereby better serve the needs of frail elderly and disabled citizens. Options which enable functionally impaired people to "age in place" are encouraged, so that they may receive additional services and assistance without necessarily having to relocate to a more intensive and expensive care setting. Another key feature of both N.J.A.C. 8:100-16 and 8:33H is the establishment of county Long-Term Care Commitees that will play an active role in shaping the area's long-term care system, taking into consideration local conditions and county residents' preferences.

The proposed new rules incorporate the input, deliberations, and recommendations of a Department of Health advisory panel on long-term care. This panel includes representation by consumers, long-term care providers, professional associations, several county Offices on Aging, and the Departments of Human Services and Community Affairs. In addition to its contributions to the revision of N.J.A.C. 8:33H, the advisory panel has had a role in assisting the Department to formulate N.J.A.C. 8:100-16, and they will continue to advise the Department regarding the implementation of its long-term care policies. These policies are aimed at creating a well coordinated system of options and alternatives to address the diversity of people's needs for long-term care.

The Department's long-term care advisory panel has recognized that reform of New Jersey's long-term care system, as recommended in N.J.A.C. 8:100-16, will not happen overnight; therefore, various transition plans are under consideration. These transition plans are largely based on the assumption that it will take at least five years before changes

in the array of available services will become effective. Between 1992 and 1994, the Department of Health, in collaboration with the Departments of Human Services and Community Affairs, is expected to be engaged in a variety of planning and implementation activities, such as developing licensing standards and reimbursement mechanisms for new services such as assisted living residences. As well, State appropriations must be sought in order to bring about a better balanced allocation of resources, shifting toward the expansion of home and community-based long-term care and away from heavy reliance on nursing homes. By 1994, according to the transition plans under consideration, it should be possible to initiate new services.

The proposed N.J.A.C. 8:33H has been developed with the understanding that amendments will be necessary during the upcoming, transitional years. For example, as licensing standards for new categories of care are adopted, the applicable Certificate of Need requirements will be developed and added to N.J.A.C. 8:33H. If and when the success of options such as alternate family care and the expansion of Community Care Program for the Elderly and Disabled (CCPED) are documented, it may be possible to revise the long-term care placement need methodologies in N.J.A.C. 8:33H and 8:100-16 to reflect a proportionate decrease in the need for nursing home beds.

It is the Department of Health's position that the preferred environment in which to receive long-term care is generally one's private place of residence. Independent living and informal/family caregiving should be promoted to the greatest extent. Home and community-based services should be made available to ease the burden borne by informal caregivers and, wherever possible, to prevent, delay, or reduce the use of institutional long-term care. In most cases, long-term nursing home stays should be utilized only as an option of last resort. For those patients who have no other viable alternative, however, institutional long-term care should be readily accessible, provided in facilities that offer high quality care and a high quality of life for residents. The proposed new rules pertain to the system of long-term care facilities and related services, while acknowledging that these formal services are, and should be, largely ancillary to the informal system of family and friendly long-term caregivers.

Persons of any age may require long-term care; therefore, N.J.A.C. 8:33H contains provisions to address the needs of chronically ill, functionally impaired children and young adults. However, the population at greatest risk for long-term care is the elderly. While many persons over age 65 lead healthy, vigorous lives, advancing age is often associated with the onset or progression of chronic, degenerative illnesses. The latter may lead to impairments in the ability to perform basic functions and activities which are essential for an independent existence. The most vulnerable individuals are those who reach the point of needing ongoing assistance with activities of daily living and yet who lack an informal caregiver. A person age 75 or over who has no spouse and is afflicted with multiple, severe functional impairments and high-risk diagnoses has a very great probability of requiring placement in a nursing home; it is estimated that approximately 90 percent of the individuals fitting this description are institutionalized. By contrast, fewer than three percent of those persons age 75 and over who are married, independent in essential activities of daily living, and free of certain high-risk diseases are institutionalized.

In New Jersey, there are currently more than one million persons age 65 and over. This number is expected to increase by approximately 11 percent by the year 2000. The "old-old"—those age 85 and over—will grow in numbers by 38 percent during the same time period. The latter group will pose a significant challenge to the long-term care system during the 1990's, in terms of the resources that will be needed to assure adequate care. The proposed new rules should assure that those in need of long-term care will have access to high quality care.

Highlights of the proposed rules are as follows:

1. N.J.A.C. 8:33H-1.4 sets forth the process whereby newly created county Long-Term Care Committees will be designated and empowered by Local Advisory Boards to do local level planning. In counties where there is a need for additional long-term care placements, the Committees will formulate a "placement mix proposal," thereby determining how the placements should be allocated among a variety of care options in order to best meet residents' needs.

2. A new method of computing the need for long-term care placements is proposed in N.J.A.C. 8:33H-1.5. The formula is based upon empirical data regarding the past use of, and demand for, long-term care services in New Jersey. The formula includes placement need projections for four adult age groupings: 20 to 64, 65 to 74, 75 to 84 and 85 and over. According to the proposed formula, 15 counties show a need, while six do not. N.J.A.C. 8:33H-1.5(a)1 contains a provision requiring by June 30, 1993 that the Department of Health devise a formula to allow new alternatives to be developed in counties that do not currently show a long-term care placement need.

The proposed methodology requires that placement need be targeted for five years into the future. Currently, the long-term care bed need formula in N.J.A.C. 8:33H-3.10 assumes that nursing home projects will be built and licensed within three years of approval. A retrospective study by the Department of Health revealed that three years is an insufficient time period for most facilities to come on line. Furthermore, in view of N.J.A.C. 8:100-16 and the Department's aim to create new long-term care options requiring the development of new licensing standards and funding mechanisms, a five year period represents a more realistic time frame in which to accomplish all necessary initiatives for change.

3. N.J.A.C. 8:33H-1.6 sets forth requirements for pediatric long-term care. The subchapter acknowledges the importance of assuring that children receive long-term care in an environment which is dedicated to addressing their special growth and developmental needs. An expedited review process for pediatric day health care programs is proposed.

4. Two types of specialized care are recognized in N.J.A.C. 8:33H-1.7: ventilator care and the care of patients with severe behavior management problems. This subchapter allows for the Certificate of Need approval of specialized care units to meet a regional need. In the case of patients with severe behavior management problems, such as aggressive, combative, or disruptive behaviors, model units with a research and multidisciplinary team emphasis will be established under N.J.A.C. 8:33H-1.7(e), in order to encourage innovative approaches to providing high quality care for individuals who cannot safely and effectively be managed in a general nursing home.

5. N.J.A.C. 8:33H-1.8 states the Certificate of Need requirements for adult day health care programs. These programs will be reviewed in relation to the long-term care placement need (see N.J.A.C. 8:33H-1.5) and each county's placement mix proposal. In counties where additional day care slots are requested as part of the placement mix proposal, priority will be given to the approval of programs that agree to dedicate a certain number of slots to the care of severely impaired patients and programs that will serve a special population.

6. Rather than dictating a nursing unit minimum size requirement, the requirements in N.J.A.C. 8:33H-1.9 focus on the facility's financial feasibility in relation to the nursing unit size proposed by the applicant. It is, nonetheless, generally recommended that nursing units proposed for new construction have a minimum of 48 beds. This size is based upon the fact that facilities are required by N.J.A.C. 8:39-25 to provide at least 2.5 hours of nursing care per day for each patient. With 48 occupied beds, a unit will have to be staffed at such a level that 120 hours of nursing care are available per day. Exactly 15 nursing personnel, each working an eight-hour shift, would be needed to staff the latter unit. This amount of staffing should promote quality care by allowing for around-the-clock staffing with at least one licensed nurse per unit (the Department's licensing standards require 20 percent of the staff coverage by licensed nurses; 20 percent of 120 hours is 24 hours). Nursing units of any size up to 64 beds will be considered for approval.

As in the case of nursing unit size, facility size will now be driven by financial feasibility and quality of care considerations. N.J.A.C. 8:33H does however propose a recommended minimum size of 96 beds. A 96-bed facility size allows for two 48-bed nursing units, in accordance with the recommended minimum unit size. The 96-bed minimum facility size should be used as a guideline in the development of nursing home projects.

Smaller nursing facilities may promote a more "homelike" environment, thereby enhancing the quality of life for residents. Consequently, a minimum long-term care facility size requirement has been omitted. While State health planners and nursing home developers have noted that facilities constructed to meet the previous minimum 60 bed size requirement were usually not financially feasible due to their small size, there may nonetheless be some unique cases where smaller facilities can be constructed and operated in a cost efficient manner. For example, some existing nursing homes or homes for the aged with fewer than 60 beds may be able to add a number of beds at a very modest cost.

The current maximum nursing home size requirement of 240 beds is proposed for inclusion in N.J.A.C. 8:33H-1.9. This standard will apply only to certificate of need projects for new nursing homes and replacement facilities and will not affect previously approved and/or already

licensed facilities. Facilities with a larger number of beds that proposed bed additions or facility replacements will be required to establish one or more separately licensed facilities, each of which will comply with the 240 bed maximum size requirement. This provision is proposed in order to reduce the magnitude of difficulties experienced by the Department's Division of Health Facility Evaluation, in the event that a nursing home has such severe quality of care problems that patients must be relocated. The task of closing a very large facility and finding alternative placements for its patients is far more onerous than would be the case with a smaller facility. As well, a smaller facility may be more easily and closely managed and may foster a more "homelike" environment for residents. An exception to the 240 bed maximum is offered in N.J.A.C. 8:33H-1.9(f) for large facilities that are willing to substantially reduce their bed capacity (by at least 15 percent). For example, a nursing home with 400 beds could be approved to construct a replacement facility provided that it eliminated at least 60 beds, thereby resulting in a 340 bed capacity. There are very few nursing homes in New Jersey that would be affected by this provision; fewer than 15 facilities exceed 300 long-term care beds.

7. N.J.A.C. 8:33H-1.10 contains Certificate of Need requirements for continuing care retirement communities; these projects will be subject to an expedited review. A noteworthy proposed change in the section concerning continuing care retirement communities relates to the nursing unit size requirements in N.J.A.C. 8:33H-1.9. Because the size of long-term care facilities will be based upon financial feasibility and quality of care considerations, it will no longer be necessary for continuing care retirement communities to contain a minimum of 60 long-term care beds and 240 independent living units. However, the 4:1 ratio requirement for independent living units and long-term care beds will remain in effect for continuing care retirement communities.

8. N.J.A.C. 8:33H-1.13 details specific requirements to be met by applicants proposing to convert residential health care, specialized care, or acute care beds to general long-term care beds, or to eliminate residential health care beds. The new requirements are intended to protect existing residents of facilities, should a relocation of residents be entailed in the project. The new rules are also aimed at permitting conversions of residential health care beds only in areas where there is a long-term care placement need.

9. N.J.A.C. 8:33H-1.19 proposed 11 criteria to be used in evaluating new nursing home projects and in making decisions about which projects should be approved in competitive situations. The section also proposes separate prioritization criteria to be used in evaluating specialized care projects that will meet a regional need.

Social Impact

It is anticipated that the proposed rules will have a positive social impact. The rules will encourage the development of long-term care alternatives which have been assessed to be needed in each county. The emphasis in this new chapter is on the quality of life and care for individuals needing long-term care and on the provision of diverse alternatives that support people's desires to "age in place." For the most part, the proposed rules allow greater decision-making flexibility than the chapter proposed for repeal. This flexibility is reflected in the establishment of county Long-Term Care Committees, elimination of minimum nursing unit and facility size requirements, and in the methodology for determining long-term care placement need.

The new policies in N.J.A.C. 8:33H represent a significant departure from the way the Department of Health conducted long-term care planning in the past. For a number of years, the Department promoted the development of an on-site, inpatient continuum of long-term care as a means of encouraging lower level alternatives to nursing home. The existing N.J.A.C. 8:33H, proposed for repeal, required that all new nursing homes include a residential health care component, regardless of whether there was a documented need for the service. As a result of this policy, there are some facilities which successfully provide both nursing home and residential health care, however there are many others with underutilized residential health care (RHC) beds. Inadequate reimbursement, the institutional appearance of some RHC units, and the stigma of living in a facility attached to a nursing home are some of the factors responsible for the difficulties experienced by these facilities.

The proposed new rules take a different approach to the development of alternatives to nursing home care. The new approach, empowering county "Long-Term Care Committees" to assess local needs and conditions in formulating a "placement mix proposal" to steer long-term care planning, should have a beneficial social impact. It should result in a more "consumer-responsive" long-term care system and, thus, greater satisfaction with and awareness of the services which are developed in each community.

Economic Impact

An economic impact will result from the adoption of N.J.A.C. 8:33H, primarily because State Medicaid resources will be partially shifted from payment for nursing home care into payment for lower cost but more numerous alternatives, such as home care (CCPED), adult day health care, alternate family care, assisted living, and so forth. Under the existing bed need methodology in N.J.A.C. 8:33H, approximately 2,400 new nursing home beds would be approved in 1992 to meet the growing population's needs. Under the proposed new N.J.A.C. 8:100-16 and 8:33H methodology, approximately 1,400 nursing home beds and 5,900 alternative placements may be approved.

Because Medicaid patients occupy over 65 percent of all nursing home beds in New Jersey, a decrease in the number of beds built and an increase in other substitute services will have an economic impact on the State. The Departments of Health, Human Services, and Community Affairs are in the process of developing precise cost projections to reflect anticipated changes in the way long-term care will be provided in New Jersey in the coming years. While reimbursement for the alternatives may be lower than that for nursing home care, there may be greater administrative costs. Also, a "woodwork effect" is anticipated, as the availability of attractive new services bring about an increased demand.

As alternative services become widely available in future years, some people who are currently unnecessarily placed in nursing homes will be able to choose more appropriate, less intensive care options. Ultimately, this could mean that nursing homes will be used by only the most debilitated, high acuity patients who cannot be cared for in any alternative setting. If this actually occurs, it is likely that nursing home care will become more costly than it is today, when facilities have a greater mix of impairment levels in their residents.

Regulatory Flexibility Analysis

The proposed new rules regulate the Certificate of Need application process for long term care services, such as nursing homes, adult day health care, pediatric and specialized long term care, continuing care retirement communities, Statewide restricted admission facilities and residential health care facilities. The rules describe the application process, and establish local advisory board regions and planning procedures which include local representation. Planning formulae are also included. The rules support placement of individuals in the most appropriate setting, with overall maximum utilization of services. The Certificate of Need application process will cause the service providers to issue administrative costs; other economic impact is discussed in the statement above. Most of the regulated group consists of large businesses, or businesses which will be large businesses, once they are completely staffed. Waiver provisions are included to expedite plans for pediatric or specialized long term care services. These entities may or may not be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department has determined that there should be no differentiation based upon business size provided in the rules, due to an overriding concern for public health and safety.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:33H.

Full text of the proposed new rules follows:

CHAPTER 33H
CERTIFICATE OF NEED POLICY MANUAL
LONG TERM CARE SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

8:33H-1.1 Purpose; scope

(a) The purpose of this chapter is to supplement N.J.A.C. 8:100-16, the Long-Term subchapter of the "State Health Plan," by setting forth Certificate of Need and related planning requirements which are necessary to effectuate N.J.A.C. 8:100-16.

(b) The Department of Health has a major responsibility for the promotion of high quality, efficiently and economically rendered health services which are available to all citizens of the State. To ensure significant progress toward the achievement of this goal, the

Department should direct planning and Certificate of Need activities toward the following:

1. Health promotion and minimization of debilitation;
2. Enhancement of the quality of life of long-term care consumers/patients and their families and/or significant others;
3. Expansion of long-term care options to maximize consumer choice;
4. Increased geographic, economic, and architectural accessibility of long-term care services;
5. Expansion of long-term care services to the extent that they are needed, while minimizing excess, underutilized capacity;
6. Increased affordability of long-term care services, the cost of which must be born by consumers and the government;
7. Access to long-term care services without regard to race, ethnicity, or medical diagnoses, including HIV infection or a history of psychiatric illness;
8. Coordination of long-term care services; and
9. Community participation in decision-making about the development of expanded long-term care services.

(c) The rules contained in this chapter address the Certificate of Need requirements for the following categories and types of facilities, as they are defined in N.J.A.C. 8:33H-1.2:

1. Nursing homes;
2. Adult day health care programs;
3. Pediatric long-term care;
4. Specialized long-term care;
5. Continuing care retirement communities;
6. Statewide restricted admissions facilities; and
7. Residential health care facilities.

(d) N.J.A.C. 8:100-16 proposes the creation of new categories of care, referred to as alternate family care programs, assisted living residences, and comprehensive personal care homes. Until such time as licensing standards for such categories have been adopted, there shall be no Certificate of Need application process for these services.

(e) Home health care is recognized as an important component of the long-term care system; however, the Certificate of Need requirements for home health care agencies are not contained in this chapter. Applicants interested in offering home health services in New Jersey should refer to N.J.A.C. 8:33L.

(f) Some patients in nursing homes may, on occasion, require rehabilitative care. The rehabilitative services offered to patients in most nursing homes are distinguished from comprehensive rehabilitation, which may only be offered by a licensed rehabilitation hospital. Applicants interested in offering comprehensive rehabilitation should refer to N.J.A.C. 8:33M.

(g) The provisions contained in this chapter shall apply uniformly to Certificate of Need applications for private and public facilities, whether State, county, municipal, incorporated, not incorporated, proprietary, or nonprofit, unless it is otherwise stated.

(h) Where a Certificate of Need is granted for long-term care beds, the applicant shall agree to occupy those beds with patients who require general nursing home care or, if so designated in the letter of approval, specialized long-term care. Applicants approved for long-term care beds shall not admit patients who require a different licensing category of care, such as comprehensive rehabilitation, unless the Commissioner has determined that admission is warranted to respond to an emergency situation and has granted approval in writing.

1. Applicants shall not advertise their facilities' services in such a way that consumers might reasonably construe that the level of care provided is something other than general nursing home care or, if so designated in the letter of approval, specialized long-term care.

8:33H-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Adult day health care program" means a facility which is licensed by the Department of Health to provide preventive, diagnostic, therapeutic, and rehabilitative services under medical supervision to meet the needs of functionally impaired adult patients. Adult day health care facilities provide services to patients for a perod of time which does not exceed 12 hours during any calendar day.

"Alternate family care" means a contractual arrangement whereby no more than two individuals in need of long-term care receive room, board, and care in the private residence of a non-related family that has been trained to provide the necessary caregiving.

"Alternate family care program" means a program operated by a community-based agency such as a home health care agency which is responsible for recruiting, screening, training, and supervising alternate family caregivers, as well as matching patients with alternate family caregivers and monitoring their status within this arrangement.

"Applicant" means an individual, a partnership, a corporation (including associations, joint-stock companies, and insurance companies), or a political subdivision (including a county or municipal corporation) that submits a Certificate of Need application.

"Assisted living residence" means an establishment that offers apartment-style housing, congregate dining, assistance with activities of daily living, and nursing care and supervision as needed to four or more adult persons unrelated to the proprietor. Apartment units offer at least one unfurnished room per resident, a private bath, and a lockable door on the unit entrance.

"Commissioner" means the State Commissioner of Health.

"Community Care Program for the Elderly and Disabled" or "CCPED" means a Medicaid-funded, Federally waivered program offering case managed home and community-based care to persons who meet specific medical and financial nursing facility eligibility criteria.

"Comprehensive personal care home" means an establishment that provides food, shelter, assistance with activities of daily living, and nursing care and supervision as needed to four or more adult persons unrelated to the proprietor.

"Continuing care retirement community" means the provision of lodging and nursing, medical, or other related services at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment of an entrance fee with or without other periodic charges. A fee which is less than the sum of the regular periodic charges for one year of residency is not considered an entrance fee.

"Deficiency" means a finding or findings by the Department of Health that a facility is not in compliance with applicable State licensure requirements and/or Federal requirements for a health care facility.

"Department" means the New Jersey State Department of Health.

"Direct admission Medicaid patient" means an individual who is admitted to a long-term care bed as a Medicaid eligible patient, or a private paying patient who will spend down to Medicaid eligibility within 180 days of placement in the long-term care bed.

"Financially feasible" means revenues exceed expenses during or before the third year subsequent to implementation of a certificate of need-approved project.

"General long-term care bed" means a long-term care bed for which there is no restriction imposed by certificate of need approval requirements or stipulations that would limit the type of nursing home patient who may occupy the bed or the type of nursing home care which may be provided to the occupant of the bed.

"Local Advisory Board" or "LAB" means a regional health planning agency designated by the Department of Health to make assessments and recommendations regarding the health needs within a specified geographical area. Local Advisory Board areas are as follows:

1. LAB region I: Morris, Sussex, Passaic, and Warren Counties;
2. LAB region II: Bergen and Hudson Counties;
3. LAB region III: Essex and Union Counties;
4. LAB region IV: Hunterdon, Mercer, Middlesex, and Somerset Counties;
5. LAB region V: Burlington, Camden, Cumberland, Gloucester, and Salem Counties; and

6. LAB region VI: Atlantic, Cape May, Monmouth, and Ocean Counties.

"Long-term care" means a wide range of personal care, psychosocial, nursing, and other supportive services for people with functional limitations due to chronic—and frequently degenerative—physical or cognitive disorders. Long-term care services range from in-home assistance provided by family members or a home care agency to nursing home care.

"Long-Term Care Committee" or "Committee" means a county-based group of volunteers which is designated by the Local Advisory Board for the purpose of identifying and addressing the county's service coordination issues, access problems, and public education needs pertaining to long-term care. In counties where there is a need for additional long-term care placements, the Committee has responsibility for formulating a placement mix proposal.

"Long-term care placement" means a unit of service provided to an individual requiring long-term care. The unit may be a bed, for example, a nursing home bed, or a slot, for example, an adult day health care slot.

"Medicaid-eligible patient" means, for the purpose of this chapter, a person who has received a determination of medical and financial eligibility for Medicaid coverage, or a person who qualifies medically and financially for Medicaid but who does not apply for Medicaid coverage, or a person whose care is paid for through General Assistance funds.

"Nursing home" or "nursing facility" means a facility that is licensed by the Department of Health for long-term care beds.

"Pediatric long-term care" means a facility, distinct nursing unit, or program which is dedicated for occupancy by patients under age 20.

"Placement mix proposal" means a proposal formulated by a county Long-Term Care Committee specifying the number and types of long-term care placements which should be developed in order to meet the future needs of county residents.

"Project" means the construction, renovation, and/or related activities which are required in order to implement a certificate of need.

"Residential health care facility" means an inpatient facility licensed by the Department of Health to provide shelter, personal care assistance, and health maintenance and monitoring.

"Respite care" means a service that provides a brief period of relief from caregiving responsibilities for the family members and friends of individuals who require long-term care. It may be offered either on an outpatient basis, for example, in the form of adult day health care, or an inpatient basis, for example, in the form of residential health care.

"Specialized care" or "specialized long-term care" means a program of care provided in licensed long-term care beds for patients who require technically complex treatment with life supporting equipment, or who have serious problems accessing appropriate nursing home care due to their special treatment requirements as dictated by their medical diagnoses and level of functional limitation.

"Statewide restricted admissions facility" means a non-profit nursing home owned and operated by a religious or fraternal organization that serves only members of that organization and their immediate families.

8:33H-1.3 Relationship between licensure and Certificate of Need requirements

(a) The provisions of N.J.A.C. 8:100-16, the Long-Term Care subchapter of the State Health Plan, N.J.A.C. 8:39, Licensing Standards for Long-Term Care Facilities, and N.J.A.C. 8:43F, Standards for Licensure of Adult Day Health Care Facilities are hereby incorporated by reference. Applicants receiving Certificate of Need approval under the provisions of this chapter shall comply with all applicable licensing requirements of N.J.A.C. 8:39, 8:43F, and 8:43.

8:33H-1.4 Role of counties, Local Advisory Boards, and the State in long-term care planning

(a) Local Advisory Boards shall appoint a Long-Term Care Committee in each county within their region.

1. Each Long-Term Care Committee shall have at least 15 members, with equal representation from the following three sectors and no more than one person representing any agency or organization. The three sectors shall be:

i. Consumers, including users and potential users of long-term care services and their family members. To be recognized as a consumer, the person shall have no employment or ownership ties (either direct or familial) to an agency, facility, or program that provides long-term care or related health services in the county;

ii. Providers, including health and social service professionals, and the employees and owners of agencies, facilities, and programs providing long-term care or other health services; and

iii. Governmental, planning, and funding agencies, such as the county's Agency on Aging, Planning Board, Board of Social Services, Medicaid District Office, United Way, and Human Services Advisory Council.

2. All Long-Term Care Committee meetings shall be open to the public and shall provide opportunities for public comment.

3. All Long-Term Care Committee meetings shall be held in a handicap-accessible location within the county.

4. To the extent that data are available, the Local Advisory Board shall provide the most recent county-specific, LAB region-specific, and statewide long-term care and population data for consideration at the county Committee meetings.

(b) In each county where there is a projected need for new long-term care placements in accordance with the methodology specified in N.J.A.C. 8:33H-1.5, the Long-Term Care Committee shall formulate a proposal specifying the mix of options and the number of placements of each type that are to be developed in the county. Options shall be:

1. Alternate family care placements;
2. Home and community-based service waiver slots; that is, Community Care Program for the Elderly and Disabled (CCPED) and AIDS Community Care Assistance Program (ACCAP);
3. Adult day health care;
4. Upgraded residential health care facilities, otherwise to be known as comprehensive personal care homes;
5. Assisted living residences; and
6. Nursing facility beds.

(c) The county Long-Term Care Committee shall be responsible for formulating or updating its placement mix proposal as described in (b) above by August 1 of each year, except for 1992, in which year the deadline date shall be August 15, 1992.

1. The placement mix proposal shall be finalized by the county Committee by a majority vote, in which each Committee member shall have one independent vote.

2. At the time that the county Committee has voted on and finalized its placement mix proposal, including the desired number of placements for each option, the Local Advisory Board shall record the proposal in writing, including the Committee's stated rationale for selecting its mix of options.

(d) The Local Advisory Board shall make a determination as to whether each county's placement mix proposal and the process whereby it was developed by the county Long-Term Care Committee comply with all applicable requirements contained in this chapter and in N.J.A.C. 8:100-16.

1. When compliance with the requirements of this chapter has been determined, the Local Advisory Board shall accept the county's placement mix proposal and transmit it, along with the county Committee's rationale, to the State Department of Health so that implementation may be initiated.

2. In the event that the Local Advisory Board determines non-compliance with the requirements of this chapter, the placement mix proposal shall be returned to the county Long-Term Care Committee, with a written statement identifying the reasons why it cannot be accepted. The county Long-Term Care Committee shall then revise or re-formulate the proposal for reconsideration by the LAB.

3. In the event that a county has not developed a placement mix proposal which is accepted by the Local Advisory Board within the time frame stipulated in (c) above, a "default" proposal shall be developed and implemented for the county by the State Health

Planning Board. Options available in the default mix proposal shall be:

i. Alternate family care placements;

ii. Home and community-based service waiver slots; that is, Community Care Program for the Elderly and Disabled (CCPED) and AIDS Community Care Assistance Program (ACCAP);

iii. Adult day health care slots; and

iv. Comprehensive personal care homes; and

v. Assisted living residences.

(e) On an annual basis, the Department of Health, in collaboration with the Departments of Human Services and Community Affairs, shall conduct education/information sharing sessions for Local Advisory Board staff, county Long-Term Care Committee members, and other interested individuals, regarding the various long-term care options, interpretation of long-term care data, and the formulation of county long-term care placement mix proposals.

(f) In proposing the desired mix of new long-term care options, county Long-Term Care Committees shall take into consideration local conditions, to the extent that data are available, as follows:

1. Waiting lists, utilization data, and availability of existing long-term care services, both non-institutional and institutional;

2. Potential capacity of services which have received Certificate of Need approval but which are not yet licensed and operational;

3. Demographic data, such as age-specific population projections and estimates;

4. Data regarding consumer preferences for long-term care options;

5. Health personnel supply and staffing and resource availability;

6. Financial, cultural, and geographical access barriers to existing services;

7. Land use availability for new facility-based long-term care services, including assisted living residences; and

8. Medicaid Pre-Admission Screening data.

(g) The county Long-Term Care Committee's placement mix proposal shall reflect consideration for area residents' diverse needs and preferences and shall promote consumer choice from a variety of options. Therefore, each placement mix proposal shall include at least two of the options specified in (b)1 through 6 above.

1. An exception may be made to (g) above in the event that a county has a need for fewer than 60 additional long-term care placements.

(h) The sum total of long-term care placements of all types proposed by each county Long-Term Care Committee shall not exceed the county's projected need for new long-term care placements in accordance with the formula in N.J.A.C. 8:33H-1.5 below.

(i) In recognition of the uncertainty about when new and expanded alternatives to nursing home care will become available, the Department of Health shall assure the continued but controlled expansion of the nursing home bed supply in New Jersey. For the year 1992, county Long-Term Care Committees may request the approval of new nursing home beds as part of their placement mix proposals, provided that the number requested will not result in more than 9.2 beds per 100 population age 75 and over, based on population projections for 1997.

1. The Department of Health shall use two benchmarks to determine whether the number of new nursing home beds to be approved should be increased in 1993: a State legislature appropriation of Medicaid funds for initiation of the options identified in (a)1 through 5 above beginning in 1994; and submission by the Department of Human Services of a Federal Medicaid waiver request for new home and community-based long term care services; or, if a waiver is not required, an amendment to the Medicaid State Plan. In the event that the State Legislature has not appropriated funds and the Department of Human Services has not submitted a Medicaid waiver request to the U.S. Health Care Financing Administration (or, if a waiver is not required, the Medicaid State Plan has not been amended) by July 31, 1993, county Long-Term Care Committees may request the approval of new nursing home beds as part of their placement mix proposals, provided that the number requested will not result in more than 10.0 nursing home beds per 100 population age 75 and over in each county, based on population projections for 1998. In the event that the aforementioned benchmarks are achieved, county Long-Term Care Committees may request the approval of new nursing home beds as part of their placement mix proposals, provided that the number requested will not result in more than 9.2 nursing home beds per 100 population age 75 and over in each county, based on population projections for 1998.

(j) County Long-Term Care Committees shall have the option of choosing to treat assisted living residences and comprehensive personal care homes interchangeably in their placement mix proposals. In this manner, Certificate of Need applications for either of these two residential services may be approved to meet the county's placement need, depending on the applications' merits.

(k) In the case of long-term placement options for which licensing, reimbursement, and planning standards have not yet been adopted, or where reimbursement has not yet been authorized by Medicaid, county Committees proposing a placement mix which includes such options shall have the requested number of placements set aside and reserved for them, until such time as the necessary standards and authorizations become effective.

1. On an annual basis, counties with set-aside and reserved placements shall have the option of reconsidering and revising their placement mix proposals, thereby re-allocating the reserved placements.

2. In the case that a county placement mix proposal contains a request for Medicaid-waivered home and community-based service slots in excess of the number which Medicaid subsequently finds it has the resources to authorize, the county Long-Term Care Committee may reconsider and revise its placement mix proposal, thereby re-allocating the unauthorized placements.

(l) In the event that a State psychiatric hospital closes, the Department of Health, in collaboration with the Department of Human Services, shall determine the number of additional placements which are imminently needed to accommodate the influx of long-term care patients who are discharged from these hospitals. The number of placements needed shall be determined for each county, based upon the county of origin of the discharged psychiatric patients. In affected counties, the Long-Term Care Committee shall formulate a placement mix proposal dedicated specifically for these patients.

(m) In counties where there is a need for long-term care placements accordance with the placement methodology in N.J.A.C. 8:33H-1.5, the long-term care needs of persons who have AIDS or are HIV positive shall be met through the mix of options which are planned by the county Long-Term Committee. However, in counties where there is no long-term care placement need in accordance with the placement methodology in N.J.A.C. 8:33H-1.5, the Department of Health recognizes that there could be special access problems for the growing number of HIV-infected people who require long-term care. Consequently, in the event that the Department determines there is an unmet need for nursing home beds or other long-term care services for persons with AIDS or HIV-infection, consideration shall be given to the approval of the necessary type of long-term care placements, which shall be dedicated for exclusive use by this patient population.

1. In counties that do not have a projected long-term care placement need in accordance with the methodology in N.J.A.C. 8:33H-1.5, applications which exclusively propose long-term care services dedicated for patients with AIDS or HIV infection may be submitted in any month when Certificate of Need applications are accepted for processing.

8:33-1.5 Projection of need for long-term care placements

(a) New long-term care placements shall only be approved in counties with a net need for placements, in accordance with the formula contained in (d) below.

1. By June 30, 1993, the Department of Health, in collaboration with the Department of Human Services, shall devise a formula in accordance with the requirements of the Administrative Procedure Act and N.J.A.C. 1:30, to allow for the development of new long-term care options identified in N.J.A.C. 8:33H-1.4(b)1 through 5 in counties where the formula contained in (d) below projects an excess of long-term care placements.

(b) The projected need for long-term care placements shall be computed for each county, targeted five years into the future. The Department of Health shall release updated projections by April 1 of each year, or as soon thereafter as the necessary data are available.

(c) The source of population data to be used in projecting the need for long-term care placements shall be the most recent official population projections which are published by the New Jersey State Department of Labor.

1. For target years between those years for which the New Jersey State Department of Labor has issued official projections, the population numbers to be used in the need formula shall be derived using linear interpolations as follows for each age group, where "Year X" precedes "Year Y" and where "n" is the number of years that must be added to "Year X" in order to arrive at the "Target Year":

Step 1: Projected Population for Year Y − Projected Population for Year X = A

Step 2: $\frac{A}{(\text{Year Y} - \text{Year X})} = B$

Step 3: Projected Population for Year X + (B × n) = Projected Population for Target Year

(d) The formula for computing the number of long-term care placements needed shall be as follows:

1. Sum 0.07 placements per 100 population age 20-64, plus 1.07 placements per 100 population age 65 to 74, plus 5.44 placements per 100 population age 75 to 84, plus 21.21 placements per 100 population age 85 and over;

2. From each county's total computed in (d)1 above, subtract the county's current inventory of long-term care placements, which shall include the following:

i. Licensed and Certificate of Need-approved general use long-term care beds, excluding pediatric long-term care beds and beds located in continuing care retirement communities and restricted admissions facilities;

ii. Home and community-based service waiver slots, including those currently available to the county and those which have been requested in the county's placement mix proposal (accepted in accordance with N.J.A.C. 8:33H-1.4(c)1);

iii. Twenty-five percent of licensed and Certificate of Need-approved adult day health care slots, which shall approximate the number of slots utilized by patients who are nursing home-eligible;

iv. Alternate family care placements, including those currently in use and those which have been requested in the county's placement mix proposal (accepted in accordance with N.J.A.C. 8:33H-1.4);

v. Assisted living residence units which have been requested in the county's placement mix proposal (accepted in accordance with N.J.A.C. 8:33H-1.4); and

vi. Comprehensive personal care beds which have been requested in the county's placement mix proposal (accepted in accordance with N.J.A.C. 8:33H-1.4);

3. Based on the computation in (d)2 above, the remainder equals the net, projected, new placement need for the county, if the number is a positive one. A negative number shall represent a projected excess of placements for the county.

(e) On an annual basis, the Department of Health shall review the need methodology contained in (d) above, along with other pertinent long-term care data, to determine whether there is a basis for amending the methodology in order to more accurately project future service requirements throughout the State.

8:33H-1.6 Pediatric long-term care

(a) Because of their unique growth and development needs, children who require nursing facility placement should be able to receive care in an environment that is dedicated to addressing these needs. For this reason, the Department shall give consideration to approving separate and distinct pediatric long-term care units in areas where they are needed.

(b) Because there are so few children who require nursing facility placement in New Jersey, pediatric long-term care units should be planned and developed to serve a regional need. For this purpose, the region shall be a Local Advisory Board region.

(c) The need for pediatric long-term care beds shall be determined in the following manner:

1. On a periodic basis (that is, at least once every two years), the Department of Health, in collaboration with the Department of Human Services, shall conduct a survey of acute care hospitals, special hospitals, and other health care facilities at a particular point in time to identify all children who are medically ready for discharge and who require transfer to a pediatric long-term care facility. In addition, the number of children who are known to have been placed in long-term care facilities outside of New Jersey shall be counted;

2. The number of pediatric patients computed in (c)1 above shall be grouped according to their county and LAB region of origin;

3. The projected rate of growth in the population under age 20 in each LAB region shall be calculated using the most recent New Jersey Department of Labor population projections, covering the five year period from the time a Certificate of Need application is accepted for processing up to the target year. The number of patients in each LAB region requring pediatric long-term care shall then be adjusted (that is, multiplied) by the aforementioned, region-specific population growth rate. The latter product shall then be added to the number of patients requiring pediatric long-term care in the LAB region;

4. The projected number of pediatric long-term care patients in each region requiring as derived in (c)3 above, shall then be adjusted (that is, divided by a factor of .85) to allow for a projected occupancy rate of at least 85 percent.

(d) Until such time as specific licensing standards and Certificate of Need requirements for pediatric day health care programs are adopted by the Department, applicants proposing these programs to serve chronically ill, medically fragile children, shall submit a Certificate of Need application for expedited review, in acordance with the applicable provisions of N.J.A.C. 8:33. Subsequent to Certificate of Need approval, the applicant shall apply to the Department for a waiver to the adult day health care licensing requirements contained in N.J.A.C. 8:43F which are not appropriate or applicable to the treatment of children, as follows:

1. The applicant shall identify the licensing requirements contained in N.J.A.C. 8:43F for which a waiver will be necessary; and

2. The applicant shall describe in detail the proposed program, target patient population, admission and discharge criteria, and the services to be provided.

8:33H-1.7 Specialized long-term care

(a) For the purposes of this chapter, specialized long-term care shall include the following categories:

1. Ventilator care for adult patients; and

2. Care of patients with severe behavior management problems, such as combative, aggresive, and disruptive behaviors.

(b) A Certificate of Need shall be required for the establishment of a new specialized care program, including the conversion of general long-term care beds for specialized care use, or for the expansion of an existing specialized care program. The Certificate of Need applicant shall identify the type of specialized care patients who will be admitted to the proposed nursing facility beds in accordance with the categories identified in (a) above. Specialized care beds shall be dedicated for exclusive use by the type or types of specialized care patients identified in the approval letter.

1. Certificate of Need approval shall be required in the event that an applicant intends to occupy specialized care beds with patients who do not require specialized care or patients who do not require the type of specialized care which was identified in the applicant's Certificate of Need. An application for the conversion of specialized care beds for some other use shall comply with the requirements in N.J.A.C. 8:33H-1.13(g).

(c) Specialized care beds shall be approved to meet a regional need. The applicant shall identify the Local Advisory Board region

to be served as defined in N.J.A.C. 8:33H-1.2 and shall document how access to the unit's services shall be assured for residents throughout the region.

(d) The number of new beds needed in each LAB region for long-term ventilator care shall be determined in the following manner:

1. On a periodic basis (that is, at least once every two years), the Department of Health shall conduct a survey of acute care hospitals, special hospitals, and other health care facilities at a particular point in time to identify all patients who are medically ready for discharge and who are in need of transfer to a facility that provides long-term ventilator care;

2. Through the survey, the number of patients shall be counted for each LAB region;

3. The projected rate of growth in the population age 20 and over in each regional health systems area shall be calculated using the most recent New Jersey Department of Labor population projections, covering the four year period from the time a Certificate of Need application is accepted for processing up to the target year. The number of patients in each LAB region requiring ventilator care, as identified through the survey, shall then be adjusted (that is, multiplied) by the aforementioned, region-specific adult population growth rate. The latter product shall then be added to the number of patients in the regional service area requiring each type of specialized care:

Number of Patients Requiring Ventilator Care, Per Survey	×	Region-Specific Growth Rate, Population Age 20+	+	Number of Patients Requiring Ventilator Care, Per Survey;

4. The projected number of patients in each region requiring ventilator care as derived in (d)3 above, shall then be adjusted (that is, divided by a factor of .85) to allow for a projected occupancy rate of at least 85 percent, in accordance with (i) below.

(e) A formal methodology shall not be used to determine the number of beds needed for the specialized care of patients with severe behavior management problems. However, in the interest of promoting improved access to high quality care for these patients whose needs cannot safely and effectively be met in general long-term care facilities, the Commissioner shall give consideration to approving one model program in each LAB region. Model programs may be approved providing that the following requirements are met, in addition to all other applicable requirements of this chapter:

1. The applicant shall document to the satisfaction of the Department that the number of beds proposed is reasonable with respect to the need for specialized long-term care for patients with severe behavior management problems in the LAB region. However, no more than 32 beds in any one nursing home in each LAB region shall be approved for a model program. Protecting individuals' identities, the applicant shall provide patient-specific data to demonstrate that there is a sufficient number of individuals residing in the regional service area who could meet the model program's admission criteria at the time of application submission, in order to fill 85 percent of the proposed number of beds in the model program. Patient-specific data shall include each individual's age, sex, county of residence, diagnoses, functional impairments, current placement, and reasons why the current placement is inappropriate;

2. The facility shall develop and maintain a collaborative affiliation with at least one school of nursing which grants baccalaureate and/or master's degrees in nursing, one school of social work, and one medical school, for the purpose of providing ongoing clinical training and research on site in the specialized care unit;

3. The model program shall include a formal research and program evaluation component. The applicant shall describe in detail how patient care outcomes will be evaluated by an independent party or organization. A report of this evaluation shall be submitted to the Department within three years of licensure of the approved beds. In view of the fact that Medicaid does not reimburse for research-related expenses, the applicant shall identify funding sources and otherwise explain how the costs of research will be covered;

4. The application shall include admission and discharge criteria which assure that the most difficult-to-manage patients in the regional service area shall receive priority for placement in the model program;

5. The application shall include a detailed plan describing how continuity of care will be assured for patients who are admitted to and discharged from the model program. The facility in which the model program will be located shall have available at all times a reasonable number of beds in other nursing units within the facility in order to allow for the transfer of patients who are no longer in need of specialized care as it is offered in the model program. Furthermore, the applicant shall specify how other nursing homes throughout the region shall be involved in assuring continuity of care for patients who are admitted to and discharged from the model program;

6. The facility shall develop and maintain an ongoing program whereby designated staff members are available to offer other area health care facilities in the regional service area training, educational seminars, and technical assistance in the care of patients with severe behavior management problems;

7. The model program shall conduct multidisciplinary team meetings on a regular basis for the purpose of establishing and reviewing each patient's plan of care; the multidisciplinary team shall include staff members involved in direct patient care on the unit, such as physicians, nurses, social workers, psychologists, activities therapists, and so fourth. The certificate of need application shall document how the multidisciplinary team will promote innovative approaches to care for patients with severe behavior management problems; and

8. The special care unit shall have a medical director with demonstrated expertise in the care of adult patients with behavior management problems.

(f) The establishment, addition, or conversion of beds for either types of specialized care shall be approved only in those cases where the facility will have one or more distinct and separate nursing units which treat exclusively patients who require the type of specialized care for which the facility receives Certificate of Need approval.

(g) All applicants for specialized care beds shall provide the following, to the satisfaction of the Department of Health:

1. A detailed description of the services and program of care that will be provided;

2. Specific admission and discharge criteria for the proposed unit, which clearly identify the types of patients who will be treated in the specialized care beds;

3. A specific plan to provide inservice training for nursing staff and others who will work with specialized care patients, including an orientation program for new staff members, ongoing inservice education, and opportunities to pursue advanced education and certification in the appropriate clinical specialties;

4. A description of physical plant considerations and special architectural features of the proposed unit as well as an identification of any special equipment that will be installed in order to accommodate patients' needs;

5. A signed transfer agreement with at least one acute care hospital with a licensed capacity of at least 200 beds to which specialized care patients can be transferred within 30 minutes total travel time for the purpose of receiving emergency medical treatment, if the proposed specialized care unit will not be located within an acute care hospital. The applicant shall submit documentation of the reasons why a particular hospital was chosen for the transfer agreement, including a description of the hospital's resources and capability to address the needs of patients requiring the applicable type of specialized care; and

6. A specific plan to provide coordination and continuity of care for patients who may be discharged from the proposed specialized care beds when this is feasible and beneficial to the patient/family/significant other. Supporting documentation for the plan may include signed transfer agreements or referral arrangements with licensed home health agencies and other health care facilities in the nursing home's regional service area which maintain the resources and capability to offer follow-up specialized care.

(h) In the case of specialized care units proposing to treat ventilator dependent patients, the facility shall provide staffing for the nursing unit on which the ventilator beds are located that includes the 24 hour per day presence on the unit of at least one registered nurse and the 24 hour per day on-call availability of at least one

respiratory therapist. In addition, the facility shall comply with licensure staffing requirements that are applicable to the care of ventilator-dependent patients.

(i) The minimum desired annual occupancy rate for specialized care units shall be 85 percent.

(j) In cases where there are two or more competing applications for specialized long-term care beds in the same health systems area, the prioritization criteria contained in N.J.A.C. 8:33H-1.19(e) shall be used in determining which applications should be approved or denied.

8:33H-1.8 Adult day health care programs

(a) Applications for new adult day health care programs and additions to existing programs shall only be approved in counties where there is a long-term care placement need in accordance with N.J.A.C. 8:33H-1.5 and where adult day health care slots are requested as part of the county's long-term care placement mix proposal, as described in N.J.A.C. 8:33H-1.4.

(b) An applicant proposing to eliminate or reduce the capacity of an existing adult day health care program shall submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33, and shall comply with N.J.A.C. 8:33H-1.13(h).

(c) Priority shall be given to the approval of adult day health care programs that propose to serve a specified number of patients who are severely compromised in their ability to perform most or all activities of daily living. The applicant shall state the number of slots which, as a condition of Certificate of Need approval, will be dedicated for the care of patients who have these characteristics, identify potential referral sources, and describe how the program will be staffed to meet these patients' needs.

(d) Priority shall be given to the approval of programs to serve a specialized population, such as patients with Alzheimer's Disease and other behavior disorders or AIDS/HIV infection, provided that the applicant documents the need for the program among the identified patient population.

(e) As a condition of Certificate of Need approval, applicants shall have at least 20 percent of the approved slots utilized by Medicaid-eligible patients. This percentage, or a higher percentage if proposed by the applicant, shall be achieved within one year of licensure and maintained thereafter.

(f) Applicants proposing pediatric day health care programs shall comply with the requirements stated in N.J.A.C. 8:33H-1.6(d).

8:33H-1.9 Size and occupancy of nursing homes and nursing units

(a) The targeted annual occupancy rate for nursing homes should be 95 percent.

1. Certificate of Need applicants proposing the addition of long-term care beds at nursing homes with an annual occupancy rate of less than 95 percent of the licensed bed capacity for the most recent calendar year shall not be approved.

(b) Nursing homes shall be designed and sized to promote a homelike environment, efficient facility operation, and a high quality of life and care.

(c) The Certificate of Need application for a new or expanding nursing home or for a long-term care bed addition to an existing facility shall state the number of long-term care beds which is proposed for each nursing unit. The maximum nursing unit size for long-term care shall be 64 beds.

(d) Although there shall be no minimum nursing unit size requirement for long-term care, it is generally recommended that new units be constructed with a minimum of 48 beds in order to promote operating efficiency.

(e) The applicant shall provide detailed documentation to show that each and every proposed nursing unit containing long-term care beds, regardless of its size, shall be staffed with at least one licensed nurse (that is, a registered nurse or licensed practical nurse) for each shift around the clock, and that there shall be at least two nursing personnel assigned to each nursing unit for each shift around the clock, and that the facility shall comply with or exceed all other applicable staffing requirements contained in N.J.A.C. 8:39, and that operation of the facility will be financially feasible thus staffed.

1. As a condition of Certificate of Need approval, the long-term care applicant shall agree to comply with the staffing requirements in (d) above, even if this necessitates exceeding the minimum staffing standards required for licensure, which are contained in N.J.A.C. 8:39.

(f) Although there shall be no minimum size requirement for nursing homes, it is generally recommended that new facilities be constructed with a minimum of 96 long-term care beds in order to promote operational efficiency.

(g) The maximum size of facilities receiving Certificate of Need approval for general or specialized long-term care beds shall be 240 beds.

i. An exception to the maximum size requirement in (g) above may be made in the case of existing facilities which are licensed for more than 240 long-term care beds, which propose to reduce their long-term care bed complement by at least 15 percent. Such facilities may be approved to maintain a licensed capacity which will exceed 240 long-term care beds at project completion, after a proposed number of long-term care beds has been eliminated, provided that all other applicable requirements of this chapter are met.

(h) A facility which is licensed for more than 240 general and/or specialized long-term care beds, which proposes either to maintain its existing long-term care bed complement through the construction of a replacement facility or to add long-term care beds, may receive Certificate of Need approval for a replacement, renovation, and/or expansion project, provided that the applicant designs the project to result in two or more separately licensed and staffed facilities, each in compliance with the maximum size requirement in (f) above.

(i) The maximum unit size for specialized long-term care beds shall be 32 beds.

8:33H-1.10 Continuing care retirement communities

(a) An applicant for a new or expanded continuing care retirement community shall submit an application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33.

(b) Continuing care retirement communities shall contain a minimum of four independent living units for every one long-term care bed.

1. Residential health care beds may be counted as independent living units in meeting the four-to-one ratio requirement in (b) above.

(c) The Certificate of Need application for a continuing care retirement community shall include the results of a detailed marketing study, analyzing demographic and economic conditions in the proposed service area, specifying and quantifying the target income-age group to which the continuing care retirement community will be marketed, identifying competing alternatives to the continuing care retirement community which are available to consumers in the service area, and estimating the number of potential continuing care retirement community residents residing in the proposed service area.

1. The applicant shall identify those municipalities that will constitute the target service area to which the continuing care retirement community will be marketed.

(d) The Certificate of Need application for a continuing care retirement community shall include a copy of the proposed resident contract or agreement. This contract shall clearly disclose the health care and other services to be provided by the community; the term or duration of the contract; projected charges, including entrance fees and periodic or monthly payments; and residents' rights. The contract shall fully disclose the circumstances under which the contract may be terminated both by the resident and the community and shall include provisions for the appeal rights of residents.

1. As a condition of certificate of approval, the resident contract shall specify that residents will have continued access to and use of the continuing care retirement community's long-term care beds in the event that they become Medicaid eligible, provided that the resident complies with all other terms of the contract and provided that this arrangement does not threaten the financial viability of the continuing care community as a whole.

(e) The long-term care facility of a continuing care retirement community shall be constructed concurrently with or subsequent to that number of independent living units which is stated in the Certificate of Need application. Licensure of the long-term care beds shall not be granted until such time as the proposed number of independent living units has been completed.

(f) Prior to licensure of the long-term care beds, the applicant shall obtain a certificate of authority from the Department of Community Affairs for the operation of a continuing care retirement community.

(g) Within seven years of occupancy of the first independent living unit, at least 90 percent of the occupants of the long-term care facility shall be drawn exclusively from the membership of the continuing care retirement community.

(h) After seven years of occupancy of the first independent living unit, no more than 10 percent of the occupants of the long-term care facility may be drawn from outside the continuing care retirement community, and of this group, at least 45 percent must be Medicaid-eligible persons.

(i) An exception to the four-to-one ratio requirement stated in (b) above may be made in the case of continuing care retirement communities which have operated as such for at least five years and which propose to add nursing home beds exclusively to accommodate the needs of their continuing care retirement community members and their current patients. In this case, the applicant may be approved for a bed addition, provided that the applicant agrees to accept a condition of approval stipulating that the nursing home shall cease to admit any patients from outside the continuing care retirement community. From the time of Certificate of Need approval for the bed addition, the nursing home shall exclusively admit patients who are members of the continuing care retirement community.

8:33H-1.11 Statewide restricted admissions facilities

(a) An applicant proposing a new or expanded nursing home which meets the definition of a Statewide restricted admissions facility in N.J.A.C. 8:33H-1.2 shall state this fact in the Certificate of Need application and shall provide documentation that the following criteria are met:

1. The facility's bylaws explicitly state that only members of the specified religious or fraternal organization and their immediate family members will be admitted to 100 percent of the long-term care beds; and

2. At least 50 percent of the facility's patients are from outside the LAB region in which the facility is located.

(b) An applicant proposing a new or expanded Statewide restricted admissions facility shall submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33.

(c) An applicant proposing a long-term care bed addition to an existing Statewide restricted admissions facility shall provide a detailed patient origin breakdown of the facility's current patient population. The applicant shall identify the county (or State, for out-of-State patients) of prior residence for each patient, as well as for any patients on the facility's admission waiting list.

(d) The applicant for a Statewide restricted admissions facility shall agree to meet the applicable utilization criteria for Medicaid, SSI, and discharged psychiatric patients, as stated in N.J.A.C. 8:33H-1.15. Facilities that do not participate in the State's Medicaid program shall document how they will subsidize the care of patients who are Medicaid-eligible.

8:33H-1.12 Residential health care facilities

(a) An applicant proposing a new or expanded residential health care facility shall submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33. The applicant shall comply with the applicable utilization requirements for Supplemental Security Income recipients and former psychiatric patients, in accordance with N.J.A.C. 8:33H-1.15.

(b) An applicant proposing the elimination or reduction of residential health care beds or the closure of a residential health care facility shall submit a Certificate of Need application for expedited review, in accordance with the applicable provisions of N.J.A.C. 8:33. The applicant shall comply with all applicable requirements pertaining to the conversion or elimination of beds, in accordance with N.J.A.C. 8:33H-1.13.

8:33H-1.13 Conversion or elimination of licensed or Certificate of Need approved beds or services

(a) Applicants proposing to convert any licensed beds to long-term care beds shall submit schematic plans with a floor layout of the facility, illustrating how the proposed conversion will be accomplished. In order to assure that the bed conversion can be implemented in accordance with health facility construction standards, it is recommended that applicants consult with the Department's Office of Health Facilities Construction Services in the Division of Health Facilities Evaluation, prior to submitting a Certificate of Need application. Applications for bed conversions that are submitted without schematic plans shall be deemed incomplete.

(b) Applicants for the conversion of residential health care beds to long-term care beds or the elimination of residential health care beds shall document a commitment to enabling current residents to continue occupying their assigned beds until or unless a permanent relocation placement is requested by the resident.

1. The mixing of residential health care and long-term care beds within one or more units as a consequence of implementing a Certificate of Need to convert or eliminate beds may be permitted if necessary in order to avoid relocating or discharging residents who do not wish to move.

(c) An applicant whose project entails the discharge or permanent relocation of patients in order to effect the conversion or elimination of licensed beds shall provide compelling documentation, to the satisfaction of the Commissioner, that a greater public benefit is to be obtained from the proposed conversion or elimination of beds than would be obtained if the existing licensed bed complement were maintained. This documentation shall be submitted not only by applicants who propose to discharge or permanently relocate a specified number of patients upon receiving Certificate of Need approval, but also by any applicant who has discharged or relocated more than 25 percent of the residents of the beds in question during the 12 month period prior to submission of the Certificate of Need application for a bed conversion or elimination. Compelling documentation of public benefit may include, but shall not be limited to, the following:

1. Letters supporting the discharge or relocation of patients which are submitted by the patients themselves, their family members or significant others, and/or the patients' health care providers;

2. Evidence that patients' quality of life and/or care would either deteriorate if they were permitted to remain in the facility, or that it would improve as a result of their being discharged or relocated to other facilities;

3. Evidence that the quality of life and/or care of those patients who will remain as residents in the facility would either deteriorate unless the proposed beds are converted or eliminated, or substantially improve as a result of eliminating or converting the beds in question; and

4. Evidence that the relocation will afford patients' family members and significant others convenient access for visitation purposes; that is, the facility to which most patients are expected to be relocated shall be situated in an area that has readily available public transportation and/or easy access to major roadways.

(d) An exception to the documentation requirement in (c) above may be granted by the Commissioner in the case where an applicant proposes to completely and permanently close the facility in question and/or to cease operating as any type of health care facility. The applicant shall nonetheless comply with the requirements in (f) below, to the extent that they are applicable.

(e) Certificate of Need applications proposing the conversion of residential health care beds to long-term care beds may be approved provided that the county in which the applicant's facility is located has a documented nursing home bed need in accordance with N.J.A.C. 8:33H-1.4(g) and consistent with the county Long-Term Care Committee's placement mix proposal.

(f) Certificate of Need applications proposing the conversion of residential health care beds to long-term care beds or the elimination of one or more residential health care beds shall meet the following requirements:

1. If the project entails the relocation of patients from the facility, the applicant shall provide documentation of a transfer agreement with at least one other residential health care facility in the area that maintains admission policies, offers amenities, and charges fees which are similar to those of the applicant's residential health care facility. Furthermore, the applicant shall provide documentation that the residential health care facility which is the subject of the transfer agreement has the willingness and bed capacity to accommodate those patients who might be transferred from the applicant's facility, including Supplemental Security recipients and discharged psychiatric patients;

2. If the applicant's facility currently has patients occupying residential health care beds who may require or desire relocation, the applicant agrees to provide all necessary social service assistance to effect the relocation in a manner that maximizes consumer choice of placement alternatives. The applicant shall bear the cost of relocating patients as necessary and shall make arrangements for any residential health care resident at the facility who wishes to visit other residential health care facilities in the area, prior to making a relocation decision; and

3. The Certificate of Need application complies with all other applicable requirements in this chapter.

(g) The conversion of specialized care beds to general long-term care beds or to another specialized care use may be considered for approval, provided that the following conditions are met:

1. The applicant provides evidence, to the satisfaction of the Department of Health, that good faith efforts have been made to implement the existing specialized care unit as it was originally approved, for a period of at least 18 months prior to submission of the Certificate of Need application for conversion. Evidence shall include:

i. Records of efforts to establish appropriate referral sources and transfer agreements;

ii. Records of efforts to negotiate reimbursement rates with third party payors including Medicaid; and

iii. Without disclosing names or otherwise publicly divulging individuals' identities, a verifiable listing of all patients referred for admission over the 12 month period prior to application submission. The listing shall include each patient's age, medical diagnoses, county of residence, payment source, and clinical care needs. For each patient, the applicant shall indicate whether the patient was admitted to the special care unit, and if not, the reason why admission was denied and the name of the facility where the patient was finally placed; and

iv. A description of all efforts to recruit and train staff for the unit.

(h) Certificate of Need applications proposing the elimination or termination of an adult day health care program may be approved, provided that the following condition is met:

1. The applicant shall provide documentation of a transfer agreement with at least one other licensed adult day health care program in the county that maintains admission policies, offers services, and charges fees which are similar to those of the applicant's program. Furthermore, if the applicant currently has patients utilizing the adult health care program, the applicant shall provide documentation that the program which is to be the subject of the transfer agreement has the willingness and slot capacity to accommodate those patients who will be transferred from the applicant's program.

(i) A Certificate of Need application proposing the conversion of acute care hospital beds to general or specialized long-term care beds may be approved provided that the following conditions are met:

1. The county in which the hospital is located has a documented nursing home bed need in accordance with N.J.A.C. 8:33H-1.4(g) and consistent with the county Long-Term Care Committee's placement mix proposal.

2. The project entails a permanent conversion of beds located on one or more distinct nursing units (that is the creation of so-called "swing beds" shall not be approved);

3. The applicant documents plans for providing a suitable, home like living environment for long-stay patients or agrees to adopt admission policies limiting utilization of the proposed long-term care beds to patients whose stays can reasonably be expected to be less than 100 days; and

4. The capital cost of converting the acute care beds is less than that of new nursing facility construction.

8:33H-1.14 Quality of care and licensure track record requirements for long-term care, residential health care, and adult day health care facilities

(a) The licensure "track record" of an applicant shall be evaluated by the Department to determine whether the applicant's proposed project may be approved. For this purpose, the following information shall be required:

1. Regarding the proposed ownership of the facility, the application shall identify each and every principal involved in the application, along with the percentage of each principal's interest. One hundred percent of the ownership of the proposed project shall be accounted for in the Certificate of Need application. If the applicant is a corporation, every investor with any amount of operational control over the proposed facility and every stockholder with 10 percent or more interest in the corporation shall be identified.

(b) Applicants shall demonstrate the capacity to provide a quality of care which meets or surpasses the requirements contained in the applicable licensing standards for the facility. Evidence of the capacity to provide high quality care shall include (b)1 below, and may also include (b)2 through 4 below:

1. A satisfactory record of compliance with licensure standards in existing health care facilities which are owned, operated, or managed, in whole or part, by the applicant. This may include reports issued by licensing agencies from other states, as well as from the Department;

2. Narrative descriptions or listings within the application of services, staffing patterns, policies and protocols addressing delivery of nursing, medical, pharmacy, dietary, and other services affecting residents' quality of care;

3. Documentation of compliance with the standards of accreditation of nationally-recognized professional bodies in fields pertaining to long-term care; and

4. A recommendation by the State Department of Human Services' Division of Medical Assistance and Health Services and Division of Mental Health and Hospitals regarding the quality of and access to services provided by the applicant to Medicaid patients and patients who have been discharged from State and county psychiatric hospitals.

(c) A recommendation to the Commissioner for denial of a Certificate of Need application may be made by the Department's Division of Health Facilities Evaluation and Licensing in consideration of any of the following criteria:

1. In the case of long-term care, a record of noncompliance with State licensure standards (N.J.A.C. 8:39) or comparable Federal Medicare and Medicaid certification requirements at any time during the 12 month period preceding the Department's processing of the Certificate of Need application and extending until the time of the Commissioner's final decision. Standards and requirements to be considered shall include but not be limited to the following areas:

i. Nursing;

ii. Patient Rights;

iii. Patient Assessment and Care Plan;

iv. Dietary Services;

v. Infection Control and Sanitation; and

vi. Pharmacy;

2. Evidence of noncompliance with applicable licensure requirements provided by an official state licensing agency in any state outside of New Jersey; and

3. Official records from any State agency indicating noncompliance with the agency's standards pertaining to life safety.

(d) Any applicant, including any principals thereof, who manages, operates, or owns in whole or in part any health care facility which has been cited for State licensing or Federal certification deficiencies which presented an immediate peril to the health, safety, or welfare of the facility's patients or residents at any time within the 12 month period prior to application submission and extending until the time of the Commissioner's final decision, shall not receive Certificate of Need approval.

(e) No more than two Certificate of Need approvals shall be granted to an applicant for the construction of new nursing homes or residential health care facilities or for bed additions to existing or approved facilities, until such time as the applicant has established a licensing track record in New Jersey. For this purpose, the establishment of a licensing track record shall be accomplished by holding at least 10 percent ownership interest or through the actual operation or management of one or more licensed, operational inpatient health care facilities in the State of New Jersey for a period of at least 12 consecutive months.

(f) In making a determination of Federal deficiencies in the case of long-term care, the Department shall use the requirements for long-term care Medicare/Medicaid participation found in 42 CFR Part 483 et al. in the areas of Resident Rights, Resident Behavior and Facility Practice, Quality of Life, and Quality of Care.

(g) Applications for a Certificate of Need to modernize, renovate or initiate new construction shall, to the greatest extent possible and practical, be directed toward correcting life-safety code waivers in categories A and B, N.F.P.A. Life Safety Code 101, incorporated herein by reference.

1. Facilities with life-safety code waivers (whether waivered or not) should contact the Department of Health's Division of Health Facilities Evaluation and the Division of Health Planning and Resources Development to discuss the seriousness of the waivered conditions prior to submitting a Certificate of Need application.

(h) Any applicant whose Certificate of Need has been denied for reasons related to a history of noncompliance with licensure requirements shall be ineligible for approval of another Certificate of Need until a period of at least one year has elapsed, during which time the applicant shall have demonstrated a record of compliance with licensing requirements. The one year period shall be measured from the time of that licensing inspection which is subsequent to the inspection in which noncompliance was determined and in which substantial compliance has thus been reestablished.

8:33H-1.15 Utilization requirements for Medicaid-eligible patients, Supplemental Security Income (SSI) recipients, and former psychiatric patients

(a) Applicants receiving Certificate of Need approval to add general or specialized long-term care beds to an existing facility or to construct a new nursing home or a replacement facility shall comply with the following utilization requirements:

1. Within one year from license issuance, a minimum of 36 percent of the total general long-term care bed complement shall be occupied by direct admission Medicaid-eligible patients, as defined in N.J.A.C. 8:33H-1.2. The facility shall continue to maintain at least 36 percent Medicaid-eligible direct admissions in its general long-term care beds annually thereafter.

2. Within one year from license issuance, a minimum of 36 percent of the total specialized long-term care bed complement shall be occupied by direct admission Medicaid-eligible patients, as defined in N.J.A.C. 8:33H-1.2. The facility shall continue to maintain at least 36 percent Medicaid-eligible direct admissions in its specialized long-term care beds annually thereafter.

3. A minimum of 45 percent of the total general long-term care bed complement shall be occupied by Medicaid-eligible patients who either have spent down to the level of Medicaid eligibility during their nursing home stay or who are directly admitted to the facility as Medicaid-eligible patients, as defined in N.J.A.C. 8:33H-1.2. The facility shall continue to maintain at least 45 percent overall occupancy by Medicaid-eligible patients in its general long-term care beds annually thereafter.

4. A minimum of 45 percent of the total specialized long-term care bed complement shall be occupied by Medicaid-eligible patients who either have spent down to the level of Medicaid eligibility during their nursing home stay or who are directly admitted to the facility as Medicaid-eligible patients, as defined in N.J.A.C. 8:33H-1.2. The facility shall continue to maintain at least 45 percent overall occupancy by Medicaid-eligible patients in its specialized long-term care beds annually thereafter.

(b) As a condition of Certificate of Need approval, a specified minimum percentage of the total number of long-term care beds shall be dedicated for occupancy by persons in need of nursing home care who are present or former patients of State/county psychiatric hospitals or community inpatient psychiatric units. The minimum acceptable percentage shall be determined on an annual basis by the Department of Health in consultation with the Department of Human Services. The Department of Health shall announce in the New Jersey Register the required percentage on January 1, or at least 30 days prior to the first filing date for that year for nursing home Certificate of Need applications. For 1992, the percentage shall be seven percent.

1. Occupancy of beds by former psychiatric patients who are Medicaid-eligible may count toward the utilization requirements for Medicaid-eligible patients which are specified in (a) above, provided that the former psychiatric patient is Medicaid-eligible.

2. At the time of initial licensure of any long-term care beds approved in accordance with this chapter, the nursing home shall sign and subsequently maintain a written transfer agreement with either the Division of Mental Health and Hospitals (within the New Jersey Department of Human Services) or at least one county psychiatric hospital or facility with a community inpatient psychiatric unit, for the purpose of complying with the percentage requirement specified in paragraph (b) above.

(c) Applicants receiving Certificate of Need approval to add residential health care beds to an existing facility or to construct a new residential health care facility or a replacement facility shall comply with the following utilization requirements:

1. A minimum of 10 percent of the total residential health care bed complement shall be occupied by direct admission Supplemental Security Income recipients. This percentage shall be achieved within one year of license issuance and maintained on an annual basis thereafter.

(d) As a condition of Certificate of Need approval, a specified minimum percentage of residential health care beds shall be dedicated for occupancy by persons in need of residential health care who are State, county, or designated psychiatric short-term care facility patients. The minimum acceptable percentage shall be determined on an annual basis by the Department of Health in consultation with the Department of Human Services. The Department of Health shall announce in the New Jersey Register the required percentage on January 1, or at least 30 days prior to the first filing date for that year for nursing home Certificate of Need applications. For 1992, the percentage shall be seven percent. The specified minimum percentage shall apply to all applications reviewed and approved in batching cycles occurring during the calendar year.

1. Occupancy of beds by former psychiatric patients who are recipients of Supplemental Security Income may count toward the utilization requirements for Supplemental Security Income recipients which are specified in (c) above.

2. At the time of initial licensure of any residential health care beds approved in accordance with this chapter, the facility shall sign and subsequently maintain a written transfer agreement with either the Division of Mental Health and Hospitals (within the New Jersey Department of Human Services) or at least one county psychiatric hospital or designated psychiatric short-term care facility, for the purpose of complying with the percentage requirement specified in (d) above.

(e) A nursing home or residential health care facility that receives Certificate of Need approval for a change in cost, location, or scope shall comply with either the applicable utilization percentages for Supplemental Security Income recipients and Medicare-to-Medicaid and Medicaid-eligible patients which were stated in the Commissioner's original Certificate of Need approval letter, or the utiliza-

tion percentages which are outlined in this chapter, whichever percentages are higher.

(f) A Certificate of Need applicant proposing a new or expanded facility, or a change in cost or scope to a previously approved project, or a transfer of ownership of an existing facility, who can produce documentation that the utilization percentage requirements in this section will cause a financial hardship may request a review of the financial feasibility of those percentages, which may result in a finding by the Department that a lower percentage is required for financial feasibility.

8:33H-1.16 Cost-efficiency and financial feasibility

(a) Applicants for a Certificate of Need shall demonstrate the financial feasibility of their projects. This analysis shall be based upon the projection of reasonable private pay and Medicaid charges, expenses of operation, and staffing patterns, relative to other facilities in the health systems area in which the proposed project will be located.

(b) Total project cost, construction cost per square foot, and cost per bed shall be taken into consideration in the review of Certificate of Need applications.

(c) Where projected construction and operating costs are considerably lower or higher than the average for the health systems area, as determined by the Department, the applicant shall provide an explanation at the request of the Department indicating factors contributing to said projections. This request for an explanation shall not be construed as an opportunity to change cost projections. Information regarding the most recent available facility costs in the health systems areas may be obtained from the Department's Division of Health Facilities Evaluation (Health Facilities Construction Services), CN 367, Trenton, N.J. 08625.

(d) Applicants shall describe their previous record of implementing Certificate of Need-approved long-term care projects, identifying each case in which a change in cost was requested in order to complete a project. All other things being equal, preference shall be given to approving applicants with a history of realistically projecting construction costs in their Certificate of Need applications, as reflected in the number and magnitude of previous requests for a change in cost.

(e) Applicants shall provide evidence in their financial projections that income generated by operation of the facility will be sufficient to provide care to the percentage of Medicaid-eligible or indigent patients specified in the application, or in accordance with N.J.A.C. 8:33H-1.15 whichever is greater.

(f) Applicants shall provide verification of the availability of at least 10 percent of the total project cost, including all financing and carrying costs, in the form of equity.

(g) As a condition of approval, applicants shall agree to make reasonable efforts to obtain the least cost financing available.

(h) Applicants proposing to add long-term care beds in an existing facility or to add long-term care beds in the course of replacing an existing facility shall provide documentation that the added beds will improve the efficient operation of the facility, reducing unit costs of care per patient.

8:33H-1.17 Environmental and physical plant considerations

(a) Health care facilities shall be designed and constructed in such a manner as to eliminate architectural barriers to care.

(b) Prior to submitting a Certificate of Need application, applicants proposing specialized long-term care beds shall consult with the Department's Division of Health Facilities Evaluation regarding the architectural design and construction of such projects. In addition to the standard construction requirements for nursing homes, (N.J.A.C. 8:39) the following shall be required.

1. Specialized care units approved for ventilator care shall have piped-in oxygen, suction equipment, emergency electrical outlets, and additional square footage for ventilator equipment and supplies;

2. Pediatric nursing home units shall include a play room or recreation room and suitable, adaptable space for educational uses such as tutoring; and

3. Specialized care units for patients with severe behavior management problems shall provide easy access to a protected outdoor area, such as a courtyard, patio, or garden.

8:33H-1.8 Location of facilities

(a) The applicant shall describe the proposed site of a project and the immediate surrounding community, identifying how the site is currently zoned and providing a time table for securing any and all necessary zoning and land use approvals. Long-term care facilities proposed to be located on sites which are currently zoned for heavy industrial use shall not be approved.

1. Applicants for long-term care, residential health care, and adult day health care facilities should not enter into costly land use or zoning approval procedures prior to receiving an approved Certificate of Need.

(b) The applicant shall identify the proposed facility's access to public transportation. Where possible, each facility shall be located where access is easily obtained via low-cost public transportation.

(c) The applicant for a long-term care or residential health care facility shall describe the availability to the proposed site of all necessary utilities. Where utilities are not already available at the proposed site, the applicant shall provide a timetable and detail the costs for obtaining these utilities.

(d) The applicant shall identify the proposed facility's proximity to any potential source of adverse environmental conditions. Long-term care and residential health care facilities shall be located so as to prevent exposure of patients to adverse environmental conditions which might hamper or interfere with their care, including excessive noise levels, offensive odors, or unsightly physical surroundings.

8:33H-1.19 Prioritization criteria and recommended features for the approval of nursing home projects

(a) In the case where two or more applications propose to meet a limited nursing home bed need in a particular county, these applications shall be reviewed in competition with each other using the prioritization criteria contained herein.

(b) Preference shall be given to the Certificate of Need approval of those projects that receive the greatest number of points using the criteria enumerated below. Each criterion shall count for one point, except that the criteria at (b)1 through 3 below shall count for two points each. In this manner, the maximum possible score shall be 16. The criteria are as follows:

1. The applicant documents a commitment to occupy 55 percent or more of the facility's total long-term care bed complement with Medicaid-eligible patients within one year of licensure. This proportion shall include at least 45 percent occupancy of the total bed complement by direct-admission Medicaid-eligible patients and at least 10 percent occupancy by patients who convert from private pay status to Medicaid eligibility during their stay in the facility. Applicants may propose to accept higher percentages of Medicaid patients than those stated herein, however, no greater priority shall be given to applicants for such a commitment;

2. The applicant demonstrates a commitment to admit and maintain Medicaid-eligible "heavy care" or acuity patients in at least 20 percent of the proposed new beds (that is, patients who do not require specialized care, as it is defined in N.J.A.C. 8:33H-1.2, but who routinely require more than the 2.5 hours per day minimum amount of nursing care required in N.J.A.C. 8:39);

3. The project does not require the discharge or permanent relocation of current residential health care residents to a different facility in order to convert the applicant's facility or any part thereof to long-term care beds, unless the relocation is to a replacement facility which is constructed or renovated by the applicant as part of the proposed project;

4. The applicant successfully operates at least one facility that is licensed for both residential health care and long-term care beds, and the facility has maintained an annual occupancy rate of at least 85 percent in its licensed residential health care beds during the most recent calendar year;

5. The facility will include a separate and distinct unit for young adult patients. The size of this unit should be proportionate to the

county's need, taking into consideration the projected need for placements for individuals age 20 to 64 in accordance with the placement methodology in N.J.A.C. 8:33H-1.5, and the existence of other long-term care resources that are available for young adults in the area;

6. Within one year of licensure, the facility will be staffed with one or more full-time equivalent clinical nurse specialists who have received a master's degree in geriatric nursing or a related clinical field from a program accredited by the National League for Nursing;

7. The facility will provide tuition reimbursement and/or a career ladder program for facility personnel. The program and employee participation criteria shall be described in detail in the application. The facility will provide documentation to the Department of Health on an annual basis to show that one or more employees have received college or training school tuition reimbursement each year as part of this program;

8. The project will result in the elimination of life safety code waivers at an existing facility;

9. The project entails the conversion of excess acute care hospital bed capacity to long-term care, in accordance with the requirements in N.J.A.C. 8:33H-1.13(i);

10. The applicant has a track record of implementing long-term care projects in New Jersey in an especially timely manner (that is, long-term care construction projects owned, operated, or managed by the applicant have been licensed within four years of Certificate of Need issuance);

11. The applicant has no more than one other Certificate of Need approved but not yet licensed long-term care facility in New Jersey at the time that the current application is accepted for processing;

12. The applicant has a track record for high quality patient care in nursing facilities owned or operated by the applicant in New Jersey, as demonstrated by compliance with five or more advisory standards contained in N.J.A.C. 8:39 at the time of the most recent annual licensing survey; and

13. The facility will promote not only a high quality of nursing and medical care but also a high quality of life for residents. Factors deemed to promote a high quality of life include, but are not limited to, the following:

i. Physical space inside the facility in excess of minimum construction requirements, designed for patients to meet privately with family and significant others;

ii. Year-round, easy access to protected, landscaped outdoor areas that are furnished with outdoor seating and tables; and

iii. Strategies to address the needs of patients with Alzheimer's Disease and related dementias, including, but not limited to, wandering tracks, behavior management programs, family support groups, and ongoing special activities.

(c) In the event that an applicant receives Certificate of Need approval for proposing to meet any or all of the prioritization criteria in (b) above, the specified criteria shall be included as conditions of Certificate of Need approval. Failure to comply with the conditions may result in licensure fines or other penalties.

(d) In the case where an applicant states a commitment to meet any or all of the prioritization criteria in (b) above, the applicant shall provide documentation that the costs of meeting the specified criteria have been factored into the applicant's financial feasibility analysis, in accordance with N.J.A.C. 8:33H-1.16.

(e) In Local Advisory Board regions where there is a need for specialized long-term care beds, priority shall be given to the approval of Certificate of Need applications for projects which are in compliance with all applicable requirements of this chapter and which meet the greatest number of the following criteria:

1. The facility will be centrally located in a geographically accessible location which is conveniently reached by public and private transportation by residents of all parts of the LAB region;

2. The facility has the physical space, bed capacity and architectural layout to accommodate an addition of specialized care beds in a timely manner in the future, should there be a need for more beds in accordance with N.J.A.C. 8:33H-1.7; and

3. The applicant documents a commitment to occupy 55 percent or more of the facility's specialized care bed complement with Medicaid-eligible patients within one year of licensure. This proportion shall include at least 45 percent occupancy by direct-admission Medicaid-eligible patients and at least 10 percent occupancy by patients who convert from private pay status to Medicaid eligibility during their stay in the facility. Applicants may propose to accept higher percentages of Medicaid patients than those stated herein, however, no greater priority shall be given to applicants for such a commitment.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Maternal and Child Health Consortia Licensing Standards

Proposed New Rules: N.J.A.C. 8:35A

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

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

Proposal Number: PRN 1992-225.

Submit comments by July 1, 1992 to:

Robert J. Fogg, Acting Director
Licensing, Certification, and Standards
Division of Health Facilities Evaluation
New Jersey Department of Health
CN 367
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Health is proposing licensing standards for Maternal and Child Health Consortia. (see proposed N.J.A.C. 8:100 at 24 N.J.R. 1164(a) and Certificate of Need rules proposed elsewhere in this issue of the New Jersey Register.) The proposed rules reflect the Department's continuing effort to improve infant and maternal health through the creation of a linked network of care. This network (the Maternal and Child Health Consortium) will focus on prevention, case finding, and appropriate referral of pregnant women and high risk infants through a regionalized perinatal and neonatal health care system in New Jersey.

The Department has made a priority commitment to the reduction of infant mortality, with the following objectives: to promote delivery of the highest quality of care to all pregnant women and newborns; to maximize utilization of highly trained perinatal personnel and intensive care facilities; to promote cost effectiveness throughout the system; and to emphasize a coordinated and cooperative prevention-oriented approach to perinatal services. Through a formalized planning process, facilitated by the appointment by the Commissioner of Health of the Perinatal Technical Advisory Committee and the Committee's 1990 report entitled "Proposal for a System of Perinatal Care," a bilevel system of perinatal health care has been proposed. Interventions and services will be provided both at Community and at Regional Perinatal Centers, depending on the level of care required. Basic, intermediate, and intensive services will be provided at the Community Perinatal Centers, while services targeted for the extremely high risk maternal-fetal population will be provided at the Regional Perinatal Centers. The Consortia will coordinate and monitor care, as well as provide regional quality assurance and educational programs.

The rules proposed at N.J.A.C. 8:35A-1 address purpose, scope and definitions, those at N.J.A.C. 8:35A-2 address licensure, those at N.J.A.C. 8:35A-3 address services to be provided by each consortium; at N.J.A.C. 8:35A-4 address the responsibility of the Governing Authority of each consortium; and at N.J.A.C. 8:35A-5.1 through 5.3 address staffing requirements for each consortium.

Social Impact

Maternal and child health continues to be a concern for the State of New Jersey, especially the health status of infants and small children. Although infant mortality has dropped from 11.5 deaths per 1000 live births in 1981 to 9.3 in 1989, much remains to be done. New Jersey has yet to reach the 1990 target set in "Objectives for the Nation" for overall infant mortality (9.0 deaths per 1000 live births), or the target

for non-white infant mortality (12.0 deaths per 1000 live births). The State's very low birth rate has actually increased, with the non-white rate (2.8 percent) being almost three times the white rate (0.96 percent).

There is wide recognition that further substantial gains cannot be accomplished through further emphasis on costly technological improvements. In order to achieve additional progress towards reducing the infant mortality rate, the focus must shift to prevention of low birth weight. This can best be achieved through a network of services and interventions which provide outreach, identification of high risk populations, and specialized levels of care and services for the management of high risk pregnancies and deliveries. The proposed rules intend to promote the goals of reducing the infant mortality rate and improving maternal and child health care in New Jersey through the delineation of specific qualifications and competencies for staff at designated levels of care.

Economic Impact

The average cost of hospital care in New Jersey for a high risk, very low birth weight infant exceeded $70,000 in 1989. Only with the prevention of low birth weight through adequate and timely prenatal care can savings in this area of health care expenditures be realized. The savings that are anticipated from the prevention of low birth weight infants and maternal and neonatal morbidity are expected to offset the anticipated costs of developing and staffing the designated appropriate levels of perinatal care and the development and staffing of Maternal and Child Health Consortia. Additionally, it is expected that at least seven consortia will be approved and share a budget of $4.4 million Statewide, funded through hospital rates.

Regulatory Flexibility Analysis

The proposed new rules at N.J.A.C. 8:35A regulate Maternal and Child Health Consortia. As defined at N.J.A.C. 8:35A-1.2, the consortia are voluntarily formed non-profit organizations which consist of all inpatient, ambulatory and perinatal care providers and related community organizations in a maternal and child health service region.

The rules require each component of a consortium, and the consortium, to conform to application, staffing, planning, community education, service and coordination standards. These standards may involve consultation with professionals, such as attorneys or financial advisers; however, such consultation is not required by the rules. The consortia are expected to have no more than three staff members. Acute care hospitals, members of the consortia, all have more than 100 employees. Some ambulatory and perinatal care providers, such as birthing centers, may be small businesses. Standards have been proposed for community centers and for regional centers which take into account the level of care to be provided. Since most of the small businesses regulated by this chapter are community centers, the rules provide a differentiation, generally, between large and small businesses. However, this differentiation is based on function, not on business size, and, due to the issues of public health and safety involved, the Department has determined that any differentiation based solely on business size would be appropriate.

Full text of the proposed new rules follows:

CHAPTER 35A
MATERNAL AND CHILD HEALTH CONSORTIA LICENSING STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

8:35A-1.1 Scope

(a) The rules in this chapter pertain to all regional Maternal and Child Health Consortia (MCHC) which oversee and monitor regional maternal perinatal and child health service delivery networks.

(b) The purpose of this chapter is to provide maternal and child health services in a coordinated and cooperative prevention-oriented manner which is accessible, cost-effective and in accordance with N.J.A.C. 8:100-1.1 and 1.4.

8:35A-1.2 Definitions

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

"Central service facility" means a health care facility, regulated by the Department of Health, providing essential administrative and clerical support services to two or more direct providers of health care services in a region and which may also include some direct provision of health care services.

"Community Perinatal Center" means any licensed facility providing, preconceptional, prenatal, intrapartum (including delivery of the patient), and postpartum care to women.

"Letter of agreement" means the document signed by both the Regional Perinatal Center and the Community Perinatal Center which defines the relationship between the two centers and specifies all tasks to be provided. If there is more than one hospital within the region able to meet the qualifications of a Regional Perinatal Center, then the Regional Perinatal Centers will first develop cooperative letters of agreement with each other; then with the Community Perinatal Centers within the region, facilitated by the Regional Maternal and Child Health Consortia. The letters of agreement are then submitted by the Regional Maternal and Child Health Consortia as part of the certificate of need application.

"Maternal and Child Health Consortium (MCHC)" means a voluntarily formed non-profit organization, incorporated under Section 501(c)(3) of the United States Internal Revenue Code, consisting of all inpatient, ambulatory perinatal and pediatric care providers and related community organizations in a maternal and child health service region, licensed as a central service facility by the Department of Health.

"Maternal and Child Health Service Region" means the perinatal and pediatric service delivery area defined by the concept of cooperative network formation. Contained within each region is at least one Regional Perinatal Center, one Regional Pediatric Center and the balance, Community Perinatal Centers.

"Maternal-fetal transport" means the transport of the high risk patient for maternal management.

"Perinatal" means the period before and after birth; defined in New Jersey and generally accepted as week 20 of gestation through the neonatal period.

"Regional Perinatal Center" means a licensed hospital which is the preferred provider of care to high risk mothers and high risk infants in the maternal and child health region. Such a facility is responsible for providing consultation, referral, transport and follow-up to the region.

"Regional Perinatal Plan" means the plan developed by the Regional Maternal and Child Consortia which describes how prenatal, intrapartum, newborn and infant follow-up services are delivered in the region. The plan is submitted to the Department of Health as part of the certificate of need application made pursuant to N.J.A.C. 8:33C.

"Transport" means the process whereby the attending physician at the Community Perinatal Center assesses that the status of the patient has become acutely high risk and arranges for the transfer of the care of the patient to the specialist at the Regional Perinatal Center via moving the patient with an emergency vehicle.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:35A-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a regional Maternal and Child Health Consortia (MCHC) shall not be instituted, constructed, expanded, or licensed to operate except upon application for, and receipt of, a Certificate of Need issued by the Commissioner based upon criteria in N.J.A.C. 8:33C.

(b) Application forms for a Certificate of Need and instructions for completion, pursuant to N.J.A.C. 8:33 and N.J.A.C. 8:33C, may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625

(c) The MCHC shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:35A-2.2 Application for licensure

(a) Following receipt of a Certificate of Need, any person, organization, or corporation desiring to operate a MCHC shall make application to the Commissioner for a license on forms prescribed by the Department, in accordance with the requirements of this chapter. Such forms may be obtained from:

Director
Licensing and Certification
Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625

(b) The applicant shall submit to the Department a nonrefundable fee of $500.00 for the filing of an application for licensure of a MCHC and for the annual renewal of the license.

(c) Each applicant for a license to operate a MCHC shall make an appointment for a preliminary conference at the Department with the Licensing and Certification Program.

8:35A-2.3 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the MCHC by representatives of the Health Facilities Inspection Program of the Department may be conducted as follows to determine if the facility complies with the rules in this chapter:

1. The MCHC shall be notified in writing of the findings of the survey, including any deficiencies found; and

2. The MCHC shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a MCHC when the following conditions are met:

1. At the discretion of the Department, a preliminary conference (see N.J.A.C. 8:43A-2.2(c)) for review of the conditions for licensure and operation may take place between the Licensing and Certification Program and representatives of the MCHC, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq. and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities; and

3. Survey(s) by representatives of the Department indicate that the MCHC complies with the rules in this chapter.

(c) A temporary license may be issued to a MCHC for a period of six months and may be renewed by the Department, if the applicant is determined by the Department to be in compliance with all applicable rules and regulations.

(d) The temporary license shall be conspicuously posted in the MCHC.

(e) The temporary license is not assignable or transferable, and it shall be immediately void if the MCHC ceases to operate or if its ownership changes.

(f) Survey visits may be made to a MCHC at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all MCHC documents and patient records and conferences with patients.

8:35A-2.4 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the MCHC is operated as required by N.J.S.A. 26:2H-1 et seq. and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year.

(c) The license shall be conspicuously posted in the MCHC.

(d) The license is not assignable or transferable, and it shall be immediately void if the MCHC ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The MCHC will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations, and/or requirements are not met.

8:35A-2.5 Surrender of license

The MCHC shall notify the Department of Health at least 30 days prior to the voluntary surrender of a license. As directed under an order of revocation, refusal to renew, or suspension of license, the license shall be returned to the Licensing and Certification Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:35A-2.6 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A MCHC seeking a waiver of these rules shall apply in writing to the Director of the Licensing and Certification Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the MCHC upon compliance;

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:35A-2.7 Action against a license

(a) If the Department determines that operational deficiencies exist, it may require that all services provided within the MCHC cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the MCHC in writing of such determination.

(c) The provisions of this section shall apply to MCHC's with a temporary license and to MCHC's with a full license.

8:35A-2.8 Hearings

(a) If the Department proposes to suspend, revoke, deny, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted 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 Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:35A-3.1 Provision of services

(a) The MCHC shall develop and implement a regional perinatal and pediatric plan in accordance with N.J.A.C. 8:33C, Certificate of Need: Regionalized Perinatal Services.

(b) The MCHC shall develop and implement a preterm labor prevention program, which shall include, but not be limited to, the following:

1. A computer-adaptable perinatal record, approved by the regional board of directors;

2. A comprehensive risk assessment protocol; and

3. Patient education and support services.

(c) The MCHC shall develop and implement a system for discharge planning, infant follow-up and child health care coordination in the MCHC region. This system shall assure post-discharge continuity of care and shall be linked to needed resources, such as:

1. Primary care services for all children in need of a primary care provider;

2. Referral to follow-up services for high risk infants which includes referral to high risk infant screening and tracking programs as appropriate;

3. Case management provided in coordination with Special Child Health Services County Case Management Units, as appropriate;
4. Public health nursing for home follow-up; and
5. Counseling services to parents, especially those experiencing perinatal or infant loss including, when appropriate, referral to the Sudden Infant Death Syndrome Resource Center established under N.J.S.A. 52:17B-88.

(d) The MCHC in conjunction with the designated Regional Perinatal Center shall coordinate and monitor the regional maternal and neonatal transport system. This system shall include written policies and procedures for the triage of mothers and/or infants to the most appropriate level of care in accordance with formal letters of agreement.

(e) The MCHC shall provide or coordinate on-going area wide professional education for all perinatal and pediatric service providers in the region, including at least regularly scheduled regional conferences. There shall be a mechanism for the annual assessment of the effectiveness of the regional education program.

(f) The MCHC shall establish a region-wide program for quality assurance which assures total quality improvement and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. This program shall include, but not be limited to:

1. A uniform regional system for automated data collection;
2. Management by a specific subcommittee which shall meet at least quarterly;
3. Policies and procedures for collecting, abstracting and reporting data to the subcommittee for use in quality assurance activities; and
4. Criteria for review of perinatal and pediatric statistics and pathology, including, but not limited to, the following:
   i. Transports with death;
   ii. Non-compliance with rules regarding birth weight and gestational age;
   iii. Cases in which no prenatal care was received;
   iv. All maternal deaths;
   v. All fetal deaths over 2500 grams not diagnosed as having known lethal anomalies;
   vi. Selected pediatric deaths and/or adverse outcomes;
   vii. Immunization of children two years of age in accordance with the provisions of N.J.A.C. 8:57 (Chapter 14 of the State Sanitary Code); and
   viii. Admissions for ambulatory care sensitive diagnoses in children.

(g) Each consortium shall establish a committee of its members to resolve conflicts arising among consortium members or between a member and the consortium. The consortium shall establish policies and procedures for conflict resolution, including committee meeting times and composition, what constitutes a conflict of interest, and provision that:

1. Any facility or group of facilities affiliated with the Consortium may bring an issue for resolution to the committee.
2. The recommendations of the committee, if accepted by the parties, constitute the decision of the consortium. At the request of a party, the recommendations may be forwarded to the full board for consideration, as described in the consortium's policies and procedures.
3. Conflicts that are not resolved by the consortium to the satisfaction of all parties to the conflict may be referred to the Commissioner of Health for a recommendation. If the parties agree prior to the Commissioner's review, the decision will be binding.

8:35A-3.2 Compliance with laws and rules

(a) If the central service MCHC provides medical services and/or nursing services directly in the MCHC, the central service MCHC shall meet the applicable sections of N.J.A.C. 8:43A, Manual of Standards for Licensure of Ambulatory Care Facilities.

(b) The MCHC shall comply with patient confidentiality requirements as specified in Hospital Licensing Standards, N.J.A.C. 8:43G-4.1(a)21. The MCHC shall assure that all patient care records it possesses will be kept confidential. Information in the patient's records shall not be released to anyone outside the MCHC without the patient's approval, unless another health care facility to which the patient was transferred requires the information, or unless the release of the information is required and permitted by law, a third-party payment contract, a medical peer review, or the New Jersey State Department of Health. The MCHC may release data about the patient for studies containing aggregated statistics when the patient's identity is masked.

(c) The MCHC shall comply with applicable Federal, State, and local laws, rules, and regulations.

8:35A-3.3 Ownership

(a) The ownership of the MCHC and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the MCHC. Any proposed change in ownership shall be reported to the Director of the Licensing and Certification Program of the Department in writing at least 30 days prior to the change and in conformance with requirements for Certificate of Need applications.

(b) No MCHC shall be owned, managed, or operated by any person convicted of a crime relating adversely to the person's capability of owning, managing, or operating the MCHC.

8:35A-3.4 Submission of documents and data

(a) The MCHC shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing and Certification Program of the Department, including formal letters of agreement from the member facilities of the MCHC region.

(b) The MCHC shall maintain and submit to the Department statistical data as required by the Department pursuant to the Administrative Procedure Act and N.J.A.C. 1:30.

8:35A-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the MCHC shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the MCHC to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement describing the MCHC's objectives and the services provided by the MCHC;
2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration of the MCHC;
3. Definition and specification of business hours, hours of operation, and full working week;
4. A system for referral of patients to sources of secondary and tertiary health care; and
5. Policies and procedures for the maintenance of personnel records for each employee, including, at a minimum, the employee's name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, records of staff orientation and staff education, and evaluations of job performance.

(b) The policy and procedure manual(s) shall be available and accessible to all staff and the public.

8:35A-3.6 Reportable events

The MCHC shall report to the Department of Health the termination of employment of the administrator/executive director, and the name and qualifications of the administrator's replacement, within seven days of the termination.

8:35A-3.7 Notices

(a) The MCHC shall conspicuously post a notice that the following information is available in the facility during business hours to patients and the public:

1. All waivers granted by the Department;
2. The list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. The names and addresses of the members of the governing authority; and

4. The hours of operation and the business hours of the MCHC.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:35A-4.1 Responsibility of the governing authority

(a) The MCHC shall have a governing authority, appointed in accordance with N.J.A.C. 8:33C, which shall assume legal responsibility for the management, operation, and financial viability of the MCHC. The governing authority shall be responsible for, but not limited to, the following:

1. Adoption and documented review of written bylaws, or their equivalent, in accordance with a schedule established by the governing authority;

2. Development and documented review of all policies and procedures, in accordance with a schedule established by the governing authority;

3. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;

4. Determination of the frequency of meetings of the governing authority and its committees, or equivalent, conducting such meetings, and documenting them through minutes;

5. Delineation of the duties of the officers of any committees, or equivalent, of the governing authority. When the governing authority establishes committees, their purpose, structure, responsibilities, and authority, and the relationship of the committee to other entities within the MCHC, shall be documented; and

6. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or equivalent.

SUBCHAPTER 5. ADMINISTRATION

8:35A-5.1 Appointment of administrator/executive director

The governing authority shall appoint an administrator or executive director who shall be accountable to the governing authority.

8:35A-5.2 Administrator/executive director's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the MCHC as determined by the governing authority; and

2. Establishing and maintaining liaison relationships and communication with MCHC staff and services, with support services and community resources, and with patients.

8:35A-5.3 Staff qualifications

(a) Each MCHC shall have:

1. An administrator/executive director who has a master's degree and at least three years of administrative or supervisory experience in health care planning or administration or financing, at least one year of which shall have been in maternal and child health services; and

2. A registered professional nurse with a master's degree in nursing, public health or administration from an accredited college or university and certification by the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties or the American Nurses Association, and two years of experience in clinical maternal and child nursing.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Home Health Agencies

Proposed Repeal and New Rules: N.J.A.C. 8:42

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

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

Proposal Number: PRN 1992-226.

Submit comments by July 1, 1992 to:

Robert J. Fogg, Acting Director
Licensing, Certification and Standards
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

The agency proposal follows:

Summary

The New Jersey Department of Health is proposing new and revised rules at N.J.A.C. 8:42, Standards for Licensure of Home Health Agencies. The current standards, which were adopted in 1987, will expire on August 17, 1992; the Department is simultaneously proposing repeal of the current rules at N.J.A.C. 8:42 and proposing new rules at the same chapter as the basis for licensure of home health agencies in New Jersey.

The proposed rules at N.J.A.C. 8:42 fulfill the Department's obligation, mandated by Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. and amendments thereto, to protect the health and safety of patients. The proposed rules provide minimal requirements for the organization, staffing, and patient care services of home health agencies and will give the Department's inspection teams a measurable set of guidelines to determine agency compliance, and will give provider agencies a quantifiable basis for meeting minimal standards in regards to the quality of home health services provided to patients.

Home health care is among the fastest growing segments of health care nationwide and is often viewed as a viable alternative to institutional care. It can be utilized to shorten lengths of stay in acute care facilities or to prevent institutionalization in various longer term facilities. The growth of home health care raises issues of quality assurance, minimal standards of care, cost control, access to care, and definitions of service offerings.

The current rules at N.J.A.C. 8:42 were thoroughly reviewed, resulting in the retention of its basic philosophy and much of its content; however, revision was undertaken with the intention to clarify existing language, remove obsolete requirements, and incorporate standards which reflect or enhance current levels of care in the home health industry. The revision was accomplished through the active participation of the Home Health Advisory Committee, which is comprised of representatives from the Home Health Assembly of New Jersey, the Home Care Council of New Jersey, the Home Health Services and Staff Association, the Department of Human Services (Medicaid), and the divisions of gerontology, planning, and licensing within the Department of Health.

Home health agencies are licensed by the Department of Health to provide preventive, rehabilitative, and therapeutic services to patients in their own home or place of residence. Home health agencies are required to provide at least nursing, homemaker-home health aide, and physical therapy services, and may provide additional services such as occupational therapy, speech-language and audiological services, social work services, and dietary counseling. The diversity among home health agencies is a noteworthy characteristic of these providers of service. New Jersey agencies differ greatly, for example, in the number and variety of services offered. Some agencies provide the basic required services, while others provide comprehensive home care programs which consolidate under a central administration the provision of a broad range of services. Types of agencies subject to State licensure include voluntary (visiting nurse associations), governmental (county and local health departments), hospital-based, combination (visiting nurse association-health department), and proprietary. Patients in all age groups are served, including patients enrolled in Medicare and Medicaid, Titles XVIII and XIX of the Social Security Act.

The proposed rules at N.J.A.C. 8:42 are the result of the Department's intention to revise, simplify, and update the Standards for Licensure of Home Health Agencies to reflect current state-of-the-art practices in home health care, while at the same time preserving the intent of the current rules to protect the health and safety of patients receiving home health services.

A summary of the contents of the proposed new rules at N.J.A.C. 8:42 and of significant changes to the requirements under the current rules follows:

Proposed N.J.A.C. 8:42 contains the following subchapters: Definitions, Licensure Procedure, General Requirements, Governing Authority, Administration, Patient Care Services, Nursing Services, Rehabilitation Services (Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Audiology), Social Work Services, Dietary Counseling Services, Medical/Health Records, Infection Prevention and Control, Patient Rights, and Quality Assurance. Subchapter 15, Financial Data, in the current chapter has been deleted as its provisions are covered at proposed N.J.A.C. 8:42-3.1(e) and 3.8(b).

Proposed Subchapter 1, Definitions, includes revisions or new language for the following entries: "Activities of daily living" has been moved verbatim from its former position at N.J.A.C. 8:42-7.7(a)3i. "Administrator" specifies administrative responsibility and availability as well as qualifications. "Advance directive" is added to comply with the New Jersey Advance Directives for Health Care Act. "Clinical note" clarifies that this note may include, but not be limited to, a flow sheet; a descriptive portion is required. "Director of nursing" replaces the current "public health nurse director" and includes revised qualifications which permit the substitution of a bachelor of nursing degree plus three years of experience for a master's degree and two years experience, a more flexible requirement than in the current rule. "Homemaker-home health aide" reflects a change in the certifying body from the Department of Health to the New Jersey Board of Nursing. "Nursing supervisor" encompasses a change of title from "public health nursing supervisor" and revised qualifications which offer increased flexibility to agencies in filling positions. "Plan of care" is revised nomenclature for the current "care plan." "Plan of treatment" revises the nomenclature of the current "patient treatment plan." A new entry has been added for "public health nursing." Finally, "signature" has been revised to include those generated by computer or communicated by facsimile transmission (fax).

Proposed N.J.A.C. 8:42-2, Licensure Procedure, including subsections on certificate of need requirements, procedures for application for licensure, surveys and temporary licensure, methods to apply for waivers, surrender of license, actions against a license, and hearings, has been unchanged from the current rules.

Proposed N.J.A.C. 8:42-3, General requirements, includes new provisions at N.J.A.C. 8:42-3.1(b) for nursing services to be provided under contract if certain conditions pertain. These provisions offer more flexibility to home health agencies in staffing nursing vacancies during temporary periods when permanent staff is unavailable. Proposed N.J.A.C. 8:42-3.4, Personnel, has been reorganized to include new requirements for employee identification and, significantly, Mantoux tuberculin testing to be provided and repeated at specified intervals for all employees and contracted personnel. Also included for the first time are mandated rubeola (measles) screening at N.J.A.C. 8:42-3.4(1) and rubeola and rubella vaccination at N.J.A.C. 8:42-3.4(k). These are considered important public health measures designed to protect both agency personnel and home care patients within the context of the recognized spread of infectious diseases in New Jersey. Proposed N.J.A.C. 8:42-3.5(a)5 adds new language requiring the identification and treatment of elderly or disabled adults who are abused or neglected, as well as staff training in this area and that of domestic violence. This standard acknowledges the social problems of elder abuse and domestic violence and recognizes that home health care personnel may be primary casefinders in these areas. Proposed N.J.A.C. 8:42-3.10 updates reporting requirements in accordance with the Professional Medical Conduct Reform Act of 1989 as these requirements relate to home health agencies.

Proposed N.J.A.C. 8:42-4, Governing Authority, includes one change at N.J.A.C. 8:42-4.1(a)2, requiring adoption and documented review of agency bylaws at least once every two years instead of according to timeframes established by the governing authority.

Proposed N.J.A.C. 8:42-5, Administration, deletes the requirement that the administrator be physically available in the facility and requires instead that this person shall be administratively responsible and available for all aspects of facility operations.

At proposed N.J.A.C. 8:42-6, Patient Care Services, the composition and meeting requirements of the advisory group have been amended. The new standard now requires at N.J.A.C. 8:42-6.1(a) and (c) that participation shall be assured by at least one physician, a nursing administrator, a consumer and representatives of those other services offered by the agency, and that the full advisory group shall meet at least annually. This changes the previous standard which required three physicians, and by mandating a meeting of the "full" advisory group annually, allowance is made for more frequent meetings on an ad hoc basis of selected members. A new paragraph at N.J.A.C. 8:42-6.2(a)8 mandates that the agency develop policies and procedures for the use of restraints for home health patients. This paragraph is in keeping with the Department's philosophy of ensuring the least restrictive environment; the standards specify that the use of restraints must be by written physician order only and require the consideration of alternatives to restraints. When restraints are needed, the agency must designate those staff who are authorized to use them and must teach the patient's family about their appropriate use. A major new section at proposed N.J.A.C. 8:42-6.3 incorporates into this subchapter rules that were recently adopted regarding advance directives in accordance with the New Jersey Advance Directives for Health Care Act of 1991. These rules delineate the agency's responsibilities, according to law, to provide written information to patients regarding their rights to make decisions about their health care and to formulate advance directives, either by proxy or written instruction or both. The section also delineates the agencies' responsibilities in regards to record-keeping, providing assistance and informational material, delineation of responsibilities of staff, and policies regarding transfer of patients. Private, religiously affiliated home health agencies may establish and communicate to patients written policies and procedures in regards to declining to participate in withholding or withdrawal of life-sustaining treatment.

Proposed N.J.A.C. 8:42-7, Nursing Services, contains minor reorganization of material and reliance upon the concept of scope of practice according to the Nurse Practice Act to specify appropriate levels of staff interventions. This is in contrast to the current rule which is overly prescriptive in its delineation of levels of staff and possible interventions, especially in the administration of medications at N.J.A.C. 8:42-7.3(e). At N.J.A.C. 8:42-7.5(a)1, the revised standard reflects a change of certifying bodies for homemaker-home health aides from the Department of Health to the New Jersey Board of Nursing.

Subchapter 8, Rehabilitation Services; Subchapter 9, Social Work Services; and Subchapter 10, Dietary Counseling Services, all provide for services to be provided directly or by contract and require written policies and procedures; they also spell out specific responsibilities of the service providers. A new standard has been added in each of these subchapters for the coordination of services with other disciplines to ensure continuity of patient care.

Several new provisions have been added at proposed N.J.A.C. 8:42-11, Medical/Health Records, in order to protect the health and safety of home health care patients. For example, the requirement at N.J.A.C. 8:42-11.1(d) that medical/health records be organized with a uniform format for all records will ensure the timely retrieval of patient information in emergency or non-emergency situations. Included also is a new standard at N.J.A.C. 8:42-11.2(d)7 to ensure that a copy of a patient's advance directive, if one is available, be made part of the medical/health record. Finally, the new provision at N.J.A.C. 8:42-11.2(g) protects vital patient information against loss, theft, or destruction by mandating that original medical/health records shall not be removed from agency premises unless under court order or to safeguard them in case of emergency or natural disaster.

Subchapter 12, Infection Prevention and Control, has been generally updated and revised. Because of the importance of infection control activities as a public health measure, a formalized program coordinated by a multidisciplinary committee (proposed N.J.A.C. 8:42-12.2(a)) as well as a designated person to carry out infection control activities (proposed N.J.A.C. 8:42-12.1(b)) are mandated. In order to protect both home health care patients and agency personnel from the transmission of disease, the standards at proposed N.J.A.C. 8:42-12.2(b)1 now require the implementation of Centers for Disease Control (CDC) and Occupational Safety and Health Administration (OSHA) guidelines, including Universal Precautions, specifically in reference to exposure to Hepatitis B Virus (HBV) Human Immunodeficiency Virus (HIV). N.J.A.C. 8:42-12.3 includes the requirement to comply with industry standards through following all Category I recommendations of the Centers for Disease Control for the prevention of catheter-associated urinary tract

infections, intravascular infections, surgical wound infections, and for handwashing protocols. Proposed N.J.A.C. 8:42-12.4 and 12.5 address the sterilization of patient care items, as well as multi-use versus single-use items. A new section is inserted at proposed N.J.A.C. 8:42-12.6 to require compliance with the New Jersey Comprehensive Regulated Medical Waste Management Act of 1988 to ensure proper collection, storage, handling, and disposal of regulated medical waste as defined by law. There is a new requirement at N.J.A.C. 8:42-12.7 to comply with CDC guidelines and New Jersey statute regarding the identification and handling of high-risk bodies, as well as the need to complete the Communicable Diseases Alert required by New Jersey P.L. 1988, c.125 for the protection of those coming into contact with infectious bodies. Finally, given the critical nature of infection control activities and of constantly evolving information in this area, there is an upgraded requirement at N.J.A.C. 8:42-12.8(b) for staff education and training at least annually for staff in all disciplines and patient care services.

The Department has a strong commitment to ensuring the rights of all patients in licensed health care facilities. Basic patient rights, which exist in the current as well as the new rule, address the right to treatment without discrimination, to receiving a written statement of rights, to information about the New Jersey State Department of Health Complaint Hotline, to information about the plan of his or her care, to receive the care that has been ordered and to participate in his or her own care, to refuse services, to receive full financial information, to express grievances about the agency without fear of reprisal, to freedom from mental and physical abuse, exploitation, and restraints unless ordered by a physician. Other rights include confidential treatment of the record, to be treated with courtesy, consideration, and respect, to be assured of respect for personal property, to join with other patients or individuals to work for improvements in patient care, to retain all constitutional, civil, and legal rights, to be transferred only under specified condition, and to discharge him or herself from treatment by the facility. Specifically, there is added reference to the New Jersey Department of Health Complaint Hotline at N.J.A.C. 8:42-13.1(b)3 and 13.1(b)11, and to full information about financial arrangements at N.J.A.C. 8:42-13.1(b)10. Reference to the patient's right to provide instructions and directions for health care in the event of future decisionmaking incapacity in accordance with the Advance Directives for Health Care Act is added at N.J.A.C. 8:42-13.1(b)18.

Finally, there is an expanded subchapter for Quality Assurance at proposed N.J.A.C. 8:42-14. The quality assurance plan shall be reviewed and revised at least annually (N.J.A.C. 8:42-14.2(a)), and specific quality indicators are added at N.J.A.C. 8:42-14.2(d) to help the agency evaluate its quality assurance program and make specific improvements in the delivery of care where indicated.

Social Impact

Chapters 136 and 138 of P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, enjoin the Department of Health to protect and promote the health of the citizens of this State. The Act also mandates the Department to develop "standards and procedures relating to the licensing of health care facilities and the institution of additional health care services" to ensure the efficient and effective delivery of health care services. This purpose is served by the proposed rules, N.J.A.C. 8:42, which revise and update the current rules for licensure of home health agencies; the rules establish minimum requirements for the provision of service by home health agencies in New Jersey which reflect the current state-of-the-art in home health care.

The Department expects that the proposed rules will benefit home health care patients, their families and caregivers, the provider agencies and professionals, and the Department's own survey and regulatory programs. The Department of Health recognizes the social impact of the home health movement upon patient care in this State. For many patients, including those with both acute and chronic illness, home health care may be used as an alternative to institutionalization, including either long-term placement or hospitalization, and a means of maintaining independent living status in the community. For many patients, this method of service delivery has a significant positive impact upon the quality of life and means the difference between residing in an institution or at home among family members.

As the home health industry continues to expand, regulation is necessary to protect the health, safety, and welfare of patients. It is necessary that agencies employ staff who are qualified to provide services at the level of skill required; that agencies provide adequate continuity and coordination of services; and that adequate recordkeeping, administration, and direction are provided to support the patient care services.

The proposed rules, N.J.A.C. 8:42, clarify the contents of the current rules in several key areas. Qualifications for staff are delineated to reflect current standards of practice in the various professional disciplines; they are given additional flexibility in specific areas to assist agencies in filling positions and to ensure continuity of patient care when it might otherwise be disrupted by staff shortages. Proposed N.J.A.C. 8:42 is also intended to reduce the fragmentation of services which may occur when a patient requires a range of services or has treatment needs which change over time, through provisions for assessment, treatment planning, and revision of care and treatment plans.

Home health care serves many types of patients from all age groups, including many diagnostic categories of both acute and chronic long-term care. Because of this variation in patients served, the proposed chapter is designed to provide home health agencies with the flexibility and scope to determine policies, procedures, and methods of service delivery best suited to their individual organizational structures and patient populations. Rules thus aimed at accommodating the agency's specific configuration of services will foster effective managerial and administrative practices, resulting in efficient and effective use of resources and sustaining the quality of patient care.

Subchapter 3 of the proposed new chapter contains several elements which have an impact on the health, safety, and social welfare of patients and agency personnel alike. N.J.A.C. 8:42-3.4 addresses new requirements for Mantoux tuberculin testing, as well as measles and rubella testing and vaccination programs. The rising incidence of tuberculosis and measles in New Jersey is a serious public health problem, and these rules are designed to protect both patients and employees from the transmission of these diseases. Proposed N.J.A.C. 8:42-3.5 addresses the social problems of domestic violence and abuse and/or neglect of children and elderly or disabled adults. Identification and reporting as well as staff training are mandated. Home health care givers may be primary casefinders and through their mandated activities may have significant impact on the welfare of individuals and their families. Also in subchapter 3 is found the requirement to comply with State law regarding the reporting of medical misconduct, thus helping to safeguard the health and safety of patients.

Proposed N.J.A.C. 8:42-6.3 contains significant provisions regarding the matter of advance directives for health care. In compliance with the New Jersey Advance Directives for Health Care Act of 1991, home health care agencies must assist patients in preparing advance directives if that is their wish, and must comply with other provisions of the law designed to resolve conflict and to interpret and apply the terms of advance directives during the patient's course of treatment. The significance of permitting and encouraging patients to engage in decisionmaking regarding their health care in advance has been recognized by the Legislature; the rules reflect the intent of the law to address this important social and ethical concern.

The proposed chapter contains an updated and revised subchapter at N.J.A.C. 8:42-12, Infection Prevention and Control. The Department views infection control to be a paramount public health issue, particularly in this era of increased transmission of infectious disease. The proposed new rules mandate the implementation of Federal regulations and/or guidelines published by the Centers for Disease Control and Occupational Safety and Health Administration for the use of Universal Precautions and for the prevention of iatrogenic infections. The proposed new rules also mandate compliance with State law for the collection, storage, handling, and disposal of regulated medical waste. These rules are aimed at the protection of the health and safety of patients, personnel, and the public at large.

Proposed N.J.A.C. 8:42-13 reflects the Department's strong commitment to ensuring the rights of all patients in licensed health care facilities. Since home health care patients are treated in their homes, there is an increased need for careful surveillance to ensure that their rights are communicated and respected. Subchapter 13 requires agencies to develop policies and procedures to safeguard the patient's interests; to assure patients the ability to lodge complaints or grievances; and to prevent potentially harmful or exploitative situations. Such provisions serve both the agencies and their patients by clearly delineating specific rights and providing guidance as to the communication and implementation of these rights.

The benefits to patients and their families from receiving home health care are manifold. Studies have shown that patients who remain in their homes to receive care often respond better and recover more quickly.

The psychological benefits associated with receiving care within the familiar home environment have been demonstrated to contribute significantly to convalescence. There is also a preventive aspect to home health care, in that services provided, in some instances, may prevent disease and avert disability, and, in some cases, may reduce the likelihood of institutionalization or postpone its occurrence. For many patients, home care is less stressful than inpatient institutional care. Feelings of isolation and dependence are reduced. Disruption of family life and of the patient's personal life is minimized. The patient and family retain a sense of control over the situation. This applies in cases of long-term, acute, and terminal illness when the patient is eligible for home health services.

Given the potential benefits to patients accruing from home health care, it is important that the agencies providing these services maintain satisfactory levels of patient care. Especially in light of the challenges presented to the home health industry by rapid growth, demand for services, and evolving service modalities, there exists a need for acceptable, quantifiable measures of agency performance in order to protect the providers and consumers of home health services. The Department maintains that the proposed new rules at N.J.A.C. 8:42 will fulfill this need by updating and improving the licensure standards for home health agencies, thus ensuring a high level of care leading to increased health and safety of patients receiving health care services in their home.

Economic Impact

The Department of Health foresees minimal financial consequences in the adoption of the proposed new rules for home health agencies. Since the current rules are in effect and the survey mechanism functioning, no additional costs to the State will result; and because the proposed rules are similar in intent to the current rules with few changes, the agencies are expected to incur only moderate additional expenses in complying with its requirements.

For many individual patients, home health care reduces the incidence of disease and disability to persons at risk. As delivered by licensed home health agencies, home health care can also represent considerable savings over the alternatives, institutional care in a hospital or a long-term care facility. Many health care authorities maintain that home health care is a less expensive method than institutionalization for the delivery of long-term care services, as well as for acute post-hospital care. There is no doubt that, for many individuals and their families, the use of home health care reduces the drain on personal finances.

The growing use of home health services is motivated by economic as well as humanitarian considerations. It is becoming feasible to provide in the patient's home many service modalities which were previously available only in acute-care settings. On a national level, escalating costs for both hospital and long-term care have led to increased use of home health care as a way of reducing length of institutional stay, either by postponing the need for institutional care or by allowing earlier discharge. Given the increase in the elderly population, home health services are seen as a viable way to maintain some of the chronically ill and elderly population in their homes and forestall the need for costly institutional care.

Home health care has expanded partly in response to cost-saving measures applied to other sectors of the health care industry. The use of the DRG system, as well as technological advances, encourages earlier discharge from hospitals. Recuperation, even from major surgery or major illness, is increasingly taking place at home, supported by a proliferation of drug therapies, equipment, and professional health care services. Hospice services are also being provided to patients by some home health agencies. As these trends continue, it is anticipated that home health care will have increasing impact on the containment of total health care costs.

Proposed N.J.A.C. 8:42 allows flexibility in management and administrative practices to the agencies, such as in developing policies and procedures best suited to their individual circumstances, in hiring and allocating staff to best meet patient care needs, and in deciding whether and in what way to provide certain services. This will allow the agencies to conserve resources by determining the most efficient deployment of services and personnel. In this regard, the Department would point out increased flexibility in the qualifications of supervisory nursing personnel and the use of contracted nursing personnel under certain circumstances. Further, the use of various professional staff members in patient assessment, treatment planning, and delivery of care promotes continuity and coordination of care to reduce duplication, overlap, and fragmentation of services while ensuring that patients receive all needed services.

The proposed rules at N.J.A.C. 8:42 address the health and safety of both patients and agency personnel at N.J.A.C. 8:42-3.4 by mandating tuberculin testing and vaccination for rubella and rubeola. It has been determined, however, that the cost of Mantoux testing to safeguard both agency personnel and patients is, at a maximum, $3.00 per test; the Department believes that this is an essential public health measure with the benefit outweighing the modest cost. There may be some additional record-keeping costs in regards to the requirement at proposed N.J.A.C. 8:42-11.2(g) that original medical/health records not leave the agency premises, necessitating some form of reproduction of records. However, the value in regards to the patient's safety and welfare in protecting the medical record from destruction or loss outweighs the increased cost. The financial impact of these identified costs will be most noticeable when the rules are adopted, and costs are expected to have lesser impact on a continuing basis. Other rules at N.J.A.C. 8:42-12, Infection Prevention and Control, are intended to reduce the incidence, and thus the health and financial costs, of injury and infection occurring to patients, agency personnel, and even the public at large. Rules at N.J.A.C. 8:42-14, Quality Assurance, have the intended functions of improving the delivery of care as well as the cost-effectiveness of agency operations and managerial practices, and correcting any deficiencies in administrative or clinical practice.

Given the growth in the home health industry and the capability it offers for preventing or reducing disease, disability, and institutional care, the Department proposes the adoption of the proposed rules at N.J.A.C. 8:42 as one method of supporting the continued strong performance of the home health agencies to continue their provision of services, using updated rules attuned to current practices. The overall economic impact of the proposed new rules will be favorable, since few short-term expenses will be incurred, while the long-range economic implication of quality home health services will benefit home care patients as well as New Jersey's health care delivery system.

Regulatory Flexibility Analysis

The majority of New Jersey's 59 licensed home health agencies may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14b-15 et seq. The proposed new rules at N.J.A.C. 8:42, the Manual of Standards for Licensure of Home Health Agencies, may result in increased reporting and recordkeeping requirements, as well as enhanced employee health programs as noted above, beyond the requirements already placed upon small businesses by the current rules. The new and additional requirements are discussed in the Summary above.

The Department believes that these increased requirements will have minimal adverse economic impact on small businesses on a continuing basis, although there will be initial costs for most home health agencies. The rules' costs are discussed in the Economic Impact above. Compliance with the proposed rules is necessary for all facilities which provide home health services in the interest of public health and safety, and there should be no differentiation based on business size.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:42.

Full text of the proposed new rules follows:

CHAPTER 42
MANUAL OF STANDARDS FOR LICENSURE OF HOME HEALTH AGENCIES

SUBCHAPTER 1. DEFINITIONS

8:42-1.1 Scope: purpose

(a) The rules in this chapter pertain to all home health agencies in the State of New Jersey.

(b) The purpose of this chapter is to assure the provision of high quality home health care services to the residents of New Jersey in a coordinated and cost-effective manner.

8:42-1.2 Definitions

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

"Activities of daily living (ADL)" means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

"Administrator" means a person who is administratively responsible and available for all aspects of facility operations, and:

1. Has a master's degree in administration or a health related field, and at least two years of supervisory or administrative experience in home health care or in a health care setting; or

2. Has a baccalaureate degree in administration or a health related field and four years of supervisory or administrative experience in home health care or in a health care setting.

"Advance directive" means a written statement of the patient's instructions and directions for health care in the event of future decisionmaking incapacity in accordance with the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201. It may include a proxy directive, an instruction directive, or both.

"Audiologist" means a person who is so licensed by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

"Available" means ready for immediate use (pertaining to equipment); capable of being reached (pertaining to personnel).

"Branch office" means a facility site from which services are provided to patients in their homes or place of residence; which is physically separate from the home health agency but shares administrative oversight and services; which meets all requirements for licensure; and which has a nursing supervisor or alternate coverage by a registered professional nurse on the premises during its hours of operation.

"Bylaws" means a set of rules adopted by the facility for governing its operation. (A charter, articles of incorporation, and/or a statement of policies and objectives is an acceptable equivalent.)

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and/or organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Clinical note" means a signed and dated notation made at each patient visit by each health care professional who renders a service to the patient. The clinical note may include, but shall not be limited to, a flow sheet, and shall include a written description of signs and symptoms, treatment and/or medication(s) administered, the patient's response, and any changes in physical or emotional condition. The clinical note shall be written or dictated on the day service is rendered and shall be incorporated into the patient's medical/health record according to the facility's policies and procedures.

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

"Communicable disease" means an illness due to a specific infectious agent or its toxic products, which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by patients and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Current" means up-to-date, extending to the present time.

"Department" means the New Jersey State Department of Health.

"Dietitian or dietary consultant" means a person who:

1. Is registered or eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association; or

2. Has a bachelor's degree from a college or university with a major in foods, nutrition, food service or institution management, or the equivalent course work for a major in the subject area; and has completed a dietetic internship accredited by the American Dietetic Association or a dietetic traineeship approved by the American Dietetic Association or has one year of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care setting; or

3. Has a master's degree plus six months of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care setting.

"Director of Nursing" means a registered professional nurse who has at least one of the following qualifications:

1. A master's degree in nursing or a health related field and two years combined public health nursing and progressive management experience in public health nursing; or

2. A bachelor of science degree in nursing or a health related field and three years combined public health nursing and progressive management experience in public health nursing.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

1. "Concurrent disinfection" means the application of measures of disinfection as soon as possible after the discharge of infectious material from the body of an infected person, or after the soiling of articles with such infectious discharges, all personal contact with such discharges or articles being minimized prior to such disinfection.

2. "Terminal disinfection" means the application of measures of disinfection after the patient has ceased to be a source of infection, or after the facility's isolation practices have been discontinued. (Terminal disinfection is rarely practiced; terminal cleaning generally suffices (see definition of "cleaning"), along with airing and sunning of rooms, furniture, and bedding. Terminal disinfection is necessary only for diseases spread by indirect contact.)

"Documented" means written, signed and dated.

"Drug administration" means a procedure in which a prescribed drug or biological is given to a patient by an authorized person in accordance with all laws and rules governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.

"Full-time" means a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the determination and implementation of policy and for the management, operation, and financial viability of the facility.

"Home health agency" means a facility which is licensed by the New Jersey State Department of Health to provide preventive, rehabilitative, and therapeutic services to patients in the patient's home or place of residence. All home health agencies shall provide nursing, homemaker-home health aide, and physical therapy services.

"Homemaker-home health aide" means a person who has completed a training program approved by the New Jersey Board of Nursing and who is so certified by that Board.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties, competencies, responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses and practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Licensed practical nurse" means a person who is so licensed by the New Jersey State Board of Nursing.

"Medication" means a drug or medicine as defined by the New Jersey State Board of Pharmacy.

"Monitor" means to observe, watch, or check.

"Nursing supervisor" means a registered professional nurse who has at least one of the following qualifications:

1. A bachelor of science degree in nursing and two years combined public health nursing and progressive professional responsibilities in public health nursing; or

2. Three years combined public health nursing and progressive professional responsibilities in public health nursing.

"Occupational therapist" means a person who is certified or eligible for certification as an occupational therapist, registered (OTR) by the American Occupational Therapy Association, and has at least one year of experience as an occupational therapist.

"Physical therapist" means a person who is so licensed by the New Jersey State Board of Physical Therapy.

"Physician" means a person who is licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

"Plan of care" (nursing, rehabilitation, social work, dietary counseling) means a written plan based on an assessment of the patient and the care and treatment to be provided by each discipline. Each discipline that provides service shall initiate the development and implementation of its own service plan, including measurable goals with timeframes, at the time of the patient's admission to that service. If the patient does not need a specific service, a plan is not needed for that service.

"Plan of treatment" means a written plan established and authorized in writing by the physician based on an evaluation of the patient's immediate and long-term needs. This plan shall be:

1. Initiated and implemented when the patient is admitted;
2. Coordinated and maintained by the nursing service or the physical therapy service, if physical therapy is the sole service;
3. Inclusive of, but not limited to, the patient's diagnosis, patient goals, means of achieving goals, and care and treatment to be provided;
4. Current and available to all personnel providing patient care; and
5. Included in the patient's medical/health record.

"Progress note" means a written, signed, and dated notation by the practitioner providing care, periodically summarizing information about the care provided and the patient's response to it.

"Public health nursing" means a branch of nursing practice which has as its goals health promotion, health maintenance, primary prevention, health education and management, coordination of health care services, and continuity of care through the provision of health care to individuals, families, and groups in the community. These goals may be accomplished through activities which include, but are not limited to, making home visits to assess, plan for, and provide nursing services; providing instruction and direct nursing services in community health agencies; teaching subjects related to individual and community welfare; and coordinating services with other community agencies.

"Registered professional nurse" means a person who is so licensed by the New Jersey State Board of Nursing.

"Restraint" means devices, materials, or equipment that are attached or adjacent to a person and that prevent free bodily movement to a position of choice.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D.) of a person, legibly written either with his or her own hand, generated by computer with authorization safeguards, or communicated by a facsimile communications system (FAX) followed by the original.

"Social worker" means a person who has a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education, and at least one year of post-master's social work experience in a health care setting.

"Speed-language pathologist" means a person who is so licensed by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

"Staff education plan" means a written plan developed at least annually and implemented throughout the year which describes a coordinated program for staff education for each service, including in-service programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

SUBCHAPTER 2. LICENSURE PROCEDURE

8:42-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, licensed to operate, or closed except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Applications shall provide the information required by N.J.A.C. 8:33 and N.J.A.C. 8:33L. Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, NJ 08625

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:42-2.2 Application for licensure

(a) Following acquisition of a Certificate of Need, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department in accordance with the requirements of this chapter. Such forms may be obtained from:

Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625

(b) The applicant shall submit to the Department a nonrefundable fee of $500.00 for the filing of an application for licensure of a home health agency and $500.00 for the annual renewal of the license. An additional $150.00 shall be submitted for the filing of an application for each branch office of the facility, and $150.00 for its annual renewal.

(c) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

8:42-2.3 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this Chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.
2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to issue of license.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. An office conference for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;
2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;
3. Survey(s) by representatives of the Department indicate that the facility adheres to these rules; and
4. Professional personnel are employed in accordance with the staffing requirements in these rules.

(c) No health care facility shall accept patients until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time, or to a patient's home, by authorized staff of the Department. Such visits may include, but not be limited to, a review of all facility documents and patient records, and conferences with patients and/or their families.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:42-2.4 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the health care facility is being operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules in this chapter.

(b) A license shall be granted for a period of one year or less as determined by the Department. (See N.J.S.A. 26:2H-12.)

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless sooner suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations, and/or requirements are not met.

8:42-2.5 Surrender of license

The facility shall directly notify each patient, the patient's physician, and any guarantors of payment concerned at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the revocation, non-renewal, or suspension of license.

8:42-2.6 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of this chapter, waive sections of the rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon full compliance;

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the application for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:42-2.7 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate cessation of services by a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary license and facilities with a full license.

8:42-2.8 Hearings

(a) If the Department proposes to suspend, revoke, deny or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted 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 Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:42-3.1 Compliance with rules and laws

(a) The facility shall provide preventive, rehabilitative, and therapeutic services to patients. This shall include, but not be limited to, nursing, homemaker-home health aide, and physical therapy services. Nursing services shall be available 24 hours a day, seven days a week.

(b) The facility shall routinely provide nursing services through its own staff. Nursing services provided under contract shall be rendered only if the following conditions pertain:

1. During temporary periods when all available full and part-time employees have achieved maximum caseloads, or in order to provide specialized care which is unavailable through existing staff;

2. Contracted nursing personnel are oriented to the policies and procedures of the facility and receive supervision from supervisory staff employed by the facility; and

3. Provisions are made for continuity of patient care by the same contracted nursing personnel whenever possible.

(c) Other services such as physical therapy, occupational therapy, speech-language pathology, audiology, dietary counseling, and social work services shall be available directly or through written agreement.

(d) The facility shall adhere to applicable Federal, State, and local rules, regulations, and requirements.

(e) The facility shall adhere to all applicable provisions of N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:42-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Licensing, Certification and Standards Program of the Department in writing at least 30 days prior to the change and in conformance with the requirements for Certificate of Need applications.

(b) No health care facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:42-3.3 Submission of documents

The facility shall, upon request, submit any documents which are required by these rules to the Director of the Licensing, Certification and Standards Program of the Department.

8:42-3.4 Personnel

(a) The facility shall ensure that the duties and responsibilities of all personnel are described in job descriptions and in the policy and procedure manual for each service.

(b) All personnel who require licensure, certification, or authorization to provide patients care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

(c) All personnel, both directly employed and under contract to provide direct care to patients, shall at all times wear or produce upon request employee identification.

(d) The facility shall have policies and procedures for the maintenance of confidential personnel records for each employee, including at least his or her name, previous employment, educational

background, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials and references, health evaluation records, job description, and evaluations of job performance.

(e) All new personnel, both directly employed and under contract to provide direct patient care, shall receive an initial health evaluation which includes at least a documented history.

(f) Employee health records shall be maintained for each employee. Employee health records shall be confidential, and kept separate from personnel records.

(g) The employee health record shall include documentation of all medical screening tests performed and the results.

(h) All personnel, both directly employed and under contract to provide direct care to patients, shall receive a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions are personnel with documented negative Mantoux skin test results (zero to nine millimeters of induration) within the last year, personnel with documented positive Mantoux skin test results (10 or more millimeters of induration), personnel who received appropriate medical treatment for tuberculosis, or when medically contraindicated. Results of the Mantoux tuberculin skin tests shall be acted upon as follows:

1. If the Mantoux tuberculin skin test result is between zero and nine millimeters of induration, the test shall be repeated one to three weeks later.

2. If the Mantoux test result is 10 millimeters or more of induration, a chest x-ray shall be performed and, if necessary, followed by chemoprophylaxis or therapy.

(i) The Mantoux tuberculin skin test shall be administered by December 1, 1992 to all agency personnel, both directly employed and under contract, and thereafter to all new personnel at the time of employment. The tuberculin skin test shall be repeated on an annual basis for all persons who provide direct patient care and every two years for all other employees.

(j) The agency shall report annually on forms provided by the Department of Health the results of tuberculin testing for all agency personnel.

(k) All personnel, both directly employed and under contract to provide direct care to patients, shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test. The only exceptions are personnel who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine, or when medically contraindicated.

(l) The facility shall inform each person in writing of the results of his or her rubella screening test.

(m) The facility shall maintain a list identifying the name of each person who is seronegative and unvaccinated.

(n) All personnel, both directly employed and under contract to provide direct care to patients, who were born in 1957 or later shall be given a (measles) rubeola screening test using the hemagglutination inhibition test or other rubeola screening test. The only exceptions are personnel who can document receipt of live measles vaccine on or after their first birthday, physician-diagnosed measles, or serologic evidence of immunity.

(o) The facility shall ensure that all personnel, both directly employed and under contract to provide direct care to patients, who cannot provide serologic evidence of immunity are offered rubella and rubeola vaccination.

8:42-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be established, implemented, and reviewed at least annually. Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility at all times. The manual(s) shall include at least the following:

1. A written narrative of the program describing its philosophy and objectives, and the services provided by the facility;

2. An organizational chart delineating the lines of authority, responsibility, and accountability, so as to ensure continuity of care to patients;

3. A description of the quality assurance program for patient care and staff performance;

4. Definition and specification of full-time employment;

5. Policies and procedures for complying with applicable statutes and protocols to report child abuse and/or neglect, sexual abuse, and abuse of elderly or disabled adults, specified communicable disease, rabies, poisonings, and unattended or suspicious deaths. These policies and procedures shall include, but not be limited to, the following:

i. The development of written protocols for the identification and reporting of children and elderly or disabled adults who are abused and/or neglected;

ii. The designation of a staff member(s) to be responsible for coordinating the reporting child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq., recording notification of the Division of Youth and Family Services on the medical/health record, and serving as a liaison between the facility and the Division of Youth and Family Services; and

iii. The provision at least annually of education and/or training programs for all staff and subcontracted personnel who provide direct patient care regarding the identification and reporting of child abuse and/or neglect; sexual abuse; domestic violence; and abuse of the elderly or disabled adult.

NOTE: Copies of the law may be obtained from the local district office of the Division of Youth and Family Services (DYFS) or from the Office of Program Support, Division of Youth and Family Services, New Jersey State Department of Human Services, CN 717, Trenton, NJ 08625.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

8:42-3.6 Staffing

(a) Provision shall be made for staff with equivalent qualifications to provide services for absent staff members. Staffing schedules shall be implemented to facilitate continuity of care to patients. The facility shall maintain staff attendance records.

(b) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of the person(s) responsible for training.

8:42-3.7 Written agreements

(a) The facility shall have a written agreement, or its equivalent, for services provided by contract or subcontract. The written agreement or its equivalent shall:

1. Be dated and signed by a representative of the facility and by the person or agency providing the service;

2. Specify each party's responsibilities, functions, and objectives, the time during which services are to be provided, the financial arrangements and charges, and the duration of the written agreement or its equivalent;

3. Specify that the facility retain administrative responsibility for services rendered, including subcontracted services;

4. Require that services are provided in accordance with these rules and that personnel providing services meet training and experience requirements and are supervised in accordance with these rules; and

5. Require the provision of written documentation to the facility, including, but not limited to, documentation of services rendered by the person or agency providing the service.

8:42-3.8 Reportable events

(a) The facility shall notify the Department immediately by telephone (609-588-7725), followed within 72 hours by written confirmation, of the following:

1. Termination of employment of the administrator and/or the public health nurse director, and the name and qualifications of his or her replacement;

2. Expected or actual interruption or cessation of operations and services listed in these rules; and

3. Any deaths resulting from accidents or incidents related to the facility's services.

(b) The facility shall provide statistical data as required by the Department.

8:42-3.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility to patients and the public:

1. All waivers granted by the Department;
2. All documents required by these rules;
3. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;
4. A list of the facility's committees, or their equivalents, and the membership and reports of each;
5. The names and addresses of members of the governing authority;
6. Any changes of membership of the governing authority, within 30 days after the change; and
7. Policies and procedures regarding patient rights.

8:42-3.10 Reporting information to the State Board of Medical Examiners

(a) In accordance with the Professional Medical Conduct Reform Act, P.L. 1989, c.300, the facility shall notify the Medical Practitioner Review Panel established by the New Jersey State Board of Medical Practitioners if a practitioner who is employed by or who is under contract to render professional services of all actions which result in reduction or restriction of staff privileges. The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any practitioner licensed by the Board when the proceeding or action results in a practitioner's reduction or suspension of privileges or removal or resignation from the medical staff; and
2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved.

(b) For purposes of (a) above, "practitioner" means physician, medical resident or intern, or podiatrist.

(c) Notifications shall be provided within seven days of the date of the action, settlement, judgment or award and shall be submitted on forms provided for that purpose. Forms shall be submitted to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. (Questions may be directed to the Board office at (609) 292-4843.)

8:42-3.11 Reporting to professional licensing boards

The facility shall comply with all requirements of the professional licensing boards for reporting termination, suspension, revocation, or reduction of privileges of any health professional licensed in the State of New Jersey.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:42-4.1 Responsibility

(a) The governing authority shall assume legal responsibility for the management, operation, and financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;
2. Adoption and documented review of written bylaws or their equivalent at least every two years;
3. Development and documented review of all policies and procedures;
4. Establishment and implementation of a system to identify and resolve patient and staff grievances and/or recommendations, including those relating to patient rights. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;
5. Determination of the frequency of meetings, which shall be at least annually, of the governing authority, holding such meetings, and documenting them through minutes, including a record of attendance;
6. Delineation of the powers and duties of the officers and committees, or their equivalent, of the governing authority; and
7. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing, appointing, or employing officers, and the terms of service for members, officers, and committee chairpersons or their equivalents.

SUBCHAPTER 5. ADMINISTRATION

8:42-5.1 Administrator

(a) The governing authority shall appoint an administrator who is administratively responsible and available for all aspects of facility operations. If the facility has only one office, and if the qualifications for both positions are met, the director of nursing may function as the administrator.

(b) An alternate or alternates shall be designed in writing to act in the absence of the administrator.

8:42-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;
2. Planning for and administering the managerial, operational, fiscal, and reporting components of the facility;
3. Participating in the quality assurance program for patient care;
4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;
5. Ensuring the provision of staff orientation and staff education; and
6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families, in accordance with the philosophy and objectives of the facility.

8:42-5.3 Director's of Nursing responsibilities

The director of nursing shall be responsible for the direction of patient care services provided to patients.

SUBCHAPTER 6. PATIENT CARE SERVICES

8:42-6.1 Advisory group

(a) The governing authority shall appoint an advisory group which ensures participation by at least one physician, the director of nursing and/or nursing supervisor, a consumer, and a representative of physical therapy services, and, if offered by the agency, occupational therapy, speech-language therapy, audiology, social work, and dietary counseling.

(b) At least one member of the advisory group shall be neither an owner nor an employee of the facility.

(c) The full advisory group shall meet at least annually.

8:42-6.2 Policies and procedures

(a) The facility shall establish written policies and procedures governing patient care that are reviewed at least annually by the agencywide advisory group, revised as needed, and implemented. They shall include at least the following:

1. Criteria for admission, discharge, and readmission of patients. Admissions criteria shall be based solely upon the patient's needs and the ability of the facility to meet safely the medical, nursing, and social needs of the patient. Discharge policies shall preclude punitive discharge.
2. Criteria for physicians orders for home health services, including timeframes and other requirements for written, verbal, and renewal orders. Physician orders for physical therapy, occupational therapy, and speech therapy shall include the modality, frequency, and duration of treatment.
3. Protocols for initiation, implementation, review, and revision of plans of care and of the service plan;
4. Protocols for reassessment of patients, in accordance with timeframes documented by each health care practitioner in the service plan;
5. Protocols for providing continuity of care by the same health care practitioner whenever possible;
6. Provision of care in accordance with the plan of care;
7. Provision of emergency care;
8. Policies and procedures for the use of restraints, including at least:

i. The need for written physicians orders;
ii. Indications and contraindications for use, including emergency use or use during medical procedures;
iii. Alternatives to physical restraints, such as environmental interventions or behavior management;
iv. The designation of staff who are authorized to use restraints according to scope of practice; and
v. Teaching the patient's family or primary caregiver the use of a progressive range of restraining procedures from the least restrictive to the most restrictive, the appropriate application and release of restraints, and observation of the patient;
9. Requirements for a discharge plan for each patient developed prior to the patient's discharge, and methods for including the patient and/or the patient's family in planning and implementing the discharge plan; and
10. A system for referral of patients to other sources of care.

8:42-6.3 Advance directives

(a) In accordance with the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201, the agency shall establish procedures for the resolution of conflict concerning the patient's decision-making capacity or the appropriate interpretation and application of the terms of an advance directive to the patient's course of treatment. The procedures may include consultation with an institutional ethics committee, a regional ethics committee, or another type of affiliated ethics committee, or with any individual or individuals who are qualified by training or experience to make clinical and ethical judgments.

(b) The agency shall establish a process for patients, families, and staff to address concerns relating to advance directives.

(c) The agency shall provide community education programs at least annually, individually or in coordination with other area agencies or organizations. These programs shall be provided within the agency's service area as recognized by the Certificate of Need process and shall provide information to consumers regarding advance directives and their rights under New Jersey law to executive advance directives.

(d) The agency shall establish written policies and procedures governing the services provided to implement the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201. These policies and procedures shall be reviewed annually, revised as needed, and shall include at least:

1. Providing to each patient prior to the provision of care, or to family member or other representative if the patient is unable to respond, a written statement of the patient's rights under New Jersey law to make decisions including the right to refuse medical care and to formulate an advance directive, as well as the agency's written policies and procedures regarding implementation of such rights. This statement shall be issued by the Commissioner and shall be made available in any language which is spoken as the primary language by more than 10 percent of the population in the agency's service area;
2. Routinely inquiring of each adult patient, in advance of coming under the care of the agency and at other appropriate times, about the existence and location of an advance directive. If the patient is incapable of responding to this inquiry, the agency shall request the information from the patient's family or other representative. The response to this inquiry shall be documented in the patient's medical record;
3. Requesting and taking reasonable steps to obtain for all patients copies of currently executed advance directives, which shall be entered into the medical record;
4. Evaluating the validity of the advance directive, where a question of validity is indicated, and establishing procedures for assisting in the execution of a currently valid advance directive;
5. Providing appropriate written informational materials concerning advance directives to all interested patients, families, and health care representatives, and assistance or referral to staff or community resource persons for patients interested in discussing and executing an advance directive.
6. Delineation of the responsibilities of attending physicians, administration, nursing, social service, and other staff in regards to (d)1 through 5 above; and
7. Policies for transfer of the responsibility for care of patients with advance directives when a health care professional declines as a matter of professional conscience to participate in withholding or withdrawing life-sustaining treatment. Such transfer shall assure that the advance directive is implemented by the agency in accordance with the patient's wishes.

(e) A patient shall be transferred in another agency only for the following reasons:

1. A valid medical reason, including the agency's inability to care for the patient;
2. In order to comply with clearly expressed and documented patient choice in accordance with applicable laws or regulations; or
3. In conformance with the New Jersey Advance Directives for Health Care Act in the instance of a private, religiously affiliated home health agency which establishes written policies defining circumstances in which it will decline to participate in the withholding or withdrawal of life-sustaining treatment. Such agencies shall:

i. Provide written notice of the policy to patients, families, or health care representatives prior to or at the time of admission to services; and
ii. Implement a timely and respectful transfer of the patient to an agency which will implement the advance directive.

(f) The sending agency shall receive approval from the receiving agency before transferring the patient.

(g) The agency shall provide staff training and education programs regarding the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201, and the Federal Patient Self Determination Act, Pub.L. 101-508. This education and training shall address at least the following:

1. The rights and responsibilities of staff; and
2. Internal policies and procedures to implement these laws.

(h) The agency shall establish policies and procedure for the declaration of death of patients in accordance with N.J.S.A. 26:6 and the New Jersey Declaration of Death Act, P.L. 1991, c.90. Such policies shall also be in conformance with regulations and policies promulgated by the New Jersey Board of Medical Examiners which address declaration of death based on neurological criteria and the acceptable medical criteria, tests, and procedures that may be used. The policies and procedures must accommodate the patient's religious beliefs with respect to declaration of death.

8:42-6.2 Pharmacy and supplies

(a) The facility shall establish written policies and procedures governing pharmacy and supplies that are reviewed annually, revised as needed, and implemented. They shall include at least the following:

1. Provision for emergency supplies, including the contents, locations, and frequency of checking (including checking of expiration dates) of emergency supplies;
2. Requirements for the purchase, storage, handling, safeguarding, accountability, use, and disposition of medications in accordance with the New Jersey State Board of Pharmacy Rules (N.J.A.C. 13:39), the Controlled Dangerous Substances Act of 1970 (Title II, Pub.L. 91-153), and the New Jersey Controlled Dangerous Substances Act of 1970 (N.J.S.A. 24:21-1 et seq.) and amendments thereto;
3. Procedures for documenting all drug administration; and
4. Reporting and documenting medication errors and adverse drug reactions.

(b) The facility shall provide current pharmaceutical reference materials and sources of information to staff.

SUBCHAPTER 7. NURSING SERVICES

8:42-7.1 Provision of nursing services

The facility shall provide nursing services to patients who need these services.

8:42-7.2 Nursing organization, policies, and procedures

(a) A written organizational chart and written plan that delineates lines of authority, accountability, and communication shall be available to all nursing personnel in the agency at all times.

(b) The agency shall have written policies and procedures for the provision of nursing services that guide nursing practices in the agency. These policies shall be reviewed annually, revised as needed, and implemented. These policies and procedures shall conform with the Nurse Practice Act at N.J.S.A. 45:11-23 and N.J.A.C. 13:37-1.4, 6.1, 6.2, 13.1, and 13.2.

(c) The agency's current clinical and administrative nursing policies and procedures shall be available to all nursing personnel at all times.

8:42-7.3 Nursing staff qualifications and responsibilities

(a) The governing authority shall appoint a full-time director of nursing who shall be available in the facility. An alternate or alternates shall be designated in writing to act in the absence of the director.

(b) The director of nursing shall be responsible for the direction, provision, and quality of nursing services. He or she shall be responsible for, but not limited to, the following:

1. Overall planning, supervision, and administration of nursing services;

2. The coordination and integration of nursing services with other home health services to provide a continuum of care for the patient;

3. Development of protocols for regular verbal communication, including case conferencing, between the nursing service and other disciplines based on the needs of each patient;

4. Development of written job descriptions and performance criteria for nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Ensuring that nursing services are provided to the patient as specified in the nursing plan of care; and

6. Ensuring public health nursing supervision to nursing personnel.

(c) A full-time nursing supervisor or alternate coverage by a registered professional nurse shall be available on the premises of each facility branch office during its hours of operation to provide clinical supervision.

(d) Registered professional nurses and licensed practical nurses shall provide nursing care to patients commensurate with their scope of practice, as delineated in the Nurse Practice Act. Nursing care shall include, but not be limited to, the following:

1. The promotion, maintenance, and restoration of health;

2. Ensuring the prevention of infection, accident, and injury;

3. Performing an initial assessment and identifying problems for each patient upon admission to the nursing service. The initial assessment shall be performed by a registered professional nurse;

4. Reassessing the patient's nursing care needs an ongoing, patient-specific basis and providing care which is consistent with the medical plan of treatment;

5. Monitoring the patient's response to nursing care; and

6. Teaching, supervising, and counseling the patient, family members, and staff regarding nursing care and the patient's needs, including other related problems of the patient at home. Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel.

(e) Nursing staff shall administer medications in accordance with all Federal and State laws and rules.

8:42-7.7 Nursing entries in the medical/health record

(a) In accordance with written job descriptions and with these rules, nursing personnel shall document in the patient's medical/health record:

1. The nursing plan of care in accordance with the facility's policies and procedures;

2. Clinical notes and progress notes; and

3. A record of medications administered. After each administration of medication, the following shall be documented by the nurse who administered the drug: name and strength of the drug, data and time of administration, dosage administered, method of administration, and signatures of the licensed nurse who administered the drug.

8:42-7.8 Homemaker-home health aide services

(a) The facility shall provide homemaker-home health aide services in accordance with the following:

1. The homemaker-home health aide shall have completed a training program approved by the New Jersey Board of Nursing, shall be certified by the Board of Nursing, and shall provide verification of current certification for inclusion in the agency personnel record;

2. The homemaker-home health aide shall provide personal care and/or homemaking services under the direction and supervision of a registered professional nurse;

i. The registered professional nurse shall assign the homemaker-home health aide to a patient and shall give written instructions to the homemaker-home health aide regarding the home health services to be provided. The homemaker-home health aide shall document the home health services provided. Copies of the written instructions shall be kept in the patient's home and documentation of services provided shall be kept in the patient's medical/health record;

ii. If the registered professional nurse delegates selected tasks to the homemaker-home health aide, the registered professional nurse shall determine the degree of supervision to provide, based upon an evaluation of the patient's condition, the education, skill, and training of the homemaker-home health aide to whom the tasks are delegated, and the nature of the tasks and activities being delegated. The registered professional nurse shall delegate a task only to a homemaker-home health aide who meets the requirements specified in (a)1 above and who has demonstrated the knowledge, skill, and competency to perform the delegated tasks; and

iii. The registered professional nurse shall make supervisory visits to the patient's home and document these visits in the patient's medical record, in accordance with the facility's policies and procedures; and

3. The homemaker-home health aide shall be responsible for, but not limited to, providing personal care and homemaking services essential to the patient's health care and comfort at home, including shopping, errands, laundry, meal planning and preparation (including therapeutic diets), serving of meals, child care, assisting the patient with activities of daily living, and assisting with prescribed exercises and the use of special equipment.

SUBCHAPTER 8. REHABILITATION SERVICES (PHYSICAL THERAPY, OCCUPATIONAL THERAPY, SPEECH-LANGUAGE PATHOLOGY, AND AUDIOLOGY)

8:42-8.1 Services

(a) The facility shall provide physical therapy and may provide occupational therapy, speech-language pathology, and audiology services, directly or through written agreement, to patients who need these services.

(b) The facility shall develop and implement written objectives, policies, a procedural manual, and a quality assurance program for rehabilitation services.

8:42-8.2 Responsibilities of rehabilitation personnel

(a) In accordance with written job descriptions (and for physical therapy personnel, in accordance also with the State of New Jersey Physical Therapy Practice Act, N.J.S.A. 45:9-37.11 et seq.; and for speech-language pathology and audiology personnel, in accordance also with the State of New Jersey Audiology and Speech-Language Pathology Practice Act, N.J.S.A. 45:3B-1 et seq.), each physical therapist, occupational therapist, speech-language pathologist, and audiologist shall be responsible for, but not limited to, the following:

1. Assessing the physical therapy, occupational therapy, speech-language pathology, or audiology needs of the patient, preparing the rehabilitation plan of care based on the assessment, providing rehabilitation services to the patient as specified in the rehabilitation plan of care, reassessing the patient's response to services provided,

and revising the rehabilitation plan of care as needed. Each of these activities shall be documented in the patient's medical/health record;

2. Participating in the quality assurance program for rehabilitation services and patient care;

3. Participating in staff education activities and providing consultation to facility personnel; and

4. Communicating and documenting the communication with other disciplines and services to provide continuity and coordination of patient care.

8:42-8.3 Rehabilitation entries in the medical/health record

(a) Each physical therapist, occupational therapist, speech-language pathologist, or audiologist shall document in the patient's medical/health record:

1. The rehabilitation plan of care, which may be the rehabilitation portion of the patient's plan of care. The plan of care shall be reviewed and revised by the therapist, speech-language pathologist, or audiologist; and

2. Clinical notes and progress notes.

SUBCHAPTER 9. SOCIAL WORK SERVICES

8:42-9.1 Services

(a) Social work services may be provided directly or through written agreement to patients who need these services.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for social work services shall be developed and implemented.

8:42-9.2 Social worker's responsibilities

(a) Each social worker shall be responsible for, but not limited to, the following:

1. Performing a psychosocial assessment of the patient; preparing the social work plan of care based on the assessment; providing social work services to the patient as specified in the social work plan of care; reassessing the patient's response to services provided; and revising the social work plan of care as needed. Each of these activities shall be documented in the patient's medical/health record;

2. Contacting social service and other community resources for information, referrals, and services;

3. Providing social work counseling to the patient and his or her family;

4. Participating in the quality assurance program for social work services and patient care; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:42-9.3 Social work entries in the medical/health record

(a) The social worker shall document in the patient's medical/health record:

1. The social work plan of care, which may be the social work portion of the patient treatment plan. The plan of care shall be reviewed and revised by the social worker; and

2. Clinical notes and progress notes.

SUBCHAPTER 10. DIETARY COUNSELING SERVICES

8:42-10.1 Services

(a) Dietary counseling services may be provided directly or through written agreement to patients who need these services.

(b) The facility shall develop and implement written objectives, policies, a procedure manual, and a quality assurance program for dietary counseling services.

8:42-10.2 Responsibilities of dietitian or dietary consultant

(a) Each dietitian or dietary consultant shall be responsible for, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary plan of care based on the assessment, providing dietary counseling services to the patient as specified in the dietary plan of care, reassessing the patient's response to services provided, and revising the dietary plan of care as needed. Each of these activities shall be documented in the patient's medical/health record;

2. Communicating and documenting the communication with other disciplines and services to provide continuity and coordination of patient care;

3. Participating in the quality assurance program for dietary counseling services and patient care; and

4. Participating in staff education activities and providing consultation to facility personnel.

8:42-10.3 Dietary entries in the medical/health record

(a) The dietitian or dietary consultant shall document in the patient's medical/health record:

1. The dietary plan of care, which may be the dietary counseling portion of the patient's plan of care. The plan of care shall be reviewed and revised by the dietitian or dietary consultant; and

2. Clinical notes and progress notes.

SUBCHAPTER 11. MEDICAL/HEALTH RECORDS

8:42-11.1 Medical/health records organization

(a) The facility shall develop written objectives, policies and procedures, an organizational plan, and a quality assurance program for medical/health records services. The quality assurance program shall include monitoring medical/health records for accuracy, completeness, legibility, and accessibility.

(b) At least 14 days before a facility plans to cease operations, it shall notify the New Jersey Department of Health in writing of the location and method for retrieval of medical/health records.

(c) There shall be a system for identifying medical/health records to facilitate their retrieval by patient identifier.

(d) Medical/health records shall be organized with a uniform format for all records.

(e) The patient's medical/health record shall be available to the health care practitioners involved in the patient's care.

8:42-11.2 Medical/health records policies and procedures

(a) The facility shall have written policies and procedures for medical/health records that are reviewed annually, revised as needed and implemented. They shall include at least:

1. Entries for clinical treatment, which shall be included in the medical/health record within 14 days;

2. Procedures for record completion, including review for accuracy and completion, which shall occur within 45 days;

3. Procedures for the protection of medical record information against loss, tampering, alteration, destruction, or unauthorized removal or use;

4. Conditions, procedures, and fees for releasing medical information; and

5. Release and/or provision of copies of the patient's medical/health record to the patient and/or the patient's authorized representative, including, but not be limited to, the following:

i. Establishment of a fee schedule for obtaining copies of the patient's medical/health record;

ii. Availability of the patient's medical/health record to the patient's authorized representative if it is medically contraindicated (as documented by a physician in the patient's medical/health record) for the patient to have access to or obtain copies of the record; and

iii. Procedures to ensure that a copy of the patient's medical/health record is provided within 30 calendar days of a written request.

(b) All entries in the patient's medical/health record shall be typewritten or written legibly in ink, and shall include date, signature, title, or authentication if an electronic system is used.

(c) A medical/health record shall be initiated for each patient upon admission and shall include at least the following:

1. Patient identification data, including name, date of admission, address, date of birth, sex, race and religion (optional), next of kin, and person to notify in an emergency;

2. Name, address, and telephone number of the patient's physician, an alternate physician, and other primary health care providers if any;

3. A plan of treatment as defined at N.J.A.C. 8:42-1.1. This plan shall be:

i. Initiated and implemented when the patient is admitted;
ii. Coordinated and maintained by the nursing service or the physical therapy service, if physical therapy is the sole service;
iii. Inclusive of, but not limited to, the patient's diagnosis, patient goals, means of achieving goals, and care and treatment to be provided;
iv. Current and available to all personnel providing patient care; and
v. Included in the patient's medical/health record.
4. A plan of care as defined at N.J.A.C. 8:42-1.1, including an assessment and plan by each discipline involved in the patient's care;
5. All physician orders;
6. All telephone orders, which must be countersigned by a physician within 14 days;
7. Clinical notes;
8. Progress notes;
9. A record of medications if administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug. This record shall include action, side effects and contraindications of medications where clinically indicated;
10. Documentation of allergies in the medical/health record and on its outside front cover;
11. An immunization record, in accordance with the facility's policies and procedures;
12. Written informed consents if indicated;
13. A copy of the patient's advance directive, if available, or documentation of the existence or nonexistence of an advance directive; and documentation of the agency's inquiry to the patient, family, or health care representative regarding this;
14. Copies of written instructions given to the patient and/or the patient's family;
15. A record of any treatment, medication, or service in the service plan that is not provided and the reason, including patient refusal; and
16. A comprehensive discharge summary with narrative information from each service within 30 days of discharge unless the patient is readmitted during that 30 day period.

(d) If the patient is transferred to another health care facility, the agency shall maintain a transfer record reflecting the patient's immediate needs and send a copy of this record to the receiving agency at the time of transfer. The transfer record shall contain at least the following information:
1. Diagnosis, including history of any serious condition unrelated to the proposed treatment which might require special attention to keep the patient safe;
2. Physician orders in effect at the time of transfer and the last time each medication was administered;
3. The patient's nursing needs;
4. Hazardous behavioral problems;
5. Drug and other allergies;
6. Reason for transfer; and
7. A copy of the patient's advance directive if available or notice of the existence of an advance directive.

(e) All consent forms for treatment shall be printed in an understandable format and the text written in clear, legible, nontechnical language. If a family member or other patient representative signs the form, the reason for the patient's not signing it and the signer's relationship to the patient shall be indicated on the form.

(f) Medical records shall be completed within 45 days of discharge.

(g) Original medical/health records or original components thereof shall not be removed from facility premises unless they are under court order or subpoena or in order to safeguard the record in case of a physical plant emergency or natural disaster.

(h) Medical records shall be retained and preserved in accordance with N.J.S.A. 26:8-5 et seq.

SUBCHAPTER 12. INFECTION PREVENTION AND CONTROL

8:42-12.1 Infection prevention and control program

(a) The administrator shall ensure the development and implementation of an infection prevention and control program.

(b) The administrator shall designate a person who shall have education, training, completed course work, or experience in infection control or epidemiology, and who shall be responsible for the direction, provision, and quality of infection prevention and control services. The designated person shall be responsible for, but not limited to, developing and maintaining written objectives, a policy and procedure manual, a system for data collection, and a quality assurance program for the infection prevention and control service.

8:42-12.2 Infection control policies and procedures

(a) The facility shall have a multidisciplinary committee which establishes and implements an infection prevention and control program.

(b) The designated committee shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control, including, but not limited to, policies and procedures regarding the following:
1. Infection control and isolation, including Universal Precautions, in accordance with the Centers for Disease Control and Occupational Safety and Health Administration publication, "Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HVB) and Human Immunodeficiency Virus (HIV)," OSHA Instruction CPL 2-2.44A, August 15, 1988 or revised or later editions, if in effect incorporated herein by reference;
2. In accordance with N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;
3. Aseptic technique, employee health, and staff training, the prevention of infection, and general improvement of patient care as it relates to infection control and prevention;
4. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;
5. Surveillance techniques to minimize sources and transmission of infection;
6. The prevention of decubitus ulcers;
7. Sterilization, disinfection, and cleaning practices and techniques including, but not limited to, the following:
i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;
ii. Selection, storage, use, and disposition of single use and nondisposable patient care items;
iii. Methods to ensure that sterilized materials are packaged, labeled, processed, transported, and stored to maintain sterility and to permit identification of expiration dates; and
iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and
8. Collection, handling, storage, decontamination, disinfection, sterilization, and disposal of regulated medical waste and all other solid or liquid waste.

NOTE: Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161
or
Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

8:42-12.3 Infection control measures

(a) The facility shall follow all Category I recommendations in the current editions of the following Centers for Disease Control

publications, and any amendments or supplements thereto, incorporated herein by reference:

1. Guideline for Prevention of Catheter-Associated Urinary Tract Infections;
2. Guideline for Prevention of Intravascular Infections;
3. Guideline for Prevention of Surgical Wound Infections; and
4. Guideline for Handwashing and Hospital Environmental Control.

8:42-12.4 Use and sterilization of patient care items

(a) The facility shall develop protocols for decontamination and sterile activities, including receiving, decontamination, storage, cleaning, packaging, labeling, disinfection, sterilization, transporting, and distribution of reusable items. These protocols shall ensure that:

1. Single use patient care items shall not be reused. Other patient care items which are reused shall be reprocessed and reused in accordance with manufacturers' recommendations;
2. Sterilized materials shall be marked with an expiration date and shall not be used subsequent to the expiration date;
3. Sterilized materials shall be packaged and labeled so as to maintain sterility and so as to permit identification of expiration dates; and
4. Expiration dates shall be assigned to sterilized materials in accordance with the following:

i. Double-wrapped muslin/paper wrappers shall be marked with an expiration date not to exceed one month following sterilization;
ii. Heat-sealed paper/plastic wrappers shall be marked with an expiration date not to exceed one year following sterilization; and
iii. Self-sealed packaging shall be marked with an expiration date not to exceed the manufacturer's recommendation.

8:42-12.5 Care and use of sterilizers

(a) Sterilizers shall be kept clean.

(b) Sterilizer drains shall be flushed at least weekly, unless otherwise specified by the manufacturer, and a record shall be maintained.

(c) At the completion of each sterilization load, the time, temperature, and pressure readings shall be checked and recorded.

(d) A record of each sterilization load, including the date, the load number, the contents of the load, and the expiration dates of the contents, shall be maintained for at least one year.

8:42-12.6 Regulated medical waste

(a) Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal and State laws and regulations.

(b) The facility shall comply with the provisions of the Medical Waste Tracking Act of 1988, and N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to the aforementioned Acts.

8:42-12.7 Communicable diseases alert

The facility shall develop protocols for identifying and handling high-risk bodies, in accordance with centers for Disease Control guidelines and in compliance with N.J.S.A. 26:6-8. In accordance with the provisions of P.L. 1988, c.125 (Assembly bill 1457), the facility shall complete the New Jersey State Department of Health form HFE-4, "Communicable Diseases Alert," in applicable cases.

8:42-12.8 Orientation and in-service education

(a) Orientation for all new employees and staff under contract to provide direct patient care shall include infection control practices for the employee's specific discipline and the rationale for the practices.

(b) The designated committee shall coordinate educational programs to address specific problems at least annually for staff in all disciplines and patient care services.

SUBCHAPTER 13. PATIENT RIGHTS

8:42-13.1 Policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients and the implementation of these rights. A complete statement of these rights, including the right to file a complaint with the New Jersey Department of Health, shall be conspicuously posted in the facility and shall be distributed to all staff and contracted personnel. These patient rights shall be made available in any language which is spoken as the primary language by more than 10 percent of the population in the agency's service area.

(b) Each patient shall be entitled to the following rights, none of which shall be abridged or violated by the facility or any of its staff:

1. To treatment and services without discrimination based on race, age, religion, national origin, sex, sexual preferences, handicap, diagnosis, ability to pay, or source of payment;
2. To be given a written notice, prior to the initiation of care, of these patient rights and any additional policies and procedures established by the agency involving patient rights and responsibilities. If the patient is unable to respond, the notice shall be given to family member or other responsible individual;
3. To be informed in writing of the following:

i. Services available from the facility;
ii. The names and professional status of personnel providing and/or responsible for care;
iii. The frequency of home visits to be provided;
iv. The agency's daytime and emergency telephone numbers; and
v. Notification regarding the filing of complaints with the New Jersey Department of Health 24-hour Complaint Hotline at 1-800-792-9770, or in writing to:

Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625

4. To receive, in terms that the patient understands, an explanation of his or her plan of care, expected results, and reasonable alternatives. If this information would be detrimental to the patient's health, or if the patient is not able to understand the information, the explanation shall be provided to a family member or guardian and documented in the patient's medical record;
5. To receive, as soon as possible, the services of a translator or interpreter to facilitate communication between the patient and health care personnel;
6. To receive the care and health services that have been ordered;
7. To participate in the planning of his or her home health care and treatment;
8. To refuse services, including medication and treatment, provided by the facility and to be informed of available home health treatment options, including the option of no treatment, and of the possible benefits and risks of each option;
9. To refuse to participate in experimental research. If he or she chooses to participate, his or her written informed consent shall be obtained;
10. To receive full information about financial arrangements, including, but not limited to:

i. Fees and charges, including any fees and charges for services not covered by sources of third-party payment;
ii. Copies of written records of financial arrangements;
iii. Notification of any additional charges, expenses, or other financial liabilities in excess of the predetermined fee; and
iv. Description of agreements with third-party payors and/or other payors and referral systems for patients' financial assistance.

11. To express grievances regarding care and services to the facility's staff and governing authority without fear of reprisal, and to receive an answer to those grievances within a reasonable period of time. The facility is required to provide each patient or guardian with the names, addresses, and telephone numbers of the government agencies to which the patient can complain and ask questions, including the New Jersey Department of Health Complaint Hotline at 1-800-792-9770;
12. To freedom from mental and physical abuse and from exploitation;
13. To freedom from restraints, unless they are authorized by a physician for a limited period of time to protect the patient or others from injury;

14. To be assured of confidential treatment of his or her medical/health record, and to approve or refuse in writing its release to any individual outside the facility, except as required by law or third-party payment contract;
15. To be treated with courtesy, consideration, respect, and recognition of his or her dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning patient treatment and disclosures;
16. To be assured of respect for the patient's personal property;
17. To join with other patients or individuals to work for improvements in patient care;
18. To retain and exercise to the fullest extent possible all the constitutional, civil, and legal rights to which the patient is entitled by law, including religious liberties, the right to independent personal decisions, and the right to provide instructions and directions for health care in the event of future decisionmaking incapacity in accordance with the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201, and with N.J.A.C. 8:42-6.3;
19. To be transferred to another facility only for one of the reasons delineated at N.J.A.C. 8:42-6.3(c); and
20. To discharge himself or herself from treatment by the facility.

SUBCHAPTER 14. QUALITY ASSURANCE

8:42-14.1 Quality assurance organization

(a) The governing authority of the facility shall have ultimate responsibility for the quality assurance program.

(b) The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall include a mechanism to ensure participation of all disciplines in quality assurance activities and monitoring, and shall specify staff responsibilities for the quality assurance program.

8:42-14.2 Quality assurance policies and procedures

(a) The quality assurance plan shall be reviewed at least annually and revised as necessary. Responsibility for reviewing and revising the plan shall be designated in the plan itself.

(b) The quality assurance program shall include regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing and monitoring corrective actions on the basis of these data.

(c) The quality assurance plan shall designate the frequency of data collection to ensure regular monitoring of patient care activities.

(d) The ongoing quality assurance activities shall include, but not be limited to:

1. Incident review;
2. Evaluation of patient care services and statistics;
3. Monitoring of infection prevention and control;
4. Evaluation of staffing patterns and staff qualifications and credentials;
5. Evaluation of clinical competence of all clinical practitioners;
6. Evaluation of staff orientation and staff education;
7. Evaluation by patients and their families of care and services provided by the facility; and
8. Audit, at least quarterly, of patient medical/health records (including those of both active and discharged patients) to determine if care has conformed to criteria established by each patient care service for the maintenance of quality of care.

(e) Reports of the activities of all facility committees or their equivalents shall be made available to the advisory group specified in N.J.A.C. 8:42-6.1(a).

(f) The results of the quality assurance program shall be submitted to the governing authority at least annually, and shall include at least deficiencies found and recommendations for corrections or improvements. The administrator shall, with the approval of the governing authority, implement measures to ensure that corrections or improvements are made.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards
Obstetric Licensing Standards
Proposed Amendments: N.J.A.C. 8:43G-19

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.
Proposal Number: PRN 1992-227.

Submit comments by July 1, 1992 to:
Robert J. Fogg, Acting Director
Licensing, Certification, and Standards
Division of Health Facilities Evaluation
N.J. Department of Health
CN 367
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Health is proposing amendments to the hospital licensing standards for obstetrics. The proposed amendments reflect the Department's continuing effort to improve infant and maternal health through the creation of a linked network of care. This network will focus on prevention, case finding, and appropriate referral of pregnant women and high risk infants through a regionalized perinatal and neonatal health care system in New Jersey.

The Department has made a priority commitment to the reduction of infant mortality, with the following objectives: to promote delivery of the highest quality of care to all pregnant women and newborns; to maximize utilization of highly trained perinatal personnel and intensive care facilities; to promote cost effectiveness throughout the system; and to emphasize a coordinated and cooperative prevention-oriented approach to perinatal services. Through a formalized planning process, facilitated by the appointment by the Commissioner of Health of the Perinatal Technical Advisory Committee and the Committee's 1990 report entitled "Proposal for a System of Perinatal Care," a bilevel system of perinatal health care has been proposed. Interventions and services will be provided both at Community and at Regional Perinatal Centers, depending on the level of care required. Basic, intermediate, and intensive services will be provided at the Community Perinatal Centers, while services targeted for the extremely high risk maternal-fetal population will be provided at the Regional Perinatal Centers. The Consortia established pursuant to proposed N.J.A.C. 8:35, published elsewhere in this issue of the New Jersey Register, will coordinate and monitor care, as well as provide regional quality assurance and educational programs.

Social Impact

Maternal and child health continues to be a concern for the State of New Jersey, especially the health status of infants and small children. Although infant mortality has dropped from 11.5 deaths per 1000 live births in 1981 to 9.3 in 1989, much remains to be done. New Jersey has yet to reach the 1990 target set in "Objectives for the Nation" for overall infant mortality (9.0 deaths per 1000 live births), or the target for non-white infant mortality (12.0 deaths per 1000 live births). The State's very low birth rate has actually increased, with the non-white rate (2.8 percent) being almost three times the white rate (0.96 percent).

There is wide recognition that further substantial gains cannot be accomplished through further emphasis on costly technological improvements. In order to achieve additional progress towards reducing the infant mortality rate, the focus must shift to prevention of low birth weight. This can best be achieved through a network of services and interventions which provide outreach, identification of high risk populations, and specialized levels of care and services for the management of high risk pregnancies and deliveries. The proposed amendments are intended to promote the goals of reducing the infant mortality rate and promoting improved maternal and child health care in New Jersey, through the delineation of specific qualifications and competencies for staff at designated levels of care.

Economic Impact

The average cost of hospital care in New Jersey for a high risk, very low birth weight, infant exceeded $70,000 in 1989. Only with the preven-

tion of low birth weight through adequate and timely prenatal care can savings in this area of health care expenditures be realized. The savings that are anticipated from the prevention of low birth weight infants and maternal and neonatal morbidity are expected to offset the anticipated costs of developing and staffing the designated appropriate levels of perinatal care and the development and staffing of Maternal and Child Health Consortia. Additionally, it is expected that at least seven consortia will be approved and share a budget of $4.4 million Statewide, funded through hospital rates.

Regulatory Flexibility Statement

The proposed amendments to the hospital licensing standards would not affect small businesses, as the term is defined in the Regulatory Flexibility Act, 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

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

SUBCHAPTER 19. OBSTETRICS

8:43G-19.1 Scope of obstetric standards; **definitions**

(a) The standards in this subchapter shall apply only to hospitals that have a separate, designated unit or service for obstetrics.

(b) The following terms, when used in this subchapter, shall have the following meanings.

"Community Perinatal Center" means a licensed hospital designated within a Maternal and Child Health Service Region as one of the following:

1. "Basic" provides services primarily for uncomplicated maternity and normal newborn patients in accordance with the scope of functions delineated in its formal letter of agreement with the Regional Perinatal Center. Such a facility shall provide care to patients expected to deliver neonates greater than 2499 grams and 36 weeks gestation.

2. "Intermediate" provides care to complicated maternity patients and neonates in accordance with the scope of functions delineated in its formal letter of agreement with the Regional Perinatal Center. Such a facility shall provide care to patients expected to deliver neonates greater than 1499 grams and 32 weeks gestation.

3."Intensive" means a licensed hospital which provides care to complicated maternity patients and neonates in accordance with the scope of functions delineated in its letter of agreement with the hospital and the Regional Perinatal Center. Such a facility shall provide care to patients expected to deliver neonates greater than 999 grams and 28 weeks gestation.

"Inpatient obstetrics" means labor and delivery, postpartum and newborn care services.

"Maternal and Child Health Service Region" means the perinatal and pediatric service delivery area defined by the concept of cooperative network formation. Contained within each region is at least one Regional Perinatal Center, one Regional Pediatric Center and the balance, Community Perinatal and Pediatric Centers.

"Mechanical ventilatory support" means the application of positive pressure ventilation and oxygen through mechanical devices to include continuous positive airway pressure (CPAP).

"Nurse manager" means a registered professional nurse currently licensed by the New Jersey State Board of Nursing, who has administrative responsibility over the areas of labor and delivery, recovery, newborn nurseries and postpartum and antepartum.

"Perinatal clinical nurse specialist" means a registered professional nurse currently licensed by the New Jersey State Board of Nursing with a master's degree in a maternal and child health nursing specialty from an accredited college or university. This individual is responsible for providing hospital and regional professional education and consultation.

"Regional Perinatal Center" means a licensed hospital which is the preferred provider of care to high risk mothers and high risk neonates in the maternal and child health region. Such a facility is responsible for providing consultation, referral, transport and follow-up to the region.

"Unit nurse manager" means a registered professional nurse currently licensed by the New Jersey State Board of Nursing who has administrative responsibility over an individual hospital care unit.

8:43G-19.2 Obstetrics policies and procedures[; mandatory]

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

[(e) The hospital shall establish and implement transfer agreements for patients who require a higher level of care than the hospital is designated to provide.]

Recodify (f) as **(e)** (No change in text.)

8:43G-19.3 Obstetrics staff qualifications[; mandatory]

(a) (No change.)

(b) [There shall be] **The inpatient obstetric service shall have** a full-time nurse, with [administrative or] clinical responsibility for all nursing care, [on the obstetric service] who is a registered professional nurse [with the equivalent of three years of full-time experience in maternal and child nursing] **and who has completed:**

1. A minimum of three years of experience in inpatient obstetric services within the five years immediately preceding the date of appointment; and

2. A continuing education course in maternal-fetal or neonatal nursing approved by a nationally recognized nurse education accrediting body. [The nurse with administrative or clinical responsibility for the obstetric service may also be responsible for nursing on the newborn care service.]

(c) (No change.)

(d) The obstetric service in a hospital designated as a Community Perinatal Center-Intermediate shall have unit nurse managers who are registered professional nurses and who have:

1. A minimum of three years of combined experience in labor and delivery, newborn nursery, postpartum and neonatal intermediate or intensive within the five years immediately preceding the date of application; and

2. Educational preparation in maternal-fetal and neonatal services in accordance with hospital policy.

(e) The obstetric service in a hospital designated as a Community Perinatal Center-Intensive or a Regional Perinatal Center, in addition to the unit nurse managers identified in (d) above, shall have a clinical nurse coordinator who is a registered professional nurse and who has:

1. A minimum of five years experience in labor and delivery, postpartum, newborn nursery and neonatal intensive care within the seven years immediately preceding the date of application. Of the five years minimum experience, at least one year shall have been in a supervisory capacity and one year shall have been in clinical neonatal intensive care; and

2. Educational preparation in maternal-fetal and neonatal services in accordance with hospital policy.

(f) The obstetric service in hospitals designated as a Regional Perinatal Center shall have a perinatal clinical nurse specialist who is responsible for intramural and regional staff training and consultation in perinatal care. This individual shall be a registered professional nurse with a master's degree in a maternal and child health nursing specialty from an accredited college or university and who has:

1. A minimum of five years experience in labor and delivery, newborn nursery or neonatal intensive care within the seven years immediately preceding the date of appointment. Of the five years minimum experience, two years shall have been in an educational capacity; and

2. Certification by the National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties or American Nurses' Association.

8:43G-19.4 Obstetrics staff [qualifications; advisory (Reserved)] **time and availability**

(a) The obstetric service in hospitals designated as a Community Perinatal Center-Basic shall be covered at all times by a board eligible or certified obstetrician or a board eligible or certified family practice physician with obstetric privileges, who is present in the hospital or available by telephone and able to arrive within 30

minutes of being summoned, under normal transportation conditions.

(b) The obstetric service in hospitals designated as a Community Perinatal Center-Intermediate shall be covered at all times by a board eligible or certified obstetrician or an obstetric resident with at least three years of training, who is either present in the hospital or available by telephone and able to arrive within 30 minutes of being summoned, under normal transportation conditions.

(c) The obstetric service in hospitals designated as a Community Perinatal Center-Intensive shall be covered at all times by a board certified obstetrician, who is present in the hospital or available by telephone and able to arrive within 30 minutes of being summoned, under normal transportation conditions.

(d) The obstetric service in hospitals designated as a Regional Perinatal Center shall be covered at all times by:

1. A board certified obstetrician who is present in the hospital; and

2. A board certified obstetrician with certification in maternal-fetal medicine, who is either present in the hospital or available by telephone and able to arrive within 30 minutes of being summoned, under normal transportation conditions.

(e) The physician in (d)2 above may also fulfill the requirement for physician coverage at (d)1 above during those times in which he or she is present in the hospital.

8:43G-19.6 [Obstetrics patient services; advisory (Reserved)]
Maternal-fetal transport and neonatal transport

(a) Maternal transports for maternal management shall only be accepted by a hospital designated as a Regional Perinatal Center. Maternal transports, when the expected birth weight or gestational age falls below the facility's certified capability for neonatal care, shall be made in accordance with the facility's letter of agreement.

(b) Each Community Perinatal Center shall establish and implement transfer agreements for patients who require a higher level of care for maternal management or delivery than the hospital is designated to provide. This shall be documented in its letter of agreement with the Regional Perinatal Center.

(c) The Regional Perinatal Center shall develop and implement policies and procedures that establish a maternal-fetal transport system which includes, at a minimum, a transport team staffed by health professionals with special training in maternal and fetal care in accordance with hospital policy.

(d) The hospital shall establish and implement transfer agreements for neonates who require a higher level of care than the hospital is designated to provide. Transfer agreements shall be developed only with hospitals designated as Regional Perinatal Centers or Community Perinatal Centers-Intensive in accordance with the Regional Perinatal Plan. The transport agreement shall also include provisions for return of the neonate to the sending hospital when the problems that required transport have been resolved.

(e) All infants, regardless of birth weights, who require major surgery or other highly specialized services shall be transported to a Regional Perinatal Center, children's hospital or specialized hospital capable of providing the care.

(f) All Regional Perinatal Centers and Community Perinatal Center—Intensives which have a letter of agreement to accept neonatal transports shall have, at a minimum:

1. A transport team staffed by health professionals with special training in neonatology;

2. Board eligible or certified anesthesiologists available with special training in the care of neonates;

3. Formal consultative relationship with physicians in the following pediatric subspecialties: anesthesiology, cardiology, hematology/oncology, infectious diseases, nephrology, neurology, pulmonary, radiology, and surgery; and

4. Written policies and procedures specific to the required arrival time for the physicians with pediatric subspecialties identified in (f)3 above.

8:43G-19.18 Newborn care staff qualifications[; mandatory]

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

(f) A hospital designated as a Regional Perinatal Center shall have a physician director of the neonatal intensive care nursery who is board certified in pediatrics with certification in neonatal medicine.

8:43G-19.19 Newborn care staff time and availability[. mandatory]

(a) [There shall be] **The basic newborn nursery shall be covered at all times by a pediatrician or family practice physician with pediatric privileges, who is either** present in the hospital [at all times] or available by telephone and able to arrive within 30 minutes of being summoned, under normal transportation conditions.

(b) [There shall be] **The basic newborn nursery shall have** a registered professional nurse present whenever an infant is in the newborn nursery. [Staffing] **Additional staffing** assignments [in the newborn nursery] shall be determined by acuity levels [of] **appropriate to** infants.

(c) The basic newborn nursery shall have at least one registered professional nurse to every eight infants.

(d) The intermediate nursery shall be covered at all times by a board eligible or certified pediatrician with certification and/or one year training in neonatology, who is either present in the hospital or available by telephone and able to arrive within 30 minutes of being summoned, under normal transportation conditions.

(e) The intermediate nursery shall have at least one registered professional nurse to every three infants. Additional staffing assignments shall be determined by the acuity levels of the infants.

(f) The neonatal intensive nursery shall be covered at all times by a board eligible or certified pediatrician with at least one year of training in neonatal medicine, present in the hospital.

(g) The neonatal intensive nursery shall be covered at all times by a board certified pediatrician with certification in neonatal medicine, who is either present in the hospital or available by telephone and able to arrive within 30 minutes of being summoned, under normal transportation conditions. This physician may also serve as the physician director of the neonatal intensive care nursery.

(h) The neonatal intensive care nursery shall have at least one registered professional nurse to every two infants. Additional staffing assignments shall be determined by the acuity levels of the infants.

8:43G-19.20 Newborn care patient services[; mandatory]

(a) (No change.)

(b) [Oxygen monitoring shall be done on newborns receiving continuous oxygen therapy.] **Specialized services for newborns shall be provided as specified below:**

1. A Community Perinatal Center—Basic may provide care to neonates greater than 2499 grams and 36 weeks gestation. A Community Perinatal Center—Basic shall not provide mechanical ventilatory support, except for resuscitative measures, nor shall it provide total parenteral nutrition. Neonates needing such care shall be transferred in accordance with the hospital's letter of agreement.

2. A Community Perinatal Center—Intermediate may provide care to neonates greater than 1499 grams and 32 weeks gestation. A Community Perinatal Center—Intermediate may provide short term mechanical ventilatory support. In no case shall mechanical ventilatory support exceed five cumulative days, except in cases where authorization has been received from the neonatologist on-call at the Regional Perinatal Center and documented in the medical record on a daily basis. A Community Perinatal Center—Intermediate shall not provide total parenteral nutrition. Neonates needing such care shall be transferred in accordance with the hospital's letter of agreement.

3. A Community Perinatal Center—Intensive may provide care to neonates greater than 999 grams and 36 weeks gestation. A Community Perinatal Center—Intensive may provide long term ventilatory support and total parenteral nutrition.

4. A Regional Perinatal Center may provide long term ventilatory support and total parenteral nutrition.

(c)-(f) (No change.)

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF DAIRY INDUSTRY

Producers of Milk

Readoption with Amendment: N.J.A.C. 2:50

Proposed: March 16, 1992, at 24 N.J.R. 893(a).

Adopted: May 1, 1992 by State Board of Agriculture and Arthur R. Brown, Jr., Secretary of Agriculture.

Filed: May 1, 1992 as R. 1992 d.229, **without change.**

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-20 and 4:12-41.15, and 4:1-24.

Effective Date: May 1, 1992, Readoption;
June 1, 1992, Amendment.
Expiration Date: May 1, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:50.

Full text of the adopted amendment follows:

2:50-3.2 Milk weighing, measuring and sampling procedures

(a) Weighing, measuring and sampling milk should be performed pursuant to the procedures as set forth in the current "Standard Methods for Examination of Dairy Products," published by the American Public Health Association, Inc., and as a minimum shall include the following:

1. (No change.)

2. Agitate for not less than five minutes and longer if necessary to disperse the butterfat uniformly throughout the tank:

i. The person holding the weigher and sampler certificate issued by the Division of Dairy Industry shall be responsible for ascertaining that the milk is agitated for not less than five minutes and should periodically check the tank time to determine whether it may be used as a guide; and

ii. It is suggested that each truck carry a timing device which may be used for timing the agitation;

3. (No change.)

(b) (No change.)

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

Mortgage Bankers and Brokers

Adopted Amendments: 3:38-1.9 and 4.1
Adopted New Rules: 3:38-1.1 and 3:38-5

Proposed: November 18, 1991 at 23 N.J.R. 3406(b) (see also 23 N.J.R. 3686(c)).

Adopted: April 30, 1992 by Jeff Connor, Commissioner, Department of Banking.

Filed: May 1, 1992 as R.1992 d.226, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8; 17:11B-13, *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Comm'n, et al.,* 102 *N.J.* 176 (1986) (on remand—OAL Docket No. BRE-228-87).

Effective Date: June 1, 1992.

Operative Date for N.J.A.C. 3:38-5.3: January 1, 1993.

Expiration Date: October 5, 1992.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

1. Edmond V. Lawlor, Jr., President, New Jersey Savings League.
2. Stanley M. Gordon, Esq., Gordon & Wolf, on behalf of the Prudential Real Estate Affiliates, Inc.
3. Glenn A. La Mattina, on behalf of The Mortgage Consultant & Co., Inc.
4. Robert DiConsiglio, on behalf of the League of Mortgage Lenders.
5. Dennis R. Casale, Esq., Jamieson Moore Peskin & Spicer, on behalf of Merrill Lynch Credit Corporation and Merrill Lynch, Pierce, Fenner & Smith Inc.
6. Edward R. McGlynn, Esq., Robinson, St. John & Wayne, on behalf of Mortgage Access Corporation.
7. Barry S. Goodman, Esq., Greenbaum, Rowe, Smith, Ravin & Davis, on behalf of the New Jersey Association of Realtors.
8. Robert G. Holston, Esq., Holston, MacDonald and Morgan, on behalf of Shelter Mortgage Services and Fox & Lazo Realtors.
9. Marguerite M. Schaffer, Esq., Shain, Schaffer & Rafanello, on behalf of Coldwell Banker, Schlott and Sears Mortgage Corporation.
10. E. Robert Levy, Esq., Levy and Lybeck, on behalf of the Mortgage Bankers Association.

A **summary** of the comments received and responses of the Department follows:

COMMENT: Proposed N.J.A.C. 3:38-4.1(c), which prohibits the licensee from accepting compensation from any person other than the borrower, is objectionable on several grounds. First, the prohibition assumes a traditional delivery of services, and does not allow for other business methods. By enacting this provision, the Department would preclude lenders from offering certain lending products through brokers, which will reduce the choices available to consumers.

Further, the provision will not eliminate abuses, since lenders and brokers will find other ways to compensate for services. For example, a broker could charge points at closing, and then pay the lender a fee. The lender charging the least fee would then become the most attractive, not necessarily the lender with the loan product most attractive to consumers.

In addition, the provision contradicts the intent of the Legislature as expressed in the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq. (the "Act"). N.J.S.A. 17:11B-14(e), which prohibits a person or licensee from paying a commission, bonus or fee to any person not licensed or exempt in connection with arranging for or originating a mortgage loan for a borrower, implies that a licensee may pay a fee to a person licensed under the Act. As an alternative, brokers who do not receive fees from borrowers should be entitled to receive payments from lenders.

RESPONSE: The Department finds some of these arguments convincing. Most importantly, the Department does not want to adopt a rule which may limit the loan products available to consumers through a broker. For example, the rule would discourage brokers from referring no-point mortgages, since the only other fee a broker may charge, an application fee, is usually enough to only cover costs.

Accordingly, the Department will not adopt N.J.A.C. 3:38-4.1(c). However, in a future proposal, brokers will be required to disclosures to applicants the amount of any fee they will receive incident to the mortgage loan. This proposal will amend N.J.A.C. 3:1-16.11 which concerns the disclosure required of all brokers including licensees under the Act.

COMMENT: We applaud the anti-kickback provision set forth in N.J.A.C. 3:38-4.1(b), which mirrors the provision in the Real Estate Settlement Procedures Act, 12 U.S.C. §2601 et seq. ("RESPA").

RESPONSE: Subsection (b), which sets forth the anti-kickback provisions of RESPA, is adopted. Pursuant to that rule, brokers may receive fees only for services rendered.

COMMENT: The Department does not have the statutory authority to impose a licensing requirement on realtors. N.J.S.A. 17:11B-2(d), which exempts a licensed real estate broker or salesman "not engaged in the business of a mortgage banker or broker," is evidence of a Legislative intention to exempt from licensing under the Act real estate licensees conducting mortgage banking or brokering for compensation or gain.

RESPONSE: The Act does not exempt real estate licensees who are "engaged in the business of a mortagage banker or broker." Courts have therefore recognized that real estate licensees who conduct mortgage banking or brokering are subject to supervision by the Department of Banking. *Mortg. Bankers Ass'n v. N.J. Real Estate Com'n,* 102 *N.J.* 176, 183-184 (1986); *Wharton v. Howard S. Straub, Inc.,* 235 *N.J. Super.* 179, 186 (App. Div. 1989).

In the proposal, the Department defined the phrase, engaged in the business of a mortgage banker or broker, to mean someone who takes "separate or additional compensation" for this service. The Department views this to be consistent with the Legislative intent.

However, the Department takes notice of the October 3, 1990 decision of ALJ Samuels in *Mortgage Bankers Association of New Jersey v. New Jersey Real Estate Commission, et al.,* OAL Docket No. BRE-228-87. In that decision, the ALJ summarized testimony of various witnesses regarding the activities of real estate licensees in mortgage banking and brokering. Witnesses testified regarding innovations in the industry whereby computerized networks link individual real estate broker's offices with lenders. Through these systems, real estate licensees can access mortgage information and pre-qualify clients for mortgage products.

In its proposal, the Department made some accommodation for these systems by allowing a licensee to conduct pre-qualification at a location without licensing that location as a branch office. However, pursuant to the proposal, any location where mortgage loan applications are distributed to or received from consumers, mortgage records are maintained, underwriting decisions are made, mortgage commitments or lock-in agreements are issued, or any fees or charges relating to the mortgage loan are received from consumers constitutes a branch office. Because most real estate licensees that access computerized networks also distribute or receive applications or accept fees at those locations, all such locations would need to be licensed under the Act. In addition, each office would need to be supervised by a licensed individual. This would cause real estate licensees to incur considerable administrative costs and would restrict the number of real estate licensees offering this service to the detriment of consumers.

The ALJ also recounted the testimony of witnesses regarding the costs of subscribing to these networks. There was further testimony that, because of this considerable cost, it is necessary for participating real estate licensees to at least recoup some or all of their cost for accessing these computerized networks.

Upon further review of the testimony and based upon the regulatory comments received, the Department has not adopted that portion of proposed new rule N.J.A.C. 3:38-5.2(a)4 which further defined when a real estate licensee is engaged in the business of a mortage banker or broker and must be licensed. That portion of the proposed new rule stated that the real estate licensee was engaged in the business of a mortgage banker or broker upon receiving separate or additional compensation in any amount for originating or brokering a mortgage loan, in addition to the real estate commission.

The Department, in a proposal submitted concurrent with this adoption and published elsewhere in this issue of the New Jersey Register, proposes to further define the exemption in the Act for real estate licensees "not engaged in the business of a mortgage banker or broker." N.J.S.A. 17:11B-2(d). This exemption will permit real estate licensees to obtain from consumers at closing reimbursement for expenses incurred in brokering mortgage loans up to $250. A real estate licensee who only obtains reimbursement for up to $250.00 of expenses incurred in providing these mortgage related services to consumers, and who does not directly profit from such activity, will, under the proposal, be deemed not to be engaged in the business of a mortgage banker or broker.

COMMENT: The maximum fee that a real estate licensee may charge, regardless of whether it is licensed under the Act, should be set at no higher than $250.00. It is not in the best interests of homeowners to allow brokers to collect a percentage of the loan principal, since this will encourage real estate licensees to handle mortgage arrangements and will narrow the number of lenders permitted to participate.

RESPONSE: The Department leaves to the courts and the Real Estate Commission the determination of whether a real estate licensee under N.J.S.A. 45:15-17(i) may receive a real estate commission on the sale of the property and also a mortgage broker's fee for mortgage related services. However, if such dual activity is viewed as not constituting an inherent conflict of interest, the Department can find no basis in the Act for treating real estate licensees who are licensed under the Act any differently from other licensees under the Act.

COMMENT: The Department of Banking should consider establishing mandatory training and continuing education requirements in all aspects of mortgage finance, to be completed by every applicant for a mortgage brokers or bankers license, to ensure that the persons applying for such licenses are qualified.

RESPONSE: The Department agrees that such requirements would be beneficial, and is considering proposing them in the future. In addition, the Department is considering an apprentice requirement, and the registration of solicitors is a first step in this process.

COMMENT: The regulations need to have "teeth" to serve as a disincentive for a licensee to ignore, evade or otherwise violate the regulations. For example, the regulations should specify the penalties for violations, such as loss of license, monetary fine or refund of the fee.

RESPONSE: Rules imposed by the Department incident to the Act have the effect of law. N.J.S.A. 17:11B-13. Further, the Commissioner may refuse to issue and may revoke, suspend or refuse to renew a license or impose a penalty if the Commissioner finds that a person has violated any regulation made pursuant to the Act. N.J.S.A. 17:11B-9(a). The maximum penalty is set at $5,000 per offense. N.J.S.A. 17:11B-17. The Department believes that these provisions in the Act provide adequate incentives for compliance, and therefore has not made changes based on this comment.

COMMENT: Although the proposed amendments and additions will significantly affect the requirements and conditions imposed upon mortgage bankers and brokers, these proposals are reasonable and can, in good faith, be met.

RESPONSE: The Department appreciates hearing that the rules do not impose an unreasonable burden on licensees.

COMMENT: Pursuant to the proposed new rules, every location at which a mortgage application is being taken is defined as a branch office, thereby requiring a licensee to supervise all activities at such location. The concept of doing all mortgage activities at a formal office is contrary to the current economic trends of the mortgage banking and brokerage business. It would be sufficient to require that a mortgage solicitor work out of an office supervised by a licensee and that there be appropriate safeguards to insure that the licensed supervisor have cognizance of the solicitor's activities. Further, the Department when defining a branch office should look to the activities which occur after the application, such as processing, underwriting, closing and recordkeeping.

RESPONSE: The Act requires a mortgage banker to obtain a license from the Department for each branch office. N.J.S.A. 17:11B-7. Under this section, each branch office must be operated under the full control and supervision of an individual licensed under the Act and employed there on a regular and full-time basis to supervise and perform mortgage banking and brokerage services. This section also prohibits one person from being in charge of more than one branch office.

In defining branch office, the Department has looked to those activities which are most in need of direct supervision. For example, the Department views the taking of an application to be a critical stage of a mortgage transaction. The applicant at that stage commonly receives information regarding available loan products, and obtains representations from the licensee. For this reason, locations where this occurs on a regular basis need to be licensed and supervised. Licensing of such locations also facilitates supervision by the Department.

However, as the commenter notes, current industry practices do not allow for the licensing of all locations where these activities occur. The Department recognized this in its definition by requiring licensing only of locations where these activities occur in the regular course of business. A home or place of business of a consumer is exempted from the definition. Further, a location is not considered a branch merely because it is a place where consumers receive information from a computer terminal, consumers are prequalified for a loan or advertising materials are distributed.

The Department is of the view that further exceptions to this definition may lead to inadequate supervision of branch offices by licensed individuals and by the Department. Accordingly, no change is made based on this comment.

COMMENT: A branch office of a mortgage banker or broker, which distributes applications of various lenders, could be construed to be a branch of every one of those lenders. This obviously is not a practical result, and the rules should be amended to clarify that such licensing is not necessary.

Further, the definition of branch office is overly broad as it applies to real estate offices. Solicitors representing mortgage bankers and bro-

kers take applications at whatever location is most convenient. Frequently, that location is a real estate brokerage office in the territory covered by the solicitor. Requiring the borrower to meet the solicitor at another location would be inconvenient for the borrower.

RESPONSE: One important reason why a branch office is required to be licensed under the Act is to assure that there will be adequate supervision of the activities conducted there. Once a branch office is licensed and thereby supervised by a licensed individual and the Department, it is not necessary to have branch office licenses for each lender whose applications are distributed or received at that location, so long as the applications are distributed and received by employees of the person licensed at that location and not employees of the various lenders. For example, a licensed mortgage broker who distributes applications of several mortgage bankers should not be required to obtain a branch office license for each mortgage banker.

Similarly, a branch of a bank, savings bank, savings and loan association or credit union is adequately supervised. Should the employees of such a depository distribute and/or receive mortgage loan applications of a licensee at the principal office or branch office of such a depository, it is not necessary for such a location to be licensed as a branch under the Act.

Finally, the Department recognizes that real estate offices are locations where, for convenience, licensees meet with consumers on a regular basis. At such meetings, mortgage loan applications are often distributed or received by a solicitor or licensee, and fees are received. Through these rules, the Department does not want to limit such meetings to real estate offices licensed under the Act.

Accordingly, in a proposal filed concurrently with these rules and published elsewhere in this issue of the New Jersey Register, the Department proposes to exclude from the definition (1) locations that are already licensed by another licensee; (2) branches of depositories in this State; and (3) certain real estate offices.

COMMENT: The exclusion from the definition of "branch office" for locations where pre-qualification takes place provided there is no fee charged for this service should be clarified. If a person doing the pre-qualifying is a licensed mortgage broker, the pre-qualification could be construed as part of the services rendered by the broker for which the broker is compensated through the application fee and/or discount point. Similarly, if the person doing the pre-qualification is a licensed real estate broker, the pre-qualification could be construed as part of the services rendered by the broker for which the real estate commission is paid. With either construction, all locations where pre-qualification takes place would need to be licensed.

RESPONSE: Realtors and licensees under the Act are not required under the new rules to have branch licenses at locations where only prequalification takes place and where no additional fee is charged for that service. A minor technical amendment has been made to the "branch office" definition in the adoption to clarify this.

COMMENT: Proposed rule N.J.A.C. 3:38-1.9(f), which requires a licensee to notify the Department of every location other than a branch where advertising materials are distributed, should be amended to specify advertising materials related to available mortgage products.

RESPONSE: The Department agrees with the commenter, and has made the necessary minor technical amendment.

COMMENT: N.J.A.C. 3:38-5.2(a)6, which provides that a person simultaneously employed by more than one licensee must be licensed, should be changed to provide that a person simultaneously employed as a solicitor for more than one company must be licensed.

RESPONSE: The Department agrees with this proposed change and has made same upon adoption. In addition, the definition of solicitor in N.J.A.C. 3:38-1.1 is amended on adoption consistent with this change. Finally, the prohibition in N.J.A.C. 3:38-5.3(f), against a person working as a solicitor for more than one licensee at the same time, is removed as redundant.

COMMENT: Proposed N.J.A.C. 3:38-5.3(f) prohibits a person from being employed as a solicitor with more than two licensees in any one calendar year without the prior express written approval from the Department. The Department will grant such approval upon receipt of proof that the multiple employment does not constitute an attempt to evade the licensing requirement of the Act. This paragraph should be omitted, since it would be extremely onerous and difficult to regulate in a meaningful fashion.

RESPONSE: This provision is necessary to ensure that a solicitor acts as an employee of a licensee, and not as an independent contractor. Without such a provision, a solicitor could conceivably change affiliation with every mortgage loan placed. Persons conducting business in this manner should be licensed under the Act. Accordingly, no change is made based on this comment.

However, based on the comments and on internal review, the Department has made minor substantive changes to the registration procedures. In particular, the Department requires the licensee to include the solicitor's birth date, since this information is helpful to identify the solicitor under the Department's current computer system. Further, the adoption requires the licensee to return the solicitor's certificate upon a change in affiliation, rather than notifying the Department. The Department views it as beneficial to the licensee and to the Department to not have registration certificates outstanding after a solicitor has left a licensee.

In a proposal filed concurrently with this adoption, published elsewhere in this issue of the New Jersey Register, the Department clarifies that the registration for a solicitor is renewable every two years. Pursuant to this proposal, the registration will run from January 1, 1993 to December 31, 1994, and for two-year intervals thereafter.

COMMENT: The cost of registration is too high for licensees with many solicitors.

RESPONSE: The Department is reviewing the costs for registering solicitors, and may lower the $25.00 fee prior to the operative date of the rule. To help in this regard, the Department has sent out questionnaires to the industry.

COMMENT: Can a person who works for a financial institution, such as a commercial bank, originate one or two loans without a license?

RESPONSE: The Department did not intend to require licensure of employees in the financial services industry who make one or two private loans outside of their employment. Accordingly, the exemption in N.J.A.C. 3:38-5.2 has been amended upon adoption to include a person employed in the financial services industry who makes one or two private mortgage loans outside of his or her employment.

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

3:38-1.1 Definitions

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

"Act" means the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq.

"Branch office" means any location where, in the regular course of business, mortgage loan applications are distributed to or received from consumers, mortgage records are maintained, underwriting decisions are made, mortgage commitments or lock-in agreements are issued, or any fees or charges relating to the mortgage loan are received from consumers. A home or place of business of a consumer shall not be considered a branch office. A location shall not be considered a branch office merely because any or all of the following activities are conducted at the location:

1. Consumers receive information concerning available loan products from a computer terminal;

2. Consumers are prequalified for a mortgage loan, so long as no ***additional*** fee is charged for this service; and

3. Advertising materials are distributed to consumers so long as the materials do not in any way resemble an application for a mortgage loan.

"Broker" means to place for others a mortgage loan in the primary market.

"Financial services industry" means the businesses that are engaged in the granting of credit or the making of investments.

"Lender" means a bank, savings bank, savings and loan association, credit union, mortgage banker or any other person who originates mortgage loans in this State.

"Licensee" means a mortgage banker or mortgage broker licensed with the Department of Banking.

"Mortgage banker" means any person other than those exempted, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly originates, acquires or negotiates mortgage loans in the primary market.

"Mortgage broker" means any person, other than those exempted, who for compensation or gain, or in the expectation of compensation

or gain, either directly or indirectly negotiates, places or sells for others, or offers to negotiate, place or sell for others, a mortgage loan in the primary market.

"Mortgage loan" means any loan secured by a first mortgage on real property on a one- to six-family dwelling, a portion of which may be used for nonresidential purposes.

"Originate" means to commit to make a mortgage loan, or to close a mortgage loan in the name of the licensee.

"Prequalification" is the process whereby a licensee prior to application advises a person whether he or she qualifies for a mortgage loan product, subject to satisfactory appraisal and other contingencies.

"Primary market" means the market wherein mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other conduit, and shall not include the sale or acquisition of a mortgage loan after closing of the mortgage loan.

"Settlement service" means any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, and the handling of the processing, and closing or settlement.

"Solicitor" means any person not licensed as a mortgage banker or mortgage broker who is employed ***as a solicitor*** by one, and not more than one, licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts mortgage loan applications, or assists borrowers in completing mortgage loan applications.

Recodify existing N.J.A.C. 3:38-1.1 through 1.7 as 3:38-1.2 through 1.8 (No change in text.)

3:38-1.9 Office requirements

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

(f) A licensee shall notify the Department of every location, other than a principal or branch office, where the licensee distributes advertising materials ***regarding available mortgage loan products*** in person to consumers on a regular basis.

Recodify existing 3:38-1.9 as ***1.10*** (No change in text.)

3:38-4.1 Permitted charges

(a) (No change.)

(b) No licensee shall give or accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a mortgage loan shall be referred to any person, except as otherwise permitted by State or Federal law. Without limiting the above, a fee shall be deemed to be permitted if it falls within an exception to the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act ("RESPA") contained in 12 U.S.C. §2607, the implementing regulations of RESPA or any opinion regarding RESPA set forth by the Federal Department of Housing and Urban Development.

[(c) No licensee shall accept any consideration from any person, including the lender, except the borrower for brokering a mortgage loan.]

SUBCHAPTER 5. PERSONS LICENSED

3:38-5.1 Necessity for license

(a) No person shall act as a mortgage banker or a mortgage broker without first obtaining a license therefor, but a person licensed as a mortgage banker may act as a mortgage broker.

(b) No corporation, partnership, association or any other entity shall be issued or hold a license unless one officer of the corporation, or one principal of the partnership, association or other entity, has a license of the same type sought or held.

(c) Each branch office and principal office shall be operated under the full control and supervision of an individual licensee employed at the office on a regular and full-time basis to supervise and perform mortgage banking and mortgage brokerage services. No such individual may supervise more than one office. An individual supervising an office on a regular and full-time basis must normally be present at the office at least 50 percent of the time that the office is open for business. Nothing in this rule shall be deemed to require an office to be open for a specified period of time.

3:38-5.2 Exemptions

(a) The following persons are exempt from the licensing requirements of the Act:

1. Savings and loan associations, commercial banks, savings banks, insurance companies and credit unions. Subsidiaries of these institutions are not exempt from the licensing requirements;

2. A person making mortgage loans for private investment or gain and not in the regular course of business. Only a person not engaged in the financial services industry who makes one or two mortgage loans in a calendar year***, or a person employed in the financial services industry who makes one or two private mortgage loans in a calendar year outside of his or her employment,*** shall qualify for this exemption;

3. An attorney at law of this State, not actively and principally engaged in the business of a mortgage banker or mortgage broker, when the attorney renders services in the course of his ***or her*** practice. An attorney who receives compensation specifically for originating or brokering a mortgage loan shall not qualify for this exemption and must be licensed;

4. A person licensed as a real estate broker or salesman pursuant to Chapter 15 of Title 45 of the Revised Statutes, and not engaged in the business of a mortgage banker or broker*[. A person receiving separate or additional compensation in any amount for originating or brokering a mortgage loan, in addition to the real estate sales commission, is considered to be engaged in the business of a mortgage banker or broker and must be licensed]*;

5. A builder acting as a mortgage broker incident to the builder's own construction or for the sale of the builder's construction; and

6. A registered solicitor employed by a licensed mortgage banker who acts on behalf of the mortgage banker, and a registered solicitor employed by a licensed mortgage broker who acts as a broker on behalf of the mortgage broker. A *[solicitor]* ***person*** who is simultaneously employed ***as a solicitor*** by more than one licensee shall not qualify for this exemption and must be licensed.

3:38-5.3 Registration of solicitors

(a) Before acting as a solicitor for a licensee, an individual must be registered with the Department for that licensee.

(b) To register a solicitor, the prospective employing licensee shall send the following to the Department of Banking:

1. A completed registration form, which shall include the solicitor's name***, birth date*** and residence address and the name of the employing licensee; and

2. A $25.00 registration fee.

(c) The Department shall provide all licensees with a solicitor registration certificate.

(d) The employing licensee shall display the registration certificate at the office or work station of the solicitor.

(e) Within 30 calendar days after a solicitor ceases his or her affiliation with a licensee, the licensee shall *[provide written notice]* ***return the registration certificate*** to the Department.

(f) No person shall be employed as a solicitor for more than two licensees in any one calendar year without prior express written approval from the Department. The Department shall grant such approval upon receipt of proof, satisfactory to the Department, that the multiple employment does not constitute an attempt to evade the licensing requirement of the Act. *[No solicitor shall be employed by more than one licensee at a time.]*

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Municipal Enforcing Agencies

Adopted Amendments: N.J.A.C. 5:23-2.14, 4.5, 4.18, 4.20 and 9.5

Proposed: January 21, 1992 at 24 N.J.R. 168(a).
Adopted: April 30, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: May 5, 1992 as R.1992 d.230, **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. 52:27D-124.

Effective Date: June 1, 1992.
Operative Date: July 1, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from Gerald M. Garofalow, Construction Official, Village of Ridgefield Park and from Michael Townley, Administrator, City of Summit.

COMMENT: The dig number should appear on the plumbing technical section and "gas final" should be changed to "gas piping." (Note: The "dig number" is a phone number for a central information source which may be contacted prior to work, to get information about the location of pipelines. "Final" refers to an inspection.)

RESPONSE: The Department agrees and the Utility Dig number will appear at the top of all five technical sections and, under inspections, "gas final" has been reworded "gas piping."

COMMENT: A commenter noted that the information plate on air-conditioning units often does not list the size of the unit in kilowatts (KW).

RESPONSE: The Department and the Electrical Subcode Committee disagree. The electrical subcode section now lists the size of all fixtures or devices as KW, hp or amp. KW is the most common sizing for air-conditioning units.

COMMENT: The estimated cost of work on the building subcode section should be printed in boldface.

RESPONSE: The Department agrees and the change has been made.

COMMENT: On the elevator technical section there are spaces for fees for plan review and acceptance tests, but not for fees for permits for installations. The commenters were previously advised by DCA that the permit fee for installing an elevator device is to be a flat fee.

RESPONSE: The Department agrees. The wording "plan review and acceptance tests" above the fee section on the elevator subcode section was incorrect and has been removed. Each fee is to be a flat fee depending on the type of equipment being installed.

COMMENT: On Form F160B, "Application for a Variation," it is sugggested that the signature lines for Construction Official and Elevator Subcode Official be reordered.

RESPONSE: The Department agrees. This will keep all subcode signatures together and place the Construction Official's signature last.

COMMENT: On the Construction Permit Application (F100B) in the Fee Summary, space should be provided for the name of the person collecting the fee and the date of collection.

RESPONSE: The Department disagrees. This information is collected on other forms including each individual technical section. This section is meant only to serve as a summary, and because of extremely limited space, the Department cannot duplicate the information.

COMMENT: On F100B, on the prior approval checklist, there should be a line item for zoning officer and it should be listed first before planning board and zoning board.

RESPONSE: The Department agrees and this change has been made.

COMMENT: On all the technical sections of the standard forms, F110B to F150, there should be an "Exempt Fees" check off similar to what is provided in the Department's computer software, UCCARS II.

RESPONSE: The Department disagrees. UCCARS II calculates the municipal fees by computer and, therefore, there must be a check off for "exempt from all fees" or "exempt from local fees." Placing those same items on manually completed forms could cause confusion and does not aid in the calculation of fees.

COMMENT: It was requested that on the electrical (F120B) and plumbing (F130B) subcode sections, the area under technical site data be expanded to include a written description of work.

RESPONSE: While the Department agrees that the additional information may be helpful, both the electrical and plumbing subcodes wanted to keep all items listed both for fee calculation and as an inspection checklist. There is not room for a written description of work.

COMMENT: On Form F160B, "Application for Variation," provide space for each subcode official to make his or her own decision and space to provide differing opinions.

RESPONSE: The Department disagrees with expanding this to a two page form or providing a separate form for each subcode. If there is a dissenting opinion, it can be put on a separate sheet of paper, attached to the form.

COMMENT: On the "Construction Permit Notice," F180B, add a line for "Description of Work"; this will aid the inspector in determining what work has been authorized (that is partial release permits).

RESPONSE: The Department agrees and space has been provided.

COMMENT: On the Certificate, F260B, move up the information on Warranty Plan and provide more space for Description of Work/Use.

RESPONSE: The Department agrees.

Summary of Agency-Initiated Changes:

Form references in N.J.A.C. 5:23-2.14, 4.18, 4.20 and 9.5 have been amended upon adoption to be consistent with the revised form designations. The proposed change of Forms F-170A, B to Forms F-170B, C has been changed to Forms F-170C, D to alleviate possible confusion. An inadvertently omitted change of the Form F-330A designation to F-330B has been made upon adoption. Form F-150 has been added to the list of documents which must be maintained by a construction office, in keeping with other subcode retention requirements, at N.J.A.C. 5:23-9.5(a).

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

5:23-2.14 Construction permits when required

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

(d) The Construction Official, upon review of the application may issue or deny an annual construction permit in whole or in part. The construction permit (Form *[F-170A]* ***F-170C**) shall state that the permit is an annual permit and indicate the technical subcodes in which the facility is approved to do work under the annual permit. A copy of the permit shall be forwarded by the Construction Official to the Department of Community Affairs Training Section along with the appropriate training registration fee.

(e)-(f) (No change.)

5:23-4.5 Municipal enforcing agencies; administration and enforcement

(a) (No change.)

(b) Forms:

1. The construction official shall ensure that all necessary forms and applications are available to the public at the central permit office.

2. The following standardized forms established by the Commissioner are required for use by the municipal enforcing agency:

Form No.	Name
F-100B	Construction Permit Application
F-110B	Building Subcode Technical Section
F-120B	Electrical Subcode Technical Section
F-130B	Plumbing Subcode Technical Section
F-140B	Fire Subcode Technical Section
F-150	Elevator Subcode Technical Section
F-155	Elevator Subcode Multiple Devices
F-160B	Application for a Variation
F-170*[B]**C*, *[C]**D*	Construction Permit, Required Inspections
F-180B	Construction Permit Notice
F-190B	Permit Update

F-210A	Notice of Violation and Order to Terminate/ Notice Order to Pay Penalty
F-221A	Inspection Sticker Approval for Building
F-222A	Inspection Sticker Approval for Electric
F-223A	Inspection Sticker Approval for Plumbing
F-224A	Inspection Sticker Approval for Fire Protection
F-225	Inspection Sticker Approval for Elevator
F-230B	Inspection Sticker—Not Approved
F-240A	Notice of Unsafe Structure/Imminent Hazard
F-245A	Unsafe Structure Notice
F-250A	Stop Construction Order
F-255A	Stop Construction Notice
F-260B	Certificate
F-270B	Application for Certification
F-310B	Elevator Inspection
F-320A	Elevator Notice
F-330*[A]***B***	Application to Construction Board of Appeals
F-340A	Decision of Construction Board of Appeals
F-350B	Cut-in Card
F-360A	Denial of Permit

3. The following standardized forms established by the Commissioner are optional for use by the municipal enforcing agency; provided, however, that where they are not used, equivalent forms or mechanisms are used by the enforcing agency to accomplish the same purpose:

Form No.	Name
F-200A	Inspection Notice
F-280B	T.C.O. Control Card
F-290A	Ongoing Inspection Control Card
F-300A	Ongoing Inspection Schedule
F-370	Tickler/X-Ref Card

4.-5. (No change.)

(c) Logs:

1. The following standardized logs established by the Commissioner are to be maintained by the municipal enforcing agency:

Log No.	Name
L-700B	Permit Fee Log
L-710A	Inspection Log
L-720B	Certificate Log
L-730A	Ongoing Inspection Log

2. (No change.)

(d) Reports:

1. The following standardized forms established by the Commissioner are required to be completed by the municipal enforcing agency and transmitted to the Department as required by N.J.A.C. 5:23-4.19 by the tenth business day following the end of each calendar month:

Report No.	Name
R-811B	Municipal Monthly Activity Report Certificate
R-812B	Municipal Monthly Activity Report Permits

2.-4. (No change.)

(e)-(h) (No change.)

5:23-4.18 Standards for municipal fees

(a) General:

1.-4. (No change.)

5. Prior to the issuance of the annual permit, a training registration fee of $100.00 per subcode shall be submitted by the applicant to the municipal construction official, who shall forward the fee to the Department of Community Affairs, Bureau of Construction Code Enforcement, Training Section along with copies of the construction permit (Form *[F-170]* ***F-170C***). Checks shall be made payable to "Treasurer, State of New Jersey."

(b)-(k) (No change.)

5:23-4.20 Departmental fees

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

(c) Departmental (enforcing agency) fees shall be as follows:

1.-4. (No change.)

5. Annual permit requirements are as follows:

i. (No change.)

ii. Fees for annual permits shall be as follows:

(1) (No change.)

(2) Prior to the issuances 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]* ***F-170C***). Checks shall be made payable to "Treasurer, State of New Jersey."

6.-8. (No change.)

5:23-9.5 Records retention

(a) A construction official shall maintain, for the life of each structure wholly or partially within its jurisdiction copies of the following documents: construction application, permit(s), any update(s), notice of unsafe structure, certificate of occupancy, ongoing inspection control card, elevator inspection, decision of the construction board of appeals, cut-in card and the inspection and certificate logs (*[F-100A]* ***F-100B***, *[F-110A]* ***F-110B***, *[F-120A]* ***F-120B***, *[F-130A]* ***F-130B***, *[F-140A]* ***F-140B***, ***F-150***, *[F-170A and B]* ***F-170C and D***, *[F-190A]* ***F-190B***, F-240A, *[F-260A]* ***F-260B***, F-290A, *[F-310A]* ***F-310B***, F-340A, L-710A, *[L-720A]* ***L-720B***).

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

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System

Adopted Amendments: N.J.A.C. 7:11-2.2, 2.3 and 2.9

Proposed: December 16, 1991 at 23 N.J.R. 3686(d).

Adopted: May 7, 1992 by Scott A. Weiner, Chairman, New Jersey Water Supply Authority, and Commissioner, Department of Environmental Protection and Energy.

Filed: May 8, 1992 as R.1992 d.238, **with substantive changes** not requiring additional public comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEPE Docket Number: 047-91-11.

Effective Date: June 1, 1992.

Operative Date: July 1, 1992.

Expiration Date: May 13, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (hereafter "Authority") is adopting amendments to N.J.A.C. 7:11-2. In accordance with N.J.A.C. 7:11-2.11(a)4, Procedures for rate adjustments, the Authority held a pre-public hearing meeting with the Authority's contractual water customers to present and explain the proposed adjustments to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water customers and Public Advocate's office as required by N.J.A.C. 7:11-2.11(a)4. This meeting was held on January 7, 1992 at the Authority's Administration Building conference room and was attended by representatives from the Elizabethtown Water Company, the Middlesex Water Company and the City of New Brunswick. Representatives from the Public Advocate's Office and the Hunterdon Sailing Club also attended.

Notice of the proposed rate adjustments and public hearing was legally advertised in the New Brunswick Homes News, Trenton Times, Newark Star Ledger, Asbury Park Press, Hunterdon County Democrat and the Courier-News. A news release covering the proposed rate adjustments

was also distributed to newspapers of general circulation in the water customers' service area. In addition, a direct mailing of the Notice of Public Hearing was made to all water customers and approximately 281 interested parties on the Authority's mailing list.

A public hearing concerning this rule was held on February 5, 1992 to provide interested persons the opportunity to present testimony. Eight individuals attended the hearing and five parties presented comments. No letters were received during the public comment period which closed on March 13, 1992. The comments received at the public hearing are summarized below.

The following is a list of those persons or organizations that made either written or oral comments related to the proposed rule.

Thomas J. Cawley, Elizabethtown Water Company
Edward D. Mullen, Elizabethtown Water Company
Michael J. Opaleski, Township of East Brunswick
Nicky Einthoven, Hunterdon Sailing Club

Retiree Health Benefits

COMMENT: A representative of the Elizabethtown Water Company asked what the $50,000 line item "Code 160 for Retiree Health Benefits" in the Authority's Fiscal Year 1993 Operations and Maintenance Budget included.

RESPONSE: This line item covers the cost of medical coverage for those retirees who at the time they retire have at least 25 years of service. At present the Authority has nine such retirees.

COMMENT: A representative of the Elizabethtown Water Company asked what was the basis for calculating the $50,000 figure in "Code 160 for Retiree Health Benefits".

RESPONSE: The rates effective July 1, 1992 for retirees' medical coverage are as follows:

Single	$215.63 per month
Married	$473.25 per month
Married with Dependents	$552.46 per month

The total projected cost for the nine existing and three anticipated additional retirees eligible for medical coverage on 7/1/92 is estimated at $50,000. The Authority also reimburses those who are eligible for Medicare coverage for their portion of Medicare A and B that is deducted from their Social Security check every month. This amounts to an additional $2,000. While the total estimated cost may be $52,000, all additional eligible employees may not retire within the Fiscal Year, and therefore the Authority has budgeted $50,000 instead of $52,000 for Fiscal Year 1993.

On-Site Residence Expenses

COMMENT: A representative of the Elizabethtown Water Company indicated that the $40,500 line item "Code 200 Expenses for On-Site Residences" was a new budget code and asked what was the effect on the old codes.

RESPONSE: For better control the Authority decided to break-out of the cost of maintaining the Authority's employee on-site residences. The costs that are included in this account are Heating Fuel, Utilities-Electric, Gas and Propane and a small amount of Maintenance Supplies. The 210 (Heating Fuel), and 220-240 (Utilities-Electric, Gas and Propane Service) where they were charged in Fiscal Year 1992 have been reduced by the amount of $38,900.

Seasonal Help Expense

COMMENT: A representative of the Elizabethtown Water Company asked what could be done to control the increases in the $21,200 line item "Code 140 for Seasonal Help."

RESPONSE: Over the past several years the Authority has employed from three to six college students for summer work. They are assigned to the Grounds Maintenance units at the Reservoirs and the Canal. The addition of these workers augments the maintenance staff during the peak mowing and grounds maintenance season. The seasonal help handles much of this work allowing the regular staff to undertake small construction projects and major maintenance tasks. Some of these tasks would otherwise have to be contracted out or completed by permanent employees both of which would accomplish those tasks at greater cost. Additionally, many of the regular staff take vacation during the summer months. The seasonal help makes up for those maintenance workers and allows the Authority to keep the same level of maintenance performance.

Hourly wages for seasonal help have increased only slightly over the past four years. In 1988 the Authority paid $5.50 per hour, in 1989 $5.75, and in 1990 and 1991 $6.00. This $6.00 per hour wage will be paid for the summer of 1992. The budget figure of $21,200 was arrived at by hiring 6 employees at $6.00 per hour, 40 hours a week for 15 weeks. The hourly wage of $6.00 per hour allows the Authority to attract a better quality employee than is available at minimum wage.

In the final analysis, the cost of the seasonal employment of students at $6.00 per hour is lower as compared to hiring an additional maintenance worker at $9.00 to $11.00 per hour plus benefits. The cost of the whole program of six seasonal employees is approximately the same as the cost of one full time maintenance worker.

Cost of Electricity

COMMENT: A representative of the Elizabethtown Water Company asked what tests are performed at lower off peak rates in order to minimize the $254,200 line item "Code 250 for electricity."

RESPONSE: All pump testing and the pumping of water into the Round Valley Reservoir is done during off peak hours when the electric rates are lowest.

COMMENT: A representative of the Elizabethtown Water Company asked what type of service agreement does the Authority currently have and is it the most cost effective.

RESPONSE: The South Branch Pumping Station is on the JCP&L General Service Transmission rate schedule. The Authority does not currently have a curtailable service agreement with JCP&L since it would provide no cost benefits to the Authority. Under a curtailable service agreement discounts for usage curtailment are based on the power company requesting that the facility shed load. Moreover, this curtailment program only operates from June to September and currently, the Authority only pumps during off peak hours in the spring months. Therefore, the curtailment program would not reduce the Authority's pumping costs.

COMMENT: A representative of the Elizabethtown Water Company asked if the Authority would consider alternating the pump testing exercise.

RESPONSE: The Authority does not consider it prudent to amend the annual maintenance pumping program on the basis of an alternate year pumping schedule. Spreading a pumping program out over two or more years could reduce the cost of the pumping itself but the demand charges would remain since the demand charge is based upon the month the greatest demand is generated and is carried forward for the following eleven months.

The cost of the annual pumping is actually an investment in maintaining the equipment. Any savings created by not exercising and maintaining all of these pumps on an annual basis must be compared against the reduction in the life of the equipment and the capital cost of replacement of the main pumps.

COMMENT: A representative of the Elizabethtown Water Company asked if the Authority would consider installing a generator to provide power for testing of the equipment.

RESPONSE: Running two of the main pumps at the South Branch Pumping Station requires three megawatts of electrical power. The suggestion that the Authority consider the installation of its own generator to handle this load will be referred to our consultant who is performing the electrical and mechanical evaluation of the station. The Authority will advise all interested parties of the results of that evaluation.

Service and Maintenance Contracts Expense

COMMENT: A representative of the Elizabethtown Water Company noted that expenses in line item "Code 340 for Service & Maintenance Contracts" has increased significantly over the past three years.

RESPONSE: The budget for this account has decreased from $135,600 in Fiscal Year 1992 to $102,600 in Fiscal Year 1993. Whenever possible competitive bids are sought for these services.

Costs for Maintenance Supplies

COMMENT: A representative of the Elizabethtown Water Company asked what the line item "Code 290 for Maintenance Supplies" includes.

RESPONSE: The Budget for this account increased from $113,800 in Fiscal Year 1992 to $131,600 in Fiscal Year 1993. Code 290 includes expenses for materials and tools used in the maintenance and repair of the Authority's assets such as kerosene, lumber, fasteners, masonry products, paint products, plumbing products, electrical items, fencing material, road, ditch, culvert and bank repair materials, small hand and power tools, and welding gases.

Drawdown of Reservoirs

COMMENT: The Hunterdon Sailing Club requested that steps be taken to maintain a usable water level for recreational purposes at the Spruce Run Reservoir through the month of September.

RESPONSE: The primary purpose of the Spruce Run-Round Valley reservoir complex is for water supply. The reservoirs were developed to supply the day to day water needs of the people of Central New Jersey and to do so in a dependable and cost effective way. Accordingly, annual hydrologic conditions and related drafts by the Authority's water customers dictate the reservoir water levels in September of each year.

Prudent water supply operation of the Raritan Basin System reservoirs, as practiced by the New Jersey Water Supply Authority, dictates that the Authority conserve as much water as possible in storage. In order to maintain the maximum water level in the Authority's reservoirs and also minimize the cost of the water supply, the staff constantly monitors streamflows at six gaging stations downstream of the reservoirs as well as our customers projected water diversions. In this manner the Authority is able to minimize reservoir releases while maintaining required minimum flows in the Raritan River Basin at Hamden, Manville and Bound Brook. This in itself is of benefit to the recreational users of the reservoirs.

In addition, the Authority's integrated management of the water resources of the Raritan Basin and the water diverted from the Delaware River through the Delaware and Raritan Canal, results in the full development of the maximum possible yields of the water from the two basins at least cost with maximum recreational benefit.

General

COMMENT: The representative of the Township of East Brunswick endorsed the specific matters that Mr. Mullen of Elizabethtown Water Company outlined.

Summary of Hearing Officers' Recommendations and Agency Response:

Authority Board Members Peggy Haskin and Charles Moeller, Jr. served as Hearing Officers at the February 5, 1992 public hearing. After reviewing the testimony presented at the public hearing, Hearing Officers Haskin and Moeller have made the following recommendations:

1. A balance of $100,595 in unexpended budgeted funds is projected for Fiscal Year 1992. These funds should be appropriated to the Major Rehabilitation Reserve Fund for future spending on needed Capital Projects in order to reduce the need for and cost of future revenue bonds.
2. Due to unanticipated revenues in the budget year ending June 30, 1992 an amount of $498,755 is available for appropriation into the Rate Stabilization Fund. This amount is recommended for appropriation into the Rate Stabilization Fund to be applied to the Fiscal Year 1993 revenue stream for the purpose of offsetting projected FY93 operational expenses. In this matter the Operations and Maintenance component needed for FY93 can be reduced by $11.97 per million gallons.
3. For the reasons discussed under "Agency-Initiated Changes" below, the proposed Operations and Maintenance Expense Component of $124.69 per million gallons should be reduced to $112.72 per million gallons (effective July 1, 1992).
4. The remaining adjustments to the Rate Schedule should be adopted as originally proposed to become effective on July 1, 1992.

The Authority accepts these recommendations, and has modified the rule accordingly upon adoption. The public hearing record may be reviewed by contacting Samuel Wolfe, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, CN402, Trenton, NJ 08625.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:11-2.2(b), and 2.9(a)1 and 2

Due to greater than projected revenues for Fiscal Year 1992, which will be applied to the FY93 revenue stream and savings in insurance expenses, the projected operations and maintenance component of the rate schedule is changed in this adoption from $124.69 as the charge per million gallons set forth in the proposed rule to $112.72 per million gallons, a reduction of $11.97 per million gallons. This reduced rate is reflected at N.J.A.C. 7:11-2.2(b) which actually sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-2.9(a) which references N.J.A.C. 7:11-2.2 and sets forth the operations and maintenance charge for standby service users.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) (No change.)

(b) General Rate Schedule for Operations and Maintenance:

Allocation	Rate/Million Gallons
Million Gallons per Day (MGD)	*[$124.69]* ***$112.72***

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of 151.801 million gallons per day. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation	Rate/Million Gallons
7/1/92 to 6/30/2002	Million Gallons per Day (MGD)	$13.90

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following Debt Service Assessment rate, based on a sales base of 152.226 million gallons per day, in addition to that included in (b) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
7/1/92 to 10/30/2006	Million Gallons per Day (MGD)	$33.17

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of 152.226 million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
7/1/92 to 6/30/93	Million Gallons per Day (MGD)	$55.07
7/1/93 to 6/30/95	Million Gallons per Day (MGD)	$56.91
7/1/95 to 6/30/96	Million Gallons per Day (MGD)	$56.87

7:11-2.9 Standby charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3.

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	*[$124.69]* ***$112.72*** plus annual debt service assessment rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

2. For Standby Contracts within the Raritan River Basin:

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof.	*[$124.69]* ***$112.72*** plus annual debt service assessment rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System

Adopted Amendments: N.J.A.C. 7:11-4.3, 4.4, 4.9 and 4.13

Proposed: December 16, 1991 at 23 N.J.R. 3688(a) (see also 24 N.J.R. 344(a)).
Adopted: May 7, 1992 by Scott A. Weiner, Chairman, New Jersey Water Supply Authority, and Commissioner, Department of Environmental Protection and Energy.
Filed: May 8, 1992 as R.1992 d.237, **with substantive changes** not requiring additional public comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEPE Docket Number: 046-91-11.
Effective Date: June 1, 1992.
Operative Date: July 1, 1992.
Expiration Date: May 13, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (hereafter "Authority") is adopting amendments to N.J.A.C. 7:11-4. In accordance with N.J.A.C. 7:11-4.13(a)4, the Authority held a pre-public hearing meeting with the Authority's contractual water purchasers and interested parties to present and explain the proposed adjustment to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water purchasers and interested parties including the Public Advocate's Office and the Board of Regulatory Commissioners. This meeting was held on January 16, 1992 at the Authority's Manasquan Reservoir System Administration Building, Wall, New Jersey, and was attended by two parties representing contractual water users. No representative from the Public Advocate, Division of Rate Counsel or the Board of Regulatory Commissioners attended.

Notice of the proposed rate adjustments and public hearing was legally advertised in the Trenton Times, Newark Star Ledger, Asbury Park Press, the Greater Media Newspapers and the Herald. A news release covering the proposed rate adjustments was also distributed to newspapers of general circulation in the water customers' service area. In addition, a direct mailing of the Notice of Public Hearing was made to all water customers and approximately 280 interested parties on the Authority's mailing list.

A public hearing concerning this rule was held on February 21, 1992 to provide interested persons the opportunity to present testimony. Twelve individuals attended the hearing including a representative from the Public Advocate's Office, one newspaper reporter and one Councilman from the Borough of Keyport. Four parties presented comments. The Authority received one letter during the public comment period which closed on March 27, 1992. The comments received at the public hearing and during the comment period are summarized below.

The following person made oral comments related to the proposed rate:

Anthony DeGenaro, Resident, Howell

The following persons made written comments related to the proposal:

Gary S. Prettyman, Assistant Treasurer, New Jersey—American Water Company

John C. Caniglia, Esq., Adelphia Water Company

Employee Medical Benefits

COMMENT: The New Jersey-American Water Company expressed a concern about the increases in employee medical benefits coverage costs and strongly suggested that the Authority consider increased employee contributions.

RESPONSE: The Authority's employees are enrolled in the State Health Benefits Program and are members of the same bargaining units as are State employees. Due to existing labor agreements, the Authority can not unilaterally require employee contributions towards the medical benefits coverage. The existing labor contracts expire on June 30, 1992 and it is anticipated that increased employee contributions will be part of the negotiations for the new labor agreements.

Allocation of Salaries

COMMENT: The New Jersey American Water Company stated that the Authority's employee time records do not match the time allocations in the FY93 budget.

RESPONSE: The allocation of salaries for FY93 employs the results of time sheet records compiled during FY91. Since FY91 was the initial year of operations, the Authority recognizes that the actual time records reflect unusual operational conditions which are common to the start up of a new system. The Authority's allocation of salaries for FY93 represents normal operations. The Authority will continue to implement procedures for maintaining appropriate records to allocate employee salaries between the Manasquan Reservoir and the Treatment Plant operations. The Authority's independent Auditors will review this data and their audit report with recommendations will be available in September of 1992 following the end of FY92. This report will provide the basis for any adjustments to the salary allocation percentage for Fiscal Year 1994 (July 1, 1993-June 30, 1994), and any applicable debit or credit for salary expenses incurred during FY92.

Use of Excess Funds

COMMENT: The Adelphia Water Company stated that any excess funds should be used to provide current rate relief by applying these revenues against the projected FY93 O&M expense.

RESPONSE: The Authority recommends that if any excess funds are available, they should be used to fund the reserve accounts on an accelerated basis. The Authority believes that this use of excess funds, if any remain after covering the revenue shortfall due to the Borough of Highlands' delinquent payments, will be in the best interest of the water purchasers with regard to long range rate stabilization because the water purchasers will not be subject to sudden increases in the annual budgets to cover extraordinary replacements and repair costs in future years.

Assessment of Debt Service Charges

COMMENT: Mr. Anthony DeGenaro objected to the inclusion of a Debt Service Assessment in the Schedule of Rates. He argued that the provisions of the Water Supply Bond Act of 1981 required the State of New Jersey and not the water users to repay the bonds issued under this Act (Chapter 261, Laws of 1981).

RESPONSE: Section 4 of the Water Supply Bond Act of 1981 provides for loans to construct water supply facilities as recommended in the New Jersey Statewide Water Supply Plan. The debt service assessment covers the interest and principal on the money borrowed for the design and construction of the Manasquan Reservoir Water Supply System. Section 5.b of the Water Supply Bond Act of 1981 requires the New Jersey Water Supply Authority to charge any water supply user which benefits from any project funded pursuant to the Act for the cost of planning, designing, acquiring, constructing and operating the project.

P.L. 1985, c.380 appropriated monies from the Water Supply Fund for the Manasquan Reservoir project. Section 4 of this Act required the Authority to set rates and charges for the water supplied from the facilities sufficient to make semi-annual payments of principal and interest on the loan from the Fund according to a schedule agreed upon with the State Treasurer before the loans are advanced.

Summary of Hearing Officers' Recommendations and Agency Response:

Authority Board Members Peggy Haskin and Charles Moeller, Jr. served as Hearing Officers at the February 21, 1992 public hearing. After reviewing the testimony presented at the public hearing and during the balance of the public comment period, Hearing Officers Haskin and Moeller have made the following recommendations:

1. Due to balances in the budget year ending June 30, 1992, an amount of $185,987 is available to cover the Debt Service fund deficiencies as a result of the Borough of Highlands failure to pay for their contractual water supply. An amount of $47,257 should be utilized for the April 10 and July 10, 1992 debt service payments and $238,730 should be appropriated into the O & M Reserve Fund to be applied to the Fiscal Year 1993 revenue requirements should the Borough of Highlands continue to withhold payments. In this manner the Authority will be able to pay the debt service payments during FY93 when due without the need for any special assessment upon the remaining water purchasers.

2. For the reasons discussed under "Agency-Initiated Changes" below, the proposed Operations and Maintenance Expense Component of $348.01 per million gallons should be changed to $341.47 per million gallons effective on July 1, 1992.

3. For the reasons discussed under "Agency initiated changes" below, the proposed debt service components should be changed as follows:

7/1/92-1/31/93 (110% coverage)	from $718.65/MG to $712.80/MG
2/1/93-6/30/93 (115% coverate)	from $751.32/MG to $745.20/MG
7/1/93-1/31/94 (115% coverage)	from $751.66/MG to $745.51/MG
2/1/94-6/30/94 (120% coverage)	from $784.34/MG to $777.92/MG
7/1/94-(120% coverage)	from $784.10/MG to $777.67/MG

4. The adjustments to the text of the Rate Schedule should be adopted as originally proposed to become effective on July 1, 1992.

The Authority accepts these recommendations, and has modified the rule accordingly upon adoption. The public hearing record may be reviewed by contacting Samuel Wolfe, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, CN 402, Trenton, NJ 08625.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:11-4.3(c), 4.4(b) and 4.9

Due to a reduction in the projected expenses for fiscal year 1993, the projected operations and maintenance component of the rate schedule is changed in this adoption from $348.01 as the charge per million gallons set forth in the proposed rule to $341.47 per million gallons, a reduction of $6.54 per million gallons. This reduced rate is reflected at N.J.A.C. 7:11-4.3(c) which actually sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-4.9 which references N.J.A.C. 7:11-4.3 and sets forth the operations and maintenance charge for standby services.

Due to a reduction in the required debt service payments to the State Treasurer as a result of a lower than projected interest rate obtained on the sale of the bonds for the Manasquan project completion loan, the debt service component of the rate schedule has been changed in this adoption from $718.65, $751.32, $751.66, $784.34 and $784.10 as the charge per million gallons set forth in the proposal effective July 1, 1992, February 1, 1993, July 1, 1993, February 1, 1994 and July 1, 1994 respectively to $712.80, $745.20, $745.51, $777.92 and $777.67 per million gallons respectively. These reduced rates are reflected at N.J.A.C. 7:11-4.4(b) which actually sets forth the debt service assessment schedule.

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

7:11-4.3 Operations and maintenance expense component

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

(c) Operations and maintenance expense component:

Effective Date	Rate/Million Gallons (based upon a 16.097 mg per day sales base)
July 1, 1992	*[$348.01]* ***$341.47***

7:11-4.4 Debt Service Cost Component

(a) (No change.)

(b) The following Debt Service rate, based on a sales base of 16.097 million gallons per day, apply to all water purchasers who entered into a water purchase contract before July 1, 1990, the date upon which the Authority commenced operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and began to make uninterruptible service available to the purchasers ("System Operation Date").

Period	Rate/Million Gallons
7/1/92 to 1/31/93 (Coverage 110 percent)	*[$718.65]* ***$712.80***
2/1/93 to 6/30/93 (Coverage 115 percent)	*[$751.32]* ***$745.20***
7/1/93 to 1/31/94 (Coverage 115 percent)	*[$751.66]* ***$745.51***
2/1/94 to 6/30/94 (Coverage 120 percent)	*[$784.34]* ***$777.92***
7/1/94 (Coverage 120 percent)	*[$784.10]* ***$777.67***

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

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of the purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof	*[$348.01]* ***$341.47*** plus annual debt service assessment rate established in N.J.A.C. 7:11-4.4.

7:11-4.13 Procedures for rate adjustments

(a) Prior to amending the schedule of rates, charges and debt service assessments established by this subchapter, the Authority shall:

1. Provide notice and an explanation outlining the need for the proposed rate adjustment to all purchasers; the Department of the Public Advocate, Division of Rate Counsel; the Board of Regulatory Commissioners and other interested persons at least six months prior to the proposed effective date. This notice and explanation shall be deemed to be part of the record of the proceedings;

2. Provide supporting documents and financial records of the Authority, at the Authority's cost, in support of the proposed adjustment to all purchasers; the Department of the Public Advocate, Division of Rate Counsel; the Board of Regulatory Commissioners and other interested persons upon request, and make such documents and records available for review at the Authority's offices in Clinton, New Jersey at the time notice of the proposed amendment to the rates is given. These supporting documents and financial records shall be deemed to be part of the record of the proceedings for purposes of preparing the hearing officer's report required under (a)9 below;

3. Afford purchasers, the Department of the Public Advocate, Division of Rate Counsel and the Board of Regulatory Commissioners and other interested persons the opportunity to submit written questions and requests for additional data prior to the time of the meeting required under (a)4 below. The Authority staff shall provide written answers to the questions and supply the additional data requested prior to the meeting;

4. Schedule a meeting with the purchasers, the Public Advocate, Division of Rate Counsel and the Board of Regulatory Commissioners and other interested persons within 45 days after sending them notice of the proposed amendments to the rate schedule regarding the proposed amendments;

i. At the meeting the purchasers, the Public Advocate, Division of Rate Counsel and the Board of Regulatory Commissioners and other interested persons will be invited to submit written questions which will be put into the hearing record and which will be answered by Authority at the public hearing;

ii. (No change.)

5. Hold a public hearing on the proposed rate adjustment. One or more members of the Authority will serve as the hearing officer. The public hearing agenda shall include, but not be limited to:

i. An opening statement by the hearing officer;

ii. The Authority's answers to the questions raised prior to the hearing by the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Regulatory Commissioners and other interested persons;

iii. Oral statements, written statements and any supporting evidence presented by interested persons; and

iv. Questions of the Authority by the purchasers, the Public Advocate, Division of Rate Counsel, the Board of Regulatory Commissioners, and any interested persons on any aspect of the need for, the basis of, or any provision of the proposed rate adjustment. Follow up questions relative to the answers of the Authority may also be directed to the Authority during the public hearing;

6. Attempt to answer all questions raised at the public hearing. In the event that a response cannot be immediately given at the public hearing, then a written response shall be prepared within 10 working days after the public hearing, and a copy of that written response will be provided to all contractual water purchasers, the Public Advocate, Division of Rate Counsel, Board of Regulatory Commissioners and attendees at the hearing and made a part of the hearing record;

7. Permit, within 10 working days after receipt of the answer, contractual water purchaser, the Public Advocate, Division of Rate

Counsel, the Board of Regulatory Commissioners and attendees will be permitted to respond in writing to the answers of the staff for the record;

8.-9. (No change.)

(b) (No change.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Notice of Administrative Correction
Division of Waste Management Rules
Fees for Solid Waste, Excluding Hazardous Waste Fees
N.J.A.C. 7:26-4.3

Take notice that the Office of Administrative Law has discovered an error in the text of N.J.A.C. 7:26-4.3(b) as currently published in the New Jersey Administrative Code (page 26-70.119, Supp. 3-16-92).

As proposed and adopted effective July 15, 1991, N.J.A.C. 7:26-4.3(b) was substantially amended, with a new table for compliance monitoring services effective and operative July 15, 1991, except for the fees for those services pertaining to thermal destruction facilities which were to become operative March 1, 1992 (see 22 N.J.R. 3079(a) and 23 N.J.R. 2166(b)). Through a notice published in the February 18, 1992 New Jersey Register (24 N.J.R. 584(a)), the Department of Environmental Protection and Energy postponed the operative date of the fees pertaining to thermal destruction facilities until at least July 1, 1992; a notice in this June 1, 1992 issue of the New Jersey Register further postpones the operative date for those fees until October 1, 1992.

The original Code publication of the amended fee schedule in N.J.A.C. 7:26-4.3(b) erroneously included the not-yet-operative thermal destruction facility fees. This was corrected through a notice of administrative correction published in the March 16, 1992 New Jersey Register at 24 N.J.R. 1121(a). However, that notice inadvertently failed to provide for the republication in the Code of the compliance monitoring services fees for resource recovery facilities which were in effect at the time of the 1991 amendments, and which remain effective until the amended fees become operative. Through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, this omission will be rectified.

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

7:26-4.3 Fee schedule for solid waste facilities

(a) (No change.)

(b) The permittee of a solid waste facility shall pay the annual fees listed in the following table for compliance monitoring services. The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year.

Type of Facility	Compliance Monitoring Fees
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	$ 39,087
Sanitary Landfill—operating at less than 31,200 tpy	$ 6,013
Transfer Stations and Materials Recovery Facilities—operating at 31,200 tpy or more	$ 12,027
Transfer Stations and Materials Recovery Facilities—operating at less than 31,200 tpy	$ 4,510
Resource Recovery—operating at 9.6 tons per day or more	**$500.00 per day that an inspector is on the premises**
Resource Recovery—operating at less than 9.6 tons per day	**$270.00 per site visit**
Resource Recovery under construction or expansion	**$270.00 per day that an inspector is on the premises**

(c)-(h) (No change.)

INSURANCE

(b)

DIVISION OF THE REAL ESTATE COMMISSION

Prohibition Against Dual Compensation for Dual Agency
Prohibition Against Kickbacks for Referrals
Disclosures—Mortgage Financing Services; Affiliations with Mortgage Lenders or Brokers
Prohibition Against Excluding Outside Lenders
Adopted New Rules: N.J.A.C. 11:5-1.38 through 1.42

Proposed: November 18, 1991 at 23 N.J.R. 3424(b) (see also 23 N.J.R. 3739(b)).

Adopted: April 28, 1992 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Filed: May 7, 1992 as R.1992 d.232, **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. 45:15-6, 17; Real Estate Settlement Procedures Act, 12 U.S.C. §2607; *Mortgage Bankers Assoc. of N.J. v. N.J. Real Estate Comm'n et al.*, 102 *N.J.* 176 (1986) (on remand—OAL Docket No. BRE-228-87).

Effective Date: June 1, 1992.

Operative Date for N.J.A.C. 11:5-1.40 and 1.41: November 1, 1992.

Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Real Estate Commission ("Commission") received seven written comments submitted by the following interested organizations or individuals: New Jersey Council of Savings Institutions; New Jersey Savings League; New Jersey Associations of Realtors; C.B. Commercial Real Estate Group, Inc.; Fox and Lazo Realtors and Shelter Mortgage Services; Sears, Coldwell Banker and Schlott; and Anthony P. Meli, Jr., CMB. In addition, the Commission conducted a public hearing on these proposed rules at its public meeting on December 17, 1991. The following persons made oral comments on the proposal to the Commission on the record at the public hearing: E. Lawler, Jr., President, New Jersey Savings League; J. McGuire, President and K. Diener, Vice President, U.S. Express Financial Corp; E.R. Levy, Executive Director, Mortgage Bankers Assoc. of New Jersey; B. Goodman, Esq., Counsel to the New Jersey Assoc. of Realtors. The record of the public hearing may be reviewed by contacting Robert J. Melillo, Special Assistant to the Director, New Jersey Real Estate Commission, 20 West State Street, CN 328, Trenton, New Jersey 08625.

COMMENT: Several commenters objected because the rules do not specify those mortgage financing services which must be performed by a real estate licensee before compensation would be earned in the related mortgage transaction.

RESPONSE: Neither the Commission nor the Department of Banking considered it necessary to mandate a list of specific services that must be performed either by a real estate licensee or by a mortgage broker to earn compensation or reimbursement. Since the technological advances that have promoted consolidation of mortgage financing and real estate brokerage services are still evolving, flexible regulation seems more compatible with the changing market place. The Commission's rule at N.J.A.C. 11:5-1.39 does mirror Federal law in prohibiting any compensation or payments to a real estate licensee who performs no services except referral. Furthermore, proposed Department of Banking amendments, published elsewhere in this issue of the New Jersey Register will require that fees charged by real estate brokers for residential mortgage financing services be limited to reimbursement for expenses with the fee

capped at $250.00, payable at mortgage closing, unless the licensee is also licensed as a mortgage broker or banker. Therefore, a real estate licensee who provides lesser services will incur fewer expenses and, thus, receive lesser reimbursement. Furthermore, no fee could be paid to the real estate licensee if the mortgage loan did not close.

COMMENT: One commenter objected that the proposed rules do not require that records of real estate licensees' mortgage financing services be subject to audit and examination by the Commission.

RESPONSE: The Commission has added clarifying language to the rules specifying that such records shall be kept along with the other business records of the real estate broker and made available for inspection by the Commission pursuant to N.J.A.C. 11:5-1.13.

COMMENT: Several commenters objected that the rules do not specify any penalties for violations.

RESPONSE: There is no need to state specific penalties for violations of these rules since the Real Estate License Act, N.J.S.A. 45:15-17(r), sets forth the penalties for violations of the statute and regulations. Such penalties, include suspension or revocation of license, or right of licensure, and fines up to $5,000 for a first violation and $10,000 for any subsequent violations.

COMMENT: One commenter objected to proposed N.J.A.C. 11:5-1.38(d) which requires certain disclosures in the contract or lease. The commenter noted that commercial real estate brokers do not draft the contract of sale or lease and, thus, often have no ability to include the required disclosures in these documents.

RESPONSE: Upon adoption, the Commission has added a provision to N.J.A.C. 11:5-1.38(d) which permits licensees to provide the required disclosures in a separate writing in any transaction where the licensee does not draft the contract of sale or lease.

COMMENT: Several commenters objected to the proposed rules on the basis that real estate licensees lack the requisite knowledge or training to provide buyers with mortgage financing services.

RESPONSE: The Commission shares the commenters' concern that residential mortgage financing has become increasingly complex. The public would be better served if education and training were upgraded for all professionals providing mortgage financing services, including loan officers, mortgage solicitors, mortgage brokers and real estate licensees. However, at present, the Commission notes that although residential mortgage bankers, brokers and mortgage solicitors are not presently required to demonstrate any relevant educational background in mortgage financing to obtain their New Jersey mortgage licenses or registrations, real estate licensees are, indeed, already required to complete a State-regulated educational course to obtain their licenses, which course specifically includes training on mortgage financing. See N.J.A.C. 11:5-1.27. The Commission would support efforts by the mortgage financing industry to provide updated educational materials and courses for all real estate licensees who counsel borrowers on mortgage transactions.

COMMENT: Several commenters urged the Commission to prohibit any additional fees, or, at a minimum, place a limit on the fees real estate licensees may receive for providing mortgage services.

RESPONSE: The Commission notes that after extensive hearings, the administrative law judge decided that real estate licensees are not prohibited from providing mortgage financing services for a fee, but recommended that the fees charged be capped by the Commission. The Commission has adopted the ALJ's initial decision, but rejected his recommendation that fees be capped, because the Commission lacks statutory authority under the Real Estate License Act to regulate the fees charged by real estate brokers for their services. However, the Department of Banking has proposed a regulation of the fee to be received by those real estate brokers who are not licensed as residential mortgage brokers or bankers, through a rulemaking proposal published effective in this issue of the New Jersey Register. Pursuant to the proposed Banking rule, real estate licensees may receive a maximum of $250.00 per transaction as reimbursement for expenses of providing actual mortgage services in related real estate transactions, payable only at closing of the mortgage. In order to charge or receive any higher reimbursement or compensation in one to six family residential transactions, the real estate licensee must be licensed as a mortgage banker or mortgage broker by the Department of Banking, or employed by a banking licensee and registered as a mortgage solicitor.

COMMENT: Several commenters approved the Commission's rule proposals as reasonable and useful protections for the public in real estate transactions where real estate licensees will offer convenient mortgage financing services to the buyer/borrower in the real estate office.

RESPONSE: The Commission appreciates receiving positive comments on its rulemaking proposals.

COMMENT: One commenter objected to the "reasonable access" provisions of proposed N.J.A.C. 11:5-1.42 as too restrictive of the lender's access to borrowers. The commenter urged the Commission to require real estate brokers to provide access to at least nine outside lenders, rather than three.

RESPONSE: The Commission considers that the proposed rule requiring a real estate broker who offers in-house mortgage services to permit at least three outside lenders access to salespersons in the real estate office is a fair balance of the need for borrower-access by lenders against the broker's need to control and supervise his or her offices premises. Because many real estate offices are small and congested, and considering that lenders have other means of soliciting business from real estate licensees and potential borrowers, the Commission feels that in-person access by representatives of at least three lenders is an adequate minimum standard for real estate offices. However, this is a minimum, not a restriction. In the Commission's experience real estate brokers generally welcome visits by representatives of as many lenders as will provide good service to buyer/borrowers at fair rates, to the extent such visits can be accommodated in their limited office facilities; such open door policies are not expected to change with adoption of this rule.

COMMENT: One commenter suggested that the definition of "affiliation" between a real estate licensee and a lender be based upon the Department of Banking regulations at N.J.A.C. 3:1-10.1 and that the percentage of share-ownership which triggers disclosure of the affiliation be raised to 10 percent from one percent based upon that Banking Department regulation.

RESPONSE: The Banking Department regulation referred to by the commenter serves a different purpose than the Commission's rule. While the Banking rule triggers a prohibition against certain lending activity, the Commission's rule will merely determine when disclosure is required. Therefore, the lower percentage of stock ownership is more desirable for the Commission's rule. Further, since one percent stock ownership is the level of common ownership which is defined as a "controlled business arrangement" under RESPA, 12 U.S.C. §2602(7), the Commission decided to remain consistent with RESPA here. However, the Commission did clarify the scope of its affiliation disclosures by including stock owned by the licensee's spouse, parent or child in the total percentage. This change is intended to prevent easy avoidance of the disclosure requirements by licensees who benefit from stock held in the names of such close family members.

COMMENT: One commenter objected to the proposed rules on the basis that permitting real estate licensees to receive any fees up-front for providing mortgage services was tantamount to permitting hidden kickbacks.

RESPONSE: The Federal government under RESPA, and the Commission through the administrative hearings conducted in this case, have both come to the conclusion that changes in the residential mortgage market make it currently desirable and convenient for real estate licensees to provide mortgage services to buyer/borrowers. Where actual services are provided, expenses are incurred by the real estate licensee which were not traditionally incurred in real estate brokerage transactions, and which are not necessarily compensated or reimbursed through the brokerage commission. Moreover, the Commission's rules were not changed to address this commenter's concerns, because the Banking Department has now proposed regulations on point. The Banking Department proposes to permit real estate brokers, not licensed as mortgage bankers or brokers, to recoup their expenses at closing of the mortgage, to a maximum of $250.00. However, under the new Banking proposal, real estate licensees will not be permitted to charge any "up-front" fee for mortgage services in residential transactions unless licensed by the Banking Department as mortgage bankers or brokers.

Summary of Agency-Initiated Changes:

The Commission added examples to N.J.A.C. 11:5-1.39(b) to assist licensees in understanding and complying with the prohibition against compensating salespersons for referring customers to particular lenders or providers of other related services. The Commission also made minor changes to clarify the wording of N.J.A.C. 11:5-1.40, and the disclosure statements contained in that rule.

The Commission changed the text of N.J.A.C. 11:5-1.40(d) on disclosure of the fee for mortgage services by deleting language concerning the calculation of the fee to avoid an implied inconsistency with the newly proposed Banking Department rules. The Commission felt that its original language might lead real estate licensees to believe that they were

permitted to charge a fee based upon a percentage of the loan principal on residential mortgages resulting in violations of the Banking Department proposed rule which restricts those real estate licensees not licensed by Banking to a maximum fee of $250.00 as a reimbursement of expenses for providing residential mortgage services. By deleting this language, N.J.A.C. 11:5-1.40 is now silent on the method for calculating the fee and less likely to mislead licensees. Further, the Commission has now proposed an amendment to N.J.A.C. 11:5-1.38, as a companion to the Banking Department's proposed amendment to N.J.A.C. 3:38-5.2, embodying the exemption from licensure by the Department of Banking for real estate licensees who limit their fee for residential mortgage services to the $250.00 expense reimbursement.

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

11:5-1.38 Prohibition against licensees receiving dual compensation for dual representation in the sale or rental transaction

(a) Real estate licensees are prohibited from receiving compensation from both a seller and a buyer for representing both seller and buyer in the same real estate sales transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(b) Real estate licensees are prohibited from receiving compensation from both a landlord and a tenant for representing both the landlord and the tenant in the same rental transaction. This prohibition applies even when the dual agency has been fully disclosed by the licensee to both parties.

(c) Within the meaning of this section, the phrases "sales transaction" and "rental transaction" do not include any related transactions whether or not they are contingencies in the contract or lease. For example, where there is a mortgage contingency in a contract of sale, the mortgage loan is a related transaction between the buyer and lender; it is not the same transaction as the sale.

(d) A licensee who represents only one party to a sale or rental transaction may receive the entire compensation for such representation from either party or a portion of that compensation from both parties to the transaction, provided that ***where a licensee prepares a contract or lease*** full written disclosure of the agency relationship and of the compensation arrangement *[has been]* ***is*** made to both parties to the transaction in the contract or lease. ***Where a licensee does not prepare the contract or lease, but seeks compensation from a party whom he or she does not represent, that licensee's agency relationship and proposed compensation arrangement shall be disclosed to all parties in a separate writing prior to execution of the contract or lease.***

(e) A licensee who represents any party to a sale or rental transaction may receive compensation from either party for providing actual services in related transactions, provided that the licensee discloses the related services, sources and amounts of compensation in writing to the parties to the sale or rental transaction. Where the related services to be provided by the licensee are mortgage financing services provided to the buyer for compensation ***or reimbursement***, the written disclosures must comply with N.J.A.C. 11:5-1.40. ***The broker shall maintain records of such related transactions including all required written disclosures, which records shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-1.13.***

11:5-1.39 Prohibition against kickbacks for related business referrals

(a) Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, shall be subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty. Any compensation received by a real estate licensee, pursuant to N.J.A.C. 11:5-1.38(e), for services in related transactions must be for services actually performed by the licensee beyond mere referral. Compliance with the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §2607, the regulations thereunder, or any opinion regarding RESPA issued by the Federal Department of Housing and Urban Development will be considered to be compliance with this subsection.

(b) Real estate brokers are prohibited from offering incentives to the salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services. Any compensation paid by a real estate broker to a salesperson for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral. For example, a real estate broker who *[is also a mortgage broker]* ***provides in-house mortgage services*** may compensate a salesperson licensed with that broker who performs actual ***mortgage*** services *[as a mortgage solicitor]*. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to salespersons for merely referring buyers to the in-house mortgage service ***or any particular lender or mortgage broker***. ***For example, a real estate broker shall not offer or pay a salesperson a higher commission rate on a real estate transaction because the mortgage is placed through the in-house mortgage service or affiliated lender. A broker shall not award prizes or bonuses to salespersons based upon the number of customer referrals made to the in-house mortgage service or to a particular lender.***

11:5-1.40 Disclosures by licensees providing mortgage financing services to buyers for a fee

(a) Every real estate licensee who provides mortgage financing services to buyers must provide written disclosure to the buyer/borrower and to the seller as required in this rule as a condition to receiving, in addition to a share of the brokerage commission on the sale, any compensation***, reimbursement*** or thing of value from the buyer, or any other source. These disclosures are required whenever the real estate brokerage agency, any division therein, or any individual licensed or employed by the agency will receive compensation or reimbursement for providing mortgage financing services related to the sales transaction, even if that particular division or individual will not share in the sales commission. Copies of all written disclosures required by this rule must be retained by the broker as business records pursuant to N.J.A.C. 11:5-1.12. ***The broker shall maintain records of such related mortgage transactions which shall be available to the Commission for inspection pursuant to N.J.A.C. 11:5-1.13.***

(b) The licensee must provide written disclosure as required by (a) above to the buyer/borrower before charging or accepting ***or contracting for*** any fees for mortgage financing services *[or contracting for or]* ***and*** providing such services other than prequalification. The written disclosure to the buyer must include the following information:

1. The amount of all fees which the buyer will be expected to pay to the licensee for mortgage services, and whether and under what circumstances such fees are refundable;

2. The amount and source of any compensation or reimbursement which the licensee will receive for providing mortgage financing services to the buyer;

3. Where the licensee takes applications for or places loans exclusively with any three or fewer lenders, or is affiliated with any lender or mortgage broker as defined in N.J.A.C. 11:5-1.41, the disclosure must advise the buyer of that fact, give the names of such lenders and state ***(indent, single space and all capital letters)***:

[You are under no obligation to use the mortgage services offered by this real estate licensee. You may obtain your mortgage loan from another source.]

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OFFERED BY THIS REAL ESTATE LICENSEE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

4. Where the licensee or agency is also representing the seller in the sales transaction, the disclosure to the buyer/borrower must include the statement set forth in (e) below.

(c) Real estate licensees who are dually licensed as mortgage bankers or brokers may combine the disclosures to buyers required in this rule with the written disclosure to borrowers required by the

Department of Banking pursuant to N.J.A.C. 3:1-16.3 or N.J.A.C. 3:1-16.11.

(d) A listing broker who ***represents only the seller and who*** offers to provide mortgage financing services to buyers for compensation ***or reimbursement*** shall provide written disclosure to the seller by including the following statement in the listing agreement. A selling broker who represents ***only*** the seller as subagent of the listing broker, and who offers to provide mortgage financing services to buyers for compensation ***or reimbursement***, shall provide the following disclosure statement ***(indent, single space and all capital letters)*** to the seller, with a copy to the listing broker, at the time any written offer is presented.

[This real estate agency may offer to provide mortgage financing services to the buyer for compensation in addition to the sales commission. As agent of the seller, this real estate agency has a fiduciary duty to you, the seller, which will not change should mortgage financing services be provided. In the event that mortgage financing services are provided to the buyer, this agency shall not undertake representation of the buyer in the real estate sale.]

THIS REAL ESTATE AGENCY MAY OFFER TO PROVIDE MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN ADDITION TO THE SALES COMMISSION. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO YOU, THE SELLER, WHICH WILL NOT CHANGE SHOULD MORTGAGE FINANCING SERVICES BE PROVIDED. IN THE EVENT THAT MORTGAGE FINANCING SERVICES ARE PROVIDED TO THE BUYER, THIS AGENCY SHALL NOT UNDERTAKE REPRESENTATION OF THE BUYER IN THIS REAL ESTATE SALE.

(e) Where the licensee or agency does provide mortgage financing services to the buyer for compensation ***or reimbursement*** and also represents ***only*** the seller in the sales transaction, the following statement must be included in the written disclosure to the buyer required by (b) or (c) above. The licensee or agency must also promptly send or deliver the following written disclosure statement ***(indent, single space and all capital letters)*** to the seller, with a copy to the listing broker, at the time a mortgage application is submitted on behalf of the buyer/borrower.

_____
(name of licensee and brokerage agency)

[represents the seller in this real estate sales transaction. Upon closing of title, this real estate agency will receive a sales commission paid from the seller's funds. This real estate agency also provides mortgage financing services to the buyer for compensation in the amount of _____. As agent of the seller, this real estate agency has a fiduciary duty to the seller which is not changed by providing mortgage services to the buyer. This agency does not represent the buyer in the real estate sale.]

REPRESENTS THE SELLER IN THIS REAL ESTATE SALES TRANSACTION. UPON CLOSING OF TITLE, THIS REAL ESTATE AGENCY WILL RECEIVE A SALES COMMISSION FOR REPRESENTING THE SELLER. THIS REAL ESTATE AGENCY ALSO PROVIDES MORTGAGE FINANCING SERVICES TO THE BUYER FOR A FEE IN THE AMOUNT OF _____. AS AGENT OF THE SELLER, THIS REAL ESTATE AGENCY HAS A FIDUCIARY DUTY TO THE SELLER WHICH IS NOT CHANGED BY PROVIDING MORTGAGE SERVICES TO THE BUYER. THIS AGENCY DOES NOT REPRESENT THE BUYER IN THIS REAL ESTATE SALE.

Where the precise amount of the compensation to the licensee or agency for providing mortgage services has not yet been established, the maximum estimated amount of compensation should be included in this disclosure*[, stated either as a dollar figure or as a percentage of the loan principal]*. The compensation received by the licensee may not be increased above the amount disclosed here without written notice to both parties, with a copy to the listing broker.

11:5-1.41 Disclosure of licensee's affilitation with a mortgage lender or mortgage broker to whom the licensee refers buyers

(a) Whenever a real estate licensee refers a buyer/borrower to a mortage lender or mortgage broker with whom the licensee is affiliated, the licensee must provide written disclosure of the affiliation to the buyer. This disclosure must be made even though the licensee will receive no fees or compensation for the referral, see N.J.A.C. 11:5-1.39, and even though the licensee also refers the buyer to other, unaffiliated sources of mortgage financing. *[Copies of all written disclosures required by this rule must be retained by the broker as business records available for inspection pursuant to N.J.A.C. 11:5-1.12.]* The disclosure must include the following statement ***(indent, single space and all capital letters)***:

[You are under no obligation to use the mortgage services of _____ who/which is affiliated with this real estate licensee. You may obtain your mortgage loan from another source.]

YOU ARE UNDER NO OBLIGATION TO USE THE MORTGAGE SERVICES OF _____ WHO/WHICH IS AFFILIATED WITH THIS REAL ESTATE LICENSEE. YOU MAY OBTAIN YOUR MORTGAGE LOAN FROM ANOTHER SOURCE.

(b) For the purposes of this rule, a real estate licensee is considered to be affiliated with a mortgage lender or mortgage broker when:

1. The licensee, or the licensee's spouse, parent or child*,* is an officer, director or employee of the lender or mortgage broker, or works as a solicitor for the lender or mortgage broker;

2. The licensee***, either alone or with spouse, parent or child,*** owns more than one percent of the lender or mortgage broker; the licensee is more than one percent owned by the lender or mortgage broker; or the licensee ***owns more than one percent or*** is ***more than one percent*** owned by a corporate parent, ***holding company*** or other business entity which is a majority shareholder in the lender or mortgage broker;

3. The licensee is a franchisee of a franchiser which owns more than one percent of the lender or mortgage broker or the licensee itself is the franchiser or franchisee of a mortgage lending franchise; or

4. The licensee shares office space or other facilities, or staff, with the lender or mortgage broker.

(c) Where an employing broker or broker of record of a real estate agency has an individual or corporate affiliation with a lender or mortgage broker, all licensees licensed with that real estate broker must provide the required disclosures to buyers referred to the affiliate.

1. Where an office manager has such an individual affiliation, the manager and all licensees working under his or her supervision must provide the disclosure to all buyers referred to the affiliate by that office.

2. Where a salesperson or broker-salesperson has such an individual affiliation, he or she must provide the disclosure to all buyers he or she refers to the affiliate.

(d) The disclosure required by this section may be combined with the disclosure of affiliation required under RESPA, 12 U.S.C. §2601 et seq. ***Copies of all written disclosures required by this rule must be retained by the broker as business records available for inspection pursuant to N.J.A.C. 11:5-1.12 and 1.13.***

11:5-1.42 Licensees with in-house mortgage services prohibited from excluding all outside mortgage solicitors

Real estate brokers who provide mortgage financing services to buyer/borrowers in-house, whether through computerized loan origination systems, or affiliated lenders or affiliated mortgage brokers, etc., are prohibited from limiting buyer's choices by denying outside lenders reasonable access to solicit mortgage loans in their real estate offices. Reasonable access will be presumed where three or more outside, non-affiliated lenders are permitted to send solicitors into the real estate office during business hours to contact salespersons. The reasonableness of the broker's overall office policy concerning rate sheets, and access by outside lenders, other visitors and solicitors, will also be considered. In no event shall this rule be

interpreted to require any real estate broker to permit any one specific lender to solicit loans inside the real estate office or to require the real estate broker to set aside any particular space or facilities inside the real estate office for the use of outside mortgage solicitors.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Board of Pharmacy

Reciprocal Registration

Adopted Amendment: N.J.A.C. 13:39-3.9

Proposed: February 18, 1992 at 24 N.J.R. 553(a).
Adopted: April 8, 1992 by the State Board of Pharmacy, Elaine Dunn, President.
Filed: May 8, 1992 as R.1992 d.235, **without change.**

Authority: N.J.S.A. 45:14-8; 45:14-26.2.

Effective Date: June 1, 1992.
Expiration Date: June 19, 1994.

The Board of Pharmacy afforded all interested parties an opportunity to comment on the proposed amendment, N.J.A.C. 13:39-3.9, relating to reciprocal registration. The official comment period ended on March 19, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on February 18, 1992 at 24 N.J.R. 553(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Department of Health, the New Jersey Pharmaceutical Association, the New Jersey Society of Hospital Pharmacists, Rite-Aid Corporation, Wakefern Food Corporation, Supermarkets General Corporation, and a number of pharmacists and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Pharmacy, Post Office Box 45013, Newark, New Jersey, 07101.

Summary of Public Comments and Agency Responses:

Three letters were received during the 30 day comment period.

Lucius A. Bowser, R.P., Chief, Drug Control Program, Department of Health, Health Facilities Evaluation, stated that his office had no comment on the proposal.

Arun K. Jolly, RPh., The Upjohn Company, commended the Board and expressed full support for the proposal, stating that it will have a positive impact on the social and economic well being of our State and the citizens of New Jersey. The Board acknowledges and appreciates this commenter's support for the proposal.

Jean Cirillo, President of the New Jersey Society of Hospital Pharmacists, stated that the Society thoroughly agreed that the proposal will enable pharmacists without the requisite experience to live and work in New Jersey while qualifying for licensure.

Ms. Cirillo also asked the Board to consider adding a statement that the Board will not require further internship hours for pharmacists who have completed an accredited residency if they had obtained a valid pharmacy license during their residency. In response, the Board states that it does not believe it is necessary to address this situation in regulatory form but, rather, it will deal with such applicants on a case-by-case basis.

Full text of the adoption follows.

13:39-3.9 Out of state practice requirement for transfer of license from a mutually reciprocating state

(a) An applicant for reciprocal registration to the State of New Jersey must be in good standing with any state in which the applicant is licensed and must have:

1. Practiced in pharmacy for at least 1000 hours within the two years immediately prior to application; or

2. Served a pharmacy practicum in New Jersey, in the presence of a New Jersey registered pharmacist approved by the Board, of not fewer than 500 hours within the one year immediately prior to application.

(b)

DIVISION OF CONSUMER AFFAIRS

Board of Professional Planners

Fees

Adopted Amendment: N.J.A.C. 13:41-3.2

Proposed: February 18, 1992 at 24 N.J.R. 554(b)
Adopted: April 14, 1992 by the State Board of Professional Planners, Shirley Bishop, President.
Filed: May 15, 1992 as R.1992 d.240, **without change.**

Authority: N.J.S.A. 45:14A-4.

Effective Date: June 1, 1992.
Expiration Date: July 17, 1995.

The Board of Professional Planners afforded all interested parties an opportunity to comment on the proposed amendment to its fee schedule, N.J.A.C. 13:41-3.2. The official comment period ended on March 19, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on February 18, 1992, at 24 N.J.R. 554(b). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Society of Planning Consultants, the New Jersey Chapter of the American Planners Association, and the New Jersey County Planners Association.

A full record of this opportunity to be heard can be inspected by contacting the Board of Professional Planners, Post Office Box 45016, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Two letters commenting upon the proposed fee increases were received during the 30 day comment period. A summary of the issues raised by the commenters and the Board's responses follows.

COMMENT: Donna M. Lewis, P.P., noted that many professional planners are public sector employees for whom the licensing fees would not be a "business expense." Ms. Lewis suggested that the Board consider a two-tiered approach to the license renewal fee, with a discounted rate for public sector employees.

RESPONSE: The Board is sympathetic to the adverse impact of increased fees on all licensees, including those employed in the public sector. However, a two-tiered system would be discriminatory toward professional planners who are not in the public sector. Furthermore, since the Board of Professional Planners is itself a public body, establishing discounted rates for public sector employees would be inappropriate and self-serving.

COMMENT: Noting that many people taking the examination are in entry-level positions, Ms. Lewis suggested a two-tiered approach toward the examination fee, with a lower fee for those taking the examination the first time.

RESPONSE: In establishing the examination fee, the Board is passing along to the individual applicant the actual cost of the examination to the Board plus a small administrative fee. In the Board's opinion, subsidizing first time exam takers at the expense of those retaking the exam would be improper and discriminatory.

COMMENT: Harvey S. Moskowitz, P.P., P.A., stated that in order to determine whether the fees are reasonable, he needed a copy of the Board's budget, including expenses and revenues. Mr. Moskowitz asked more specifically whether the Board shares clerical personnel with other boards and, if so, how those costs are allocated.

RESPONSE: Specific financial information concerning the Board of Professional Planners is included within the Appropriations Act for 1993, a public document which is available in the State library as well as in many local libraries. The Board shares a clerical staff of three with another professional licensing board, and salary costs are allocated equally between the two boards. As noted in the statements accompanying the fee increase proposal, pursuant to N.J.S.A. 45:1-3.2, each board is required to be self-funding; that is, operating costs must be met through licensing and other fees. The statute also requires the agency to assess fees which are estimated not to exceed the amount required to fund the Board's operations. The Board is confident that the estimate of fees required in order to continue its operations complies with this statutory requirement. However, in the unlikely event excess funds are raised, they will be carried over for the benefit of the Board.

Full text of the adoption follows.

13:41-3.2 Fee schedule

(a) The fees charged by the State Board of Professional Planners shall be:

1. Application for a Professional Planner or Planner-In-Training license	$ 75.00
2. Examination Fees	
i. Combined National and State Examination	$275.00
ii. State Examination only	$200.00
iii. National Examination only	$225.00
3. Initial license fee:	
i. During the first year of a biennial renewal period	$130.00
ii. During the second year of a biennial renewal period	$ 65.00
4. Biennial License Fee and Renewal-Professional Planner	$130.00
5. Late Renewal Fee	$ 50.00
6. Reinstatement Fee	$200.00
7. Duplicate license	$ 25.00
8. Name Change	$ 25.00
9. Duplicate Wall Certificate	$ 25.00

(a)

DIVISION OF CONSUMER AFFAIRS

Automotive Dispute Resolution

Adopted Amendments: N.J.A.C. 13:45A-26.1, 26.2, 26.4 and 26.14

Proposed: January 6, 1992 at 24 N.J.R. 53(a).
Adopted: April 30, 1992 by Emma N. Byrne, Director, Division of Consumer Affairs.
Filed: May 8, 1992 as R.1992 d.236, **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. 56:12-49 and P.L. 1991, c.130

Effective Date: June 1, 1992.
Expiration Date: November 9, 1995.

Summary of Public Comments and Agency Responses:
No comments were received.

Summary of Agency-Initiated Change Between Proposal and Adoption:
The Division is amending N.J.A.C. 13:45A-26.4(c) upon adoption to reflect the new telephone number of the Lemon Law Unit.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*).

13:45A-26.1 Purpose and scope

(a) (No change.)

(b) This subchapter is applicable to:

1. All manufacturers of passenger cars and motorcycles registered, sold or leased in the State of New Jersey;

2. All purchasers and lessees of passenger cars and motorcycles registered, sold or leased in the State of New Jersey; and

3. (No change.)

13:45A-26.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

. . .

"Motor vehicle" means a passenger automobile or motorcycle as defined in N.J.S.A. 39:1-1, that is registered, sold or leased in the State of New Jersey, whether purchased, leased, or repaired in the State or outside the State.

. . .

13:45A-26.4 Lemon Law Unit

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

(c) All correspondence by consumers or manufacturers to the Division of Consumer Affairs regarding Lemon Law matters shall be directed to the attention of the Lemon Law Unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
Post Office Box 45026
Newark, New Jersey 07101
Tel. No. (201) *[648-3135]* ***504-6376***

13:45A-26.14 Manufacturer's informal dispute resolution procedures

(a) The LLU shall compile a roster of American and foreign manufacturers of passenger automobiles and motorcycles registered, sold or leased in New Jersey.

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

(b)

NEW JERSEY RACING COMMISSION

Notice of Administrative Correction

Thoroughbred Rules

List of Racing Officials

N.J.A.C. 13:70-15.1

Take notice that the New Jersey Racing Commission has discovered an error in the text of N.J.A.C. 13:70-15.1. The phrase "one of whom shall be" in N.J.A.C. 13:70-15.1(a)1 was proposed for deletion at 21 N.J.R. 3856(b), and the deletion was adopted effective February 20, 1990 at 22 N.J.R. 663(b). However, the phrase was inadvertently not deleted from the Code pursuant to this rulemaking. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

13:70-15.1 List of racing officials

(a) The racing officials shall include:

1. Three stewards, [one of whom shall be] appointed by the Racing Commission and paid by the association;

2.-12. (No change.)

PUBLIC UTILITIES

(c)

BOARD OF REGULATORY COMMISSIONERS

Rules of Practice

Adopted New Rules: N.J.A.C. 14:1

Proposed: August 19, 1991 at 23 N.J.R. 2487(a).
Adopted: April 29, 1992 by the Board of Regulatory Commissioners (formerly the Board of Public Utilities), Dr. Edward H. Salmon, Chairman, and Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.
Filed: April 30, 1992 as R.1992 d.224, **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. 48:2-12.

BRC Docket Number: AX90091001.
Effective Date: June 1, 1992.
Expiration Date: June 1, 1997.

Summary of Public Comments and Agency Responses:
Three individuals representing various interests commented on the proposed rules. They included Richard Fryling, Jr., Esq., General Solicitor, Public Service Electric and Gas Company; Joseph Rosa, Jr., Esq., Riccardelli & Rosa; and Martin C. Rothfelder, Esq., Kraft & McManimon, for the Hudson County Improvement Authority, Mercer County Improvement Authority and Gloucester County Improvement Authority.

COMMENT: Comments were received suggesting that because of the complex and technical nature of proceedings before the Board and the need for proper and competent representations in such proceedings, N.J.A.C. 14:1-3.2 should remain intact or that the Board should adopt a rule which mirrors the requirements for representation contained in N.J.A.C. 1:1-5.

RESPONSE: N.J.A.C. 14:1-3.2, in its present form, as well as N.J.A.C. 1:1-5, pertain to appearances and representation of parties in utility related proceedings by attorneys authorized to practice law in New Jersey, but out-of-State attorneys and by certain non-attorneys. The Board sees no need to maintain its rule in its current form because of the presence of N.J.A.C. 1:1-5. Likewise, the Board is of the opinion that it is unnecessary to adopt a rule in the image of N.J.A.C. 1:1-5 in that its proposed N.J.A.C. 14:1-9.1 provides that, in the absence of a specific provision, any uncontested hearing before the Board shall be conducted pursuant to N.J.A.C. 1:1.

COMMENT: One commenter suggests that the provision proposed in N.J.A.C. 14:1-3.1 allowing "any person" to appear before the Board may be unlawful if construed to allow *pro se* appearances by corporations.

RESPONSE: Under Rule 1:21-1(e) Pressler, current Court Rules, non-attorneys are permitted to represent close corporations before Administrative Law Courts provided the non-attorney is a principle of the corporation. As previously discussed, under the proposed rule, persons appearing before the Board in a representative capacity may be required to provide evidence of his or her authority to act in such capacity. This provision will act to prevent instances suggested by the comment.

COMMENT: One comment suggests that proposed rule N.J.A.C. 14:1-3.1 be reconsidered to limit appearances by *pro se* plaintiffs or respondents to matters involving only minor bill disputes.

RESPONSE: The Board believes that such a limitation would be unlawful and contrary to good public policy.

COMMENT: Comments were received noting that the rules should reflect the Board's name change from the Board of Public Utilities to the Board of Regulatory Commissioners.

RESPONSE: The change in the Board's designation, pursuant to Reorganization Plan No. 002-1991 effective August 19, 1991, occurred after the publication of the proposed rules for comment. The Board, therefore, concurs with the comment and will reflect the change in the appropriate sections. The Board would further note that pursuant to the aforementioned Reorganization Plan, the Department of Environmental Protection has been redesignated as the Department of Environmental Protection and Energy. This change has also been reflected where appropriate.

COMMENT: Comment was received to the effect that the Board will have multiple statutory offices.

RESPONSE: The Board, as in the past, will have one statutory office. However, since the publication of the proposed rules for comment, the Board has relocated its statutory office to 44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625. The Board would further note that while the Office of the Secretary will be located at the Trenton address, its technical staff will remain at Two Gateway Center, Newark, New Jersey 07102. Accordingly, any information or material intended for the technical staff may continue to be forwarded to the Board's Newark offices.

COMMENT: One comment was received suggesting that the words "for good cause shown" be added to N.J.A.C. 14:1-1.8(f), which are rules that refer to the use of cameras and recording devices during proceedings before the Board.

RESPONSE: The Board believes the addition of the suggested phrase is appropriate. The phrase is being added to the provision of the rule having to do with suspension of the operation of all or part of the rule.

COMMENT: One comment was received objecting to the requirement of N.J.A.C. 14:1-4.2(a) that 10 copies of each pleading be filed with the Board. The comment considered this requirement to be excessive and an unnecessary carry-over from the pre-existing rule. No alternative number of copies of pleadings was proposed.

RESPONSE: As the comment noted, this requirement existed in the expired rule, N.J.A.C. 14:1-5.3(a). During the effective term of that rule, the Board found the need for the required number of copies to be justified. Accordingly, the Board will continue to require that 10 copies of all pleadings be filed.

COMMENT: Comment was received concerning the requirements of N.J.A.C. 14:1-4.6 that all pleadings be filed in verified petition format. The comment noted that unverified complaints are routinely filed in civil courts. Should the Board choose to retain the existing requirement, it was recommended that the exception given therein to the Attorney General's Office be eliminated.

RESPONSE: The proposed rule represents a continuation of past Board practice as previously set out in N.J.A.C. 14:1-5.9. The Board believes that the continuation of its past practice will be beneficial in the processing of petitions by helping to ensure that the contents of said petitions are both appropriate and accurate.

COMMENT: Comment was received requesting clarification of N.J.A.C. 14:1-4.7(b) which considers the filing of an amended petition based on any significant change to be a new filing as of the date of filing. Clarification was requested in light of the potential for confusion regarding the statutory suspension period. In particular, concern was expressed over the possibility that the rule could be used to undermine the holding of *Toms River Water Company v. New Jersey Board of Public Utility Commissioners*, 82 *N.J.* 201 (1980), which provides utilities with protection against regulatory lag.

RESPONSE: Proposed N.J.A.C. 14:1-4.7 mirrors the pre-existing N.J.A.C. 14:1-5.10. The purpose of the rule is to provide for economic review of pleadings, to insure equity to the participating parties, and to expeditiously resolve all matters of the case. N.J.A.C. 14:1-4.7(b) needs to be read with the preceding N.J.A.C. 14:1-4.7(a) which states that "Whenever, subsequent to the date of a pleading, there is any significant change in respect to matter contained in such pleading, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances." The requirement that the change be significant is crucial and acts to protect both the petitioner and other parties to the case. The Board believes that significant changes introduced after the filing of the petition can work an injustice to those parties relying on petitioner's data. It is petitioner who is in control of all data and who must insure that its original petition accurately reflects current conditions and anticipated changes. The Board recognizes, however, that certain unanticipated significant changes can occur despite petitioner's due diligence. N.J.A.C. 14:1-4.7(b) offers protection to the petitioner through language which states that amendments will be considered new filings "... unless otherwise ordered or permitted by the Board." Thus, a petitioner can, with its amended filing, move before the Board for an order for permission to have the amended filing be considered as part of the original petition with no change of filing date.

COMMENT: Comment was received which was critical of the proposed N.J.A.C. 14:1-5.4(b). The nature of the criticism was directed toward any *prima facie* determination by the Board regarding the sufficiency of a filed petition and any unilateral action by the Board rejecting deficient petitions.

RESPONSE: The Board believes that the proposed rule would continue the current procedure where substantially deficient petitions are first brought to its attention by the parties to a proceeding. Initially, the parties attempt to resolve any deficiencies among themselves. Board review occurs only when the parties cannot resolve their differences. Any Board review would be accompanied by full opportunity for the parties to present their respective positions. If deficient, a filed petition will not be considered by the Board. In order to reflect this process, however, the Board will clarify this subsection by amending its first sentence as follows: "If after review the Board determines that a petition is deficient, the Board may refuse to **consider and may issue an order dismissing** said petition".

COMMENT: One comment was received which considered the proposed N.J.A.C. 14:1-5.6(a)1 requirement of filing 20 copies was excessive.

RESPONSE: The Board disagrees. The proposed rule entitled "Petitions for the approval of the sale or lease of property" is carried over with only slight modification from the pre-existing rule, N.J.A.C. 14:1-6.10. The need for the large number of copies is driven by the nature of the petition. Petitions for approvals of sales or leases of property require a much wider internal distribution than pleadings generally covered under proposed N.J.A.C. 14:1-4.2 and pre-existing N.J.A.C. 14:1-5.3(a). To accommodate this wider distribution, the Board believes the greater number of copies is necessary.

COMMENT: Comment was received which viewed as unnecessary the provision in proposed N.J.A.C. 14:1-6.2 which would permit a party to file an answer to an answer. This proposal was seen as needlessly encumbering the administrative process. Instead, it was recommended that the Board follow the rules governing proceedings before the Superior Court which impose no responsibility to file an answer to an answer.

RESPONSE: The Board does not believe that the proposed N.J.A.C. 14:1-6.2, which is unchanged from the pre-existing N.J.A.C. 14:1-7.2, imposes any requirement or responsibility that a reply must be filed to an answer. The proposed and pre-existing rules only permit such reply. The intent of the rule is to allow as full a development as possible of the facts and issues before the initiation of negotiations or formal hearings. It is believed that this will cause swifter resolution of cases resulting in reduced involvement of Board resources, and a reduction in the number of cases requiring evidentiary hearings.

COMMENT: Comment was received objecting to the provision proposed in N.J.A.C. 14:1-8.5 which would allow the Board to reply to motions to reopen ... "as soon as practicable after the filing of answers ..." to the motion. The commenter would have the Board adopt the motion practice as contained in the Uniform Rules of Administrative Procedure or maintain the Board's current motion practice.

RESPONSE: Because of the length of time between its regularly scheduled open public meetings, the Board believes the language of the proposed rule to be appropriate. This time factor is to be taken into account in the Uniform Rules through the adoption of special rules applicable to this Board. The adoption of the proposed rule would continue the Board's motion practice as it had been previously set out in N.J.A.C. 14:1-13.2.

COMMENT: Comment was received suggesting that the Board should adopt the motion practice codified in the Uniform Rules of Administrative Procedure in regards to the proposed N.J.A.C. 14:1-8.6 and the Board's motion practice in general.

RESPONSE: The Board would rely on the response immediately preceding and would continue the Board's practices concerning rehearing, reargument or reconsideration as had been previously set out in N.J.A.C. 14:1-14.

COMMENT: Comment was received questioning the use of recommendations by the Board in N.J.A.C. 14:1-10.2. It was suggested that the proposed rule be eliminated.

RESPONSE: The Board believes that the ability to make recommendations, and to have such recommendations responded to, provides the Board with an additional flexibility by which to resolve those matters properly before it.

COMMENT: Comment was received suggesting that the time period contained in proposed N.J.A.C. 14:1-10.4 be changed to begin from the "date of receipt of" and not "the date of" the Board Order.

RESPONSE: The Board believes that the suggested change would cause confusion as to the certainty of when the report is to be received by the Board.

COMMENT: Comment was received concerning issues pertinent to government owned solid waste facilities. The comment noted the transfer of all responsibility and authority for the regulation of solid waste utilities from the Board to the Department of Environmental Protection and Energy (DEPE) pursuant to Reorganization Plan No. 002-1991, effective on August 19, 1991.

RESPONSE: As noted by the comment, jurisdiction over solid waste matters now rests with the DEPE. The Board believes that consideration of these comments belongs with DEPE which also was supplied a copy of the comments.

The Board notes that changes have been made upon adoption to N.J.A.C. 14:1-5.6(a)(5) and 5.12(b)1, respectively. These modifications are solely for the purpose of incorporating, for the convenience of those utilizing these rules, the pre-existing requirements set out in N.J.S.A. 48:2-23.1 and N.J.S.A. 48:2-32.2. Accordingly, it is the Board's belief that these changes should not be construed to be so substantive as to require additional notice and comment. Also, typographical errors are being corrected at N.J.A.C. 14:1-5.6(b) and 5.12(a)1.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 1
RULES OF PRACTICE

SUBCHAPTER 1. GENERAL PROVISIONS

14:1-1.1 Scope

These rules shall govern practice and procedure before the Board of *[Public Utilities]* ***Regulatory Commissioners***.

14:1-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to secure just and expeditious determination of issues properly presented to the Board.

(b) In special cases and for good cause shown, the Board may relax or permit deviations from these rules.

(c) The rules may be amended by the Board from time to time.

14:1-1.3 Definitions

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

"Board" means the Board of *[Public Utilities]* ***Regulatory Commissioners***.

"Commissioner" means a member of the Board of *[Public Utilities]* ***Regulatory Commissioners***.

"Secretary" means the Secretary, Assistant Secretary or any other person duly authorized to act in such capacity by the Board.

"Presiding officer" means any member of the Board or a staff member who is designated as a hearing examiner in an uncontested case.

14:1-1.4 Offices

The statutory office of the Board and the office of the Secretary of the Board are located at *[Two Gateway Center, Newark, New Jersey 07102]* ***44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625***.

14:1-1.5 Hours

(a) All offices of the Board are open on weekdays from 9:00 A.M. to 5:00 P.M., unless otherwise authorized by the Board.

(b) The offices are closed on legal holidays, Saturdays and Sundays.

14:1-1.6 Communications

(a) All pleadings, correspondence and other papers should be addressed to the Secretary, Board of *[Public Utilities]* ***Regulatory Commissioners***, *[Two Gateway Center, Newark, New Jersey 07102]* ***44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625***.

(b) All such pleadings and correspondence shall be deemed to be officially received when delivered at the office of the Board, but a Commissioner or the Secretary or an Assistant Secretary of the Board may in his or her discretion receive papers and correspondence for filing.

14:1-1.7 Official records

(a) The Secretary shall have custody of the Board's seal and its official records, including the minutes of all action taken by the Board.

(b) Copies of rules and orders and decisions of the Board will be furnished by the Secretary upon payment of appropriate fees.

14:1-1.8 Cameras and recording devices

(a) Proceedings before the Board shall be conducted with fitting dignity and decorum.

(b) The use of cameras and recording devices, including still cameras, movie cameras, television cameras, tape recorders and stenotype machines, hereinafter referred to as "equipment", in open meetings or other public proceedings conducted by the Board is permitted.

(c) Any accredited member of a news media desiring to use such equipment shall first contact the Board's Office of Public Information to arrange for the set-up and removal of equipment so as not to interfere with the orderly conduct of the proceedings.

(d) No such equipment shall be placed on the counsel tables, witness stand or on the Board or presiding officer's bench, without the approval of the Board or presiding officer; equipment which would require the user to move about the room during the proceedings is prohibited. Moving about the meeting room in order to more advantageously use such equipment is prohibited, while the meeting is in session.

(e) Except for portable equipment which is used at an individual's seat in the audience, such equipment must be in place and ready

for use prior to the start of the meeting or set-up during a recess thereof. Such equipment may be removed only at the conclusion of the meeting or during a recess. A pre-arranged recess for the set-up or removal of such equipment may be requested through the Office of Public Information.

(f) The Board or presiding officer may**, for good cause shown,** suspend the operation of all or part of this rule with respect to a particular meeting.

(g) The Board or presiding officer may at any time limit or prohibit the use of any or all such equipment in meetings where in the opinion of the Board or presiding officer use of such equipment may obstruct the conduct of the meeting.

SUBCHAPTER 2. FEES AND CHARGES

14:1-2.1 Amount of fees and charges

The Board has been empowered, authorized and required by law to charge and collect fees and charges more particularly set forth in N.J.S.A. 48:2-56.

14:1-2.2 Payment of fees and charges

(a) No petition, report, notice, document, or other paper will be accepted for filing, and no request for copies of any forms, pamphlets, documents or other papers will be granted, nor action taken by the Board, unless such filings and requests are accompanied by the required fees or charges as provided by law.

(b) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Secretary of the Board, *[Two Gateway Center, Newark, New Jersey 07102]* ***44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625***.

SUBCHAPTER 3. APPEARANCE BEFORE THE BOARD

14:1-3.1 Appearances

Any person appearing before or transacting business with the Board in a representative capacity may be required by the Board to file evidence of his or her authority to act in such capacity.

14:1-3.2 Ethical conduct and ex parte communications

All attorneys appearing in proceedings before the Board in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the State of New Jersey.

14:1-3.3 Former employees

Except with the written permission of the Board, no former member or employee of the Board or member of the Attorney General's staff assigned to the Board may appear in a representative capacity or as an expert witness on behalf of other parties at any time within six months after severing his or her association with the Board, nor may he or she appear after said six-month period in any proceeding wherein he or she previously took an active part when associated with the Board.

SUBCHAPTER 4. PLEADINGS

14:1-4.1 Pleadings enumerated and defined

(a) Pleadings before the Board shall be petitions, answers, and replies which, for purposes of these rules, are defined as follows:

1. "Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the Board;

2. "Answer" means the pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition; and

3. "Reply" means the pleading filed by the petitioner or others in response to an answer.

14:1-4.2 Number of copies

(a) Unless otherwise required by the Board, there shall be filed with the Board for its own use, an original and 10 conformed copies of each pleading or other paper and amendment thereof.

(b) Where a pleading originating a proceeding is filed by a party other than a utility subject to the jurisdiction of the Board, one additional conformed copy shall be filed for each respondent named therein for service by the Secretary in accordance with the provisions of N.J.A.C. 14:1-4.5.

14:1-4.3 Attachments to pleadings

All balance sheets, income statements and journal entries submitted with pleadings must conform to the applicable Uniform System of Accounts.

14:1-4.4 Defective pleadings

Pleadings will be liberally construed with the view to effect justice. The Board may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading prejudices a substantial right of any party the Board may, on notice, strike the pleading or take such other action as it deems appropriate.

14:1-4.5 Service and notice of proceedings

(a) Unless otherwise provided for by statute or in these rules or unless otherwise ordered or permitted by the Board, the following provisions shall govern:

1. A petition filed on behalf of a public utility shall be served by such utility or its agent or attorney upon each respondent named in such petition;

2. A petition originating a proceeding filed by a party other than a public utility shall be served by the Secretary of the Board upon each respondent named in such petition;

3. Every other pleading, including all answers, replies, notices, briefs and other papers, shall be served by the party filing the same, whether a utility or not, on all other parties of record concurrently with or prior to the filing thereof; and

4. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice.

14:1-4.6 Verification

All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the Board's own motion or the motion of the Attorney General of the State of New Jersey.

14:1-4.7 Changes in facts or circumstances

(a) Whenever, subsequent to the date of a pleading, there is any significant change in respect to matter contained in such pleading, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.

(b) The filing of such amendment shall be considered a new filing as of the date of its filing unless otherwise ordered or permitted by the Board.

SUBCHAPTER 5. PETITIONS

14:1-5.1 Form and content

(a) All petitions shall comply with the provisions of N.J.A.C. 14:1-4 to the extent applicable; shall clearly and concisely state the facts and relief sought; shall cite by appropriate reference the statutory provision or other authority under which the Board's action is sought; and in addition, shall contain such information or statements as are required by provision of the statute and the applicable provision of these rules, or such other rules or orders adopted by the Board pertaining to certain petitions, or as may be required by the Board in a particular proceeding.

(b) Special requirements with respect to certain types of petitions are set forth in N.J.A.C. 14:1-5.5.

(c) Petitions directed to particular respondents shall conclude with a direction that the respondent satisfy the prayer of the petition or file and serve an answer within 20 days in accordance with these rules.

14:1-5.2 Applications to other regulatory bodies

(a) Where the relief sought in a petition also requires the approval or authorization of any other State or Federal regulatory body, the petition to the Board shall so state and include the following:

1. The current status of such application;

2. If the application to the other regulatory body or bodies has already been filed, a copy of each such application shall be attached

to the petition to the Board, together with a copy of any order or certificate issued relating thereto; and

3. If such an application or amendment thereof is filed with another State or Federal regulatory body subsequent to the date of filing with the Board but prior to its determination, three copies of such application or amendment thereof, together with three copies of any order or certificate issued relating thereto, shall be filed with the Board and served upon other parties of record.

14:1-5.3 Joinder of requests for relief

(a) A petitioner may join in a single petition more than one independent or alternative request for relief subject, however, to the payment of the statutory filing fees applicable to each of the approvals sought.

(b) The Board may in its discretion sever matters so joined for hearing and determination or take such other action as may be in the public interest.

14:1-5.4 Procedures of Board on filing of petition

(a) If in the opinion of the Board the petition complies substantially with these rules and appears on its face to state a matter within this Board's jurisdiction, and necessary copies have been received and fees paid, the Secretary of the Board shall file same.

(b) If after review the Board determines that a petition is deficient, the Board may refuse to *[file]* ***consider and may issue an order dismissing*** said petition. In the case of a petition proposing increases in charges to customers, the time frame for Board decision set forth in N.J.S.A. 48:2-21(d) shall not begin to run until a complete petition has been filed with the Board.

(c) Unless otherwise directed by the Board, petitions and subsequent pleadings shall be served by the parties as provided for in N.J.A.C. 14:1-5.6 and 5.7.

(d) If within the time allowed for answer, the respondent makes an offer of satisfaction which is accepted by the petitioner, such offer and acceptance signed by the parties or their attorneys shall be filed with the Board and if not disapproved by the Board within 20 days, the petition shall be deemed satisfied and the proceedings closed without further action.

(e) When the respondent has not satisfied the petition, the Board may schedule a hearing thereon and issue such decision or order as the facts and circumstances appear to require.

14:1-5.5 Petitions for approval of franchises or consents

(a) Petitions for approval of a franchise or consent shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable. The following information shall also be supplied in the body of the petition or in attached exhibits:

1. A certified copy of the franchise or consent involved including the terms and conditions relating thereto;

2. Proof that all statutory requirements relating to the obtaining of the franchise or consent have been met; and

3. The reason why petitioner believes that the franchise or consent is necessary and proper for the public convenience and will properly conserve the public interest.

(b) In cases where the petition involves a new water or sewer company, the petition shall, in addition to the requirements of (a) above, also provide the following information:

1. A certified copy of the certificate of incorporation;

2. Details of plant as to type, capacity, cost, status of plant construction, construction schedule and estimated number of customers to be served;

3. A map showing the location and size, in acres or square feet, of the franchise area and the composition, diameter, length and location of pipes to be initially installed; and

4. A statement as to status of petitioner's application to the Division of Water Policy of the Department of Environmental Protection ***and Energy*** for the diversion of water and to the State Department of Health for its approval of the proposed facilities. If the State Department of Health approval has not yet been given, the petitioner shall obtain and submit with the petition a copy of a letter from said Department expressing intent to approve the operation of the plant as it is proposed to be constructed.

14:1-5.6 Petitions for the approval of the sale or lease of property

(a) Petitions for the approval of the sale, conveyance or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4 to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Twenty copies of a separate sheet or sheets designated Schedule "A" containing a description of the property;

i. For real property, the location by municipality and county, a metes and bounds or other adequate description of the property, together with a description of the property and rights, if any, reserved by the utility shall be shown;

ii. For personal property, sufficient information to identify the property adequately shall be included;

2. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights reserved by the transferor or lessor;

3. A copy of the written agreement, if any; if there is no written agreement, it shall be so stated;

4. A certified copy of the resolution of the board of directors or other authority authorizing the transfer or lease;

5. The purpose for which the property was originally acquired, the date of acquisition, the use made of the property for utility purposes, the date when and circumstances under which it ceased to be useful for such purposes, the present use, the possible prospective use and the identity of the official or officials who determined that the property is not now or prospectively required or useful for utility purposes***. Any utility requesting to convey land utilized for the protection of a public water supply to a corporation or other entity which is not subject to the jurisdiction of the Board shall submit to the Board a detailed explanation of the prospective use or uses of the land to be conveyed and an assessment of the impact that the conveyance, and the prospective use or uses of the land conveyed, would have on the water quality of the affected public water supply****;

6. The basis of the price or rental: assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental attainable; an appraisal, if any, shall be attached as exhibit;

7. Whether the proposed consideration or rental represent the fair market value of the property to be conveyed or leased;

8. What steps were taken to put this property on the market and accomplish its sale or lease; if bids were solicited, the names of bidders and the consideration or rental offered shall be included;

9. Whether there is any relationship between the parties other than that of transferor and transferee, or lessor and lessee;

10. The actual cost at date of acquisition, and the cost and nature of any improvements;

11. The amount at which the property is now carried on the utility's books;

12. Copies of proposed journal entries to record the transaction when the consideration is more than $20,000;

13. If property is income producing, details, such as carrying charges, taxes, and assessed valuation, shall be included;

14. If the property is encumbered by any mortgage, describe the mortgage, the amount thereof, and the time required to obtain a release, shall be included; and

15. When the property to be sold or leased has a net book cost or fair market value of more than $100,000, the petitioner must attach to the petition copies of the advertisement required by (b) below, and proof of publication.

(b) Where the Board's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than $100,000, the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the *[country]* ***county*** in which the property is located, within 90 days immediately prior to the filing of the petition for the approval of the sale or lease, except that advertising shall not be required for sales or leases of property for public utility

purposes to another public utility or other person or company subject to any jurisdiction of this Board. The advertisement shall contain the following:

1. A description of the property to be sold or leased and improvements thereon. In the case of land, this shall include the street address, if any, and a description sufficient to identify the location of the property and its approximate size, which may be a description by metes and bounds or lot and block numbers;

2. The place where the property is located or may be inspected, together with the street address, if any;

3. Conditions of the sale or lease, if any, together with a provision that the utility may reject any or all bids;

4. A statement that the sale or lease is subject to the approval of the Board of *[Public Utilities]* ***Regulatory Commissioners***;

5. A statement of the place and final date for submitting sealed bids which shall not be less than ten days after publication of the second advertisement together with a statement of the time and place of the opening of said bids, which shall not be more than five days following the final date for submitting bids, at a place in New Jersey; and

6. A sealed bid, in accordance with the requirements of (b)5 above, must be submitted by a prospective purchaser or lessee. However, an offer or agreement to purchase or lease in writing received by the utility or executed before the first date of advertising and still in effect at such date, shall be considered as if it were a sealed bid, provided such offer or agreement in writing meets all other conditions of sale or lease, if any, included within the advertising.

(c) In addition to any other transactions not requiring approval or which on their merits may be deemed to be in the ordinary course of business, any lease, grant or permission by a utility to occupy or use its real property or any interest therein which is terminable at the option of the utility upon notice not to exceed 90 days, and any release, by quit claim deed or otherwise by any utility of any lease, easement, or permission to occupy or use real property, shall be deemed to be in the ordinary cause of its business. Neither notice to the Board nor petition for its approval shall be required with respect thereto.

(d) In addition to any other transactions which on their merits may be deemed to be in the ordinary course of business, the sale, lease, encumbrance or other disposition by any utility of such of its property or an interest therein as is set forth in (d)1 through 3 below, may be consummated without petition to the Board for approval, provided, however, that the utility shall have given written notice thereof to the Board, to be received not less than 15 days prior to the effective date of the proposed sale, lease, encumbrance or other disposition of such property. The transactions which may be completed without petition to the Board are as follows:

1. The sale of personal property having a net book cost and sale price not in excess of $50,000 and which is no longer used by or useful to the utility;

2. Except as provided in this section, the lease or permission to use or occupy real property or any interest therein having a net book cost not in excess of $100,000 and a net rental not in excess of $10,000 per annum; and

3. The sale or release of real property, or any interest therein, not used by or useful to the utility and having a net book cost and sale price not in excess of $100,000.

(e) On expiration of the notice period and on payment of the statutory fee, the Secretary will certify on a true copy of the notice to be furnished to the Board that such sale, lease or release is deemed by the Board to be in the ordinary course of business and within the statutory provision. Such notice shall contain, to the extent applicable, the following:

1. The name of transferee or lessee, the consideration or rental and method of payment thereof, and rights, if any, reserved by the transferor or lessor;

2. A copy of the agreement or lease and a map of the real property;

3. A statement that the proposed consideration or rental represents the fair market value of the property to be conveyed, or the fair rental value of the property to be leased, giving the basis for the conclusion reached;

4. A statement of any relationship between the parties other than that of transferor and transferee, or lessor and lessee, or a statement that there is no such other relationship, as the case may be;

5. The amount at which the property is carried on the utility's books;

6. A statement as to whether or not the property is income producing and, if so, details as to whether the petitioner pays all carrying charges, including taxes. In addition, such statement shall include the assessed valuation of the property;

7. A statement, in the case of a proposed sale, that the property is not used by or useful to the utility, and in the case of a proposed lease, grant or permission, that the transaction will not compromise the ability of the utility to render service;

8. A verification by a properly authorized officer, partner or proprietor of the statements contained in the notice; and

9. A blank space of three inches shall be provided at the bottom of the first page of the notice for the Board's certification.

(f) The Board may, within the aforesaid 15-day notice period, or at any time prior to the actual consummation of the transaction, suspend the provisions of this rule and require the filing of a petition for the approval of the sale, lease, encumbrance or other disposition.

14:1-5.7 Petitions for authority to change depreciation rates

(a) Petitions for the approval of change or variation in the rates of depreciation used shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The existing and proposed rates of depreciation;

2. The existing and proposed methods of calculating or determining the rates of depreciation;

3. The calculations or studies supporting the proposed change in depreciation rates;

4. The effect of the proposed changes on operating revenue deductions and operating income; and

5. A statement as to the date when it is proposed to make the changes in depreciation rates effective, which date shall not be earlier than 90 days after the filing of a petition under this rule.

14:1-5.8 Petitions for authority to exercise power of eminent domain

(a) Petitions for authority to exercise the power of eminent domain shall conform to the requirements of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The names, and addresses if known, of the owners of the property to be condemned or of any interest therein, with a specification of the interest of each such owner;

2. The names of such owner or owners whose whereabouts or address is unknown;

3. A map or plot plan. In addition, there shall be filed with the petition 20 copies of a separate sheet, designated Schedule "A", which shall contain a proper metes and bounds description of the property to be acquired;

4. A brief description of the improvements thereon, if any, and the present and potential character and uses of the property;

5. Allegations that the property desired is reasonably necessary for the service, accommodation, convenience and safety of the public, and that the taking of such property is not incompatible with the public interest, and would not unduly injure the owners of private property;

6. A statement of the reasons why the property cannot be purchased by negotiation; and

7. Where the petitioner has, after diligent search, been unable to determine the name and address of the owner of the property to be condemned or of any interest therein, such facts must be stated in an affidavit of inquiry prepared in the manner provided for in the rules of the Superior Court.

(b) Where the petitioner has, after diligent search, been unable to determine the name and address of any respondent, the petitioner shall publish notice of hearing, addressed to such respondent by name, or other appropriate designation if the name is unknown. Such publication shall be made twice in consecutive calendar weeks, once in each week, in a newspaper published in the county where the property is situated, or if none be published therein, then in a newspaper published in this State and circulating in said county, the second such publication to be made not less than 20 days prior to the hearing date. Said publication shall contain a description of the property to be condemned. Sworn proof of publication must be filed at least five days prior to the hearing date.

14:1-5.9 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages

(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, provide the following information:

1. A statement of the amount and terms of the proposed issue including the nature of the security therefor, if any; the purposes for which the proceeds are to be used; and the nature of all rights and limitations applicable to the security;

2. Where one of the purposes is the acquisition of property, a general description of the property, the name of the transferor, and a copy of the contract, if any, for such acquisition. In the case of property to be acquired for right-of-way purposes, a general description of the proposed route and a map or plot plan will be sufficient;

3. Where one of the purposes is the construction, completion, extension or improvement of facilities, a general description of the work proposed to be done, and an estimate of the cost thereof in reasonable detail. Where one of the purposes is the improvement or maintenance of service, there shall be included a description of the existing service as well as of the improvements, or betterments proposed;

4. Where one of the purposes is the refunding of securities, a description of the securities and obligations to be refunded, including the kind, amount, date of issue and date of maturity, together with the terms of refunding and all other material facts affecting the same must be set out;

5. Where one of the purposes is the issuance of capital stock based upon the investment of earnings in plant which might have been distributed in dividends, a complete and reasonably detailed enumeration of petitioner's property, priced at original cost, or estimated if not known. The petitioner shall produce evidence at the hearing in support of such enumeration and pricing;

6. Where one of the purposes is to reimburse the treasury for expenditures not theretofore capitalized by the issuance of securities, the petitioner shall also show the exact period and amount for which reimbursement is desired; comparative financial statements which shall include, as a minimum, balance sheets and utility plant by accounts as at the beginning and end of the period, as well as changes in the period, and, in the case of utility plant, additions and retirements shall be stated separately for each year; a statement indicating the source and application of funds during the period; a statement indicating the manner in which petitioner proposes to use the proceeds from the security issue; and the necessity and reasonableness of the proposed transaction;

7. Where one of the purposes is for the issuance of common capital stock in connection with the organization of a new corporation to operate as a public utility, the petition must contain the following:

i. A copy of the certificate of incorporation;

ii. The names and addresses of the elected or proposed officers, directors and stockholders of the company and the number of shares of capital stock to be held by each;

iii. The required number of stockholders and directors and the state in which they reside pursuant to the statute under which the corporation will be organized;

iv. A corporate resolution or proposed resolution of the directors of the utility authorizing the issuance of the stock;

v. A copy of a *pro forma* balance sheet of the new corporation and copy of a *pro forma* income statement of estimated operating results anticipated for the first two years of its proposed operations, unless a different period is specified by the Board;

vi. The name of the municipality and the street and number therein;

(1) In which the principal office in this State is to be located, and the name of the agent in and in charge of such principal office upon whom process against the corporation may be served;

(2) In which the principal business office is to be located; and

(3) At which the records, books, accounts, documents and other writings referred to in N.J.S.A. 48:3-7.8 are to be kept and the name, place of residence within this State, and place of business of the agent who shall have custody of said corporate records and upon whom process for the production of the same before the Board may be served. The books of account must be kept in conformity with the appropriate Uniform System of Accounts prescribed by the Board. Books and records must be kept within this State unless authority to do otherwise is obtained from the Board;

vii. A detailed list of organization expenditures;

viii. A copy of a *pro forma* balance sheet giving effect to the issuance of the proposed securities;

ix. A copy of a *pro forma* income statement giving effect to the issuance of the proposed securities; and

x. The effective rate of interest or of the cost of money to the petitioner and the reasonableness thereof, if authority is requested to issue stocks, bonds, notes or other evidence of indebtedness by means of private placement and not at a public offering, and the financial sources that the petitioner has contacted in this connection. The petitioner shall submit information as to the computation of the effective rate of interest or of the cost of money as distinguished from the nominal rates wich may be indicated;

8. Where one of the purposes is the issuance of bonds to be secured by an existing mortgage, a statement showing the amount and use made of the proceeds of the bonds, if any, already issued under such mortgage;

9. Information relating to the current financial condition of the petitioner setting forth:

i. As to each class of capital stock of the petitioner, the amount authorized and the amount issued and outstanding;

ii. As to each class of preferred stock of the petitioner, a summary statement of the terms of preference thereof;

iii. As to each issue or series of long-term indebtedness of the petitioner, the principal amount authorized to be issued, date of issue, date of maturity, rate of interest and principal amount outstanding; and as to each such issue secured by a mortgage upon any property of the petitioner, the date of said mortgage, name of trustee, principal amount authorized to be secured, and a brief description of the mortgaged property;

iv. Other indebtedness of all kinds, giving same by classes and describing security, if any;

v. The amount of interest charged to income during previous fiscal year upon each kind of indebtedness and rate thereof; and, if different rates were charged, the amount charged at each rate;

vi. The amount of dividends paid upon each class of stock during previous fiscal year and rate thereof; and

vii. A detailed income statement for previous fiscal year and balance sheet showing condition at the close of that year;

10. A statement whether any franchise or right is proposed to be capitalized directly or indirectly. In case it is proposed to capitalize any franchise as authorized by N.J.S.A. 48:3-5, a copy of such franchise and a statement, together with an affidavit showing the amount actually paid for said franchise shall be attached to the petition;

11. Where any contract, agreement or arrangement, verbal or written, has been made to sell the securities proposed to be issued, a description of such contract, agreement or arrangement and, if in writing, a copy thereof;

12. If no contract, agreement or arrangement has been made for the sale or other disposition of the securities proposed to be issued, the proposed method of sale or other disposition must be set forth together with an affidavit of a competent person showing the amount which can probably be realized from the sale and disposition thereof, and the reasons for the opinion of the affiant;

13. Petitions filed under this rule shall contain a certified copy of the resolution of the Board of Directors or other authority authorizing the proposed issuance of securities and shall be verified. The verification shall include a statement that it is the intention of the petitioner in good faith to use the proceeds of the securities proposed to be issued for the purposes set forth in the petition; and

14. Information which under this rule is required to be set forth in a petition or any exhibit attached thereto and which is contained in any report, document, pleading or other instrument previously filed with the Board pursuant to any requirement of any statute or any rule of the Board, may be incorporated in such petition or exhibit by reference to the official filing thereof with the Board provided that said information is still correct in all respects.

14:1-5.10 Petitions for authority to transfer capital stock

(a) Petitions for authority to transfer upon the books and records of any public utility, pursuant to N.J.S.A. 48:3-10, any share or shares of its capital stock, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. The name and address of the proposed transferor and transferee;

2. A description of the proposed transferee including information as to whether the proposed transferee is a public utility, a holding company either separately or by affiliation in a utility holding company system, or a person or other domestic or foreign corporation;

3. A description of the capital stock proposed to be transferred including the class of shares, number of shares and the par or stated value thereof;

4. The percent in interest of the outstanding voting capital stock of the public utility which the proposed transfer, either by itself or in connection with other previous sales or transfers, will vest in the transferee;

5. The reason for the proposed transfer;

6. Details and explanation of any changes expected to be made, if the petition is approved, in:

i. The board of directors;

ii. Officers and active managers; and

iii. Company policies with respect to its operations, financing, accounting, capitalization, rates, depreciation, maintenance, services and any other matters affecting the public interest; and

7. The qualifications and the business or technical experience of the proposed officers, directors and stockholders, or other principal management and operating personnel with particular respect to their ability to carry out the utility's obligation to render safe, adequate and proper service.

14:1-5.11 Tariff filings which do not propose increases in charges to customers

(a) Tariff filings for the purpose of making effective initial tariffs or revisions, changes or alterations of existing tariffs and which are not filed because of the need for additional revenue from products or services covered by existing tariffs and which do not propose increases in charges to customers, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. Four copies of the proposed tariff or revision, change or alteration thereof, together with an explanation of the manner in which the tariff or change differs from the existing or prior tariff, and the effect, if any, upon revenue;

2. A statement of the reasons why the tariff or change is proposed to be filed;

3. A statement of notices given, if any, together with a copy of the text of each said notices;

4. A statement as to the date on which it is proposed to make the tariff or change effective, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the Board; and

5. In the case of initial tariffs, *pro forma* income statements for each of the first two years of operations and actual or estimated balance sheets as at the beginning and end of each year of said two-year period.

14:1-5.12 Tariff filings or petitions which propose increases in charges to customers

(a) Tariff filings or petitions for the purpose of making effective or making revisions, changes or alterations of existing tariffs which propose to increase any rate, fare, toll, rental or charge or so to alter any classification, practice, rule or regulation as to result in such an increase, other than filings to effectuate the operation of an existing fuel or raw materials adjustment clause, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, contain all applicable information and data set forth in N.J.A.C. 14:1-5.11 and, in addition, shall contain the following information and financial statements which shall be prepared in accordance with the applicable Uniform System of Accounts:

1. A comparative balance sheet for the most recent three-year period (calendar year *[of]* **or** fiscal year);

2. A comparative income statement for the most recent three-year period (calendar year or fiscal year);

3. A balance sheet at the most recent date available;

4. A statement of the amount of revenue derived in the calendar year last preceding the institution of the proceedings from the intrastate sales of the product supplied, or intrastate service rendered, the rates, tolls, fares or charges for which are the subject matter of the filing;

5. A *pro forma* income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as a calculation showing the indicated rate of return on the average net investment for the same period as that covered by the *pro forma* income statement, that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities;

6. If the request for rate relief is based upon N.J.S.A. 48:2-21.2, there shall be included, in lieu of the requirements of (a)5 above, a statement showing that the facts of the particular situation meet the statutory requirements;

7. Whenever a telephone company seeks to increase its rates, it shall include in its petition or attachments thereto information demonstrating the principles of rate design employed in the proposed tariff revisions. Such information shall identify the approximate percentage of increased revenue requirement, should the Board determine a lesser additional revenue requirement than that sought by the company, at which it would derive a different proportion of revenue requirement from each of the major classes of service whose prices are sought to be increased, and the revenue requirement by class at each such level. The information shall include a statement of the amount and percentage of increase which would be raised from each such class of service if relief of approximately one-third the request were approved by the Board;

8. In providing the information required by (a)5, 6 and 7 above, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing;

9. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five percent of the utility's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges; and

10. A copy of the form of notice to customers.

(b) Each utility that makes a filing under (a) above shall, unless otherwise ordered or permitted by the Board, give notice thereof as follows:

1. Serve a notice of the filing and a copy of the proposed tariff or a copy of the petition or a statement of the effect of the proposed filing upon the municipal clerk in each of the municipalities in which there is rendered a service, the charge for which is proposed to be increased**, the clerk of the Board of Chosen Freeholders of each affected county and, where appropriate, the executive officer of each affected county***;

2. Serve a notice of the filing and two copies of the petition or tariff on the Department of Law and Public Safety, *[1207 Raymond Boulevard]* ***124 Halsey Street, P.O. Box 45029***, Newark, New Jersey 07102 and on the Director, Division of Rate Counsel, Department of the Public Advocate; and

3. Serve a notice of the filing and a statement of the effect on customers of various classes on all current customers who are billed on a recurring basis and who will be affected by said filing. Such notice may be by bill insert or by publication in newspapers published and circulated in the utility's service area.

(c) Each utility that makes a filing under (a) above shall, after being advised by the Board of the time and place fixed for hearing, if any and unless otherwise ordered or permitted by the Board, serve notice at least 20 days prior to such time on those persons specified in (b)1 and 2 above; and shall give such notice to those persons designated in (b)3 above as current customers billed on a recurring basis, by bill insert or by publication 20 days prior to the date set for hearing, in newspapers published and circulated in the utility's service area.

(d) The notices provided for in (b) and (c) above may be given simultaneously.

(e) Where notice is prescribed under this rule, it shall be at the cost and expense of the party obligated to give or serve the notice.

14:1-5.13 Informal complaint in lieu of petition

(a) In lieu of filing a petition, an informal complaint may be made by letter or other writing.

(b) Matters thus presented may be taken up by the Board with the parties affected by correspondence or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint without formal hearing order.

(c) While no form of informal complaint is prescribed, to be considered by the Board such informal complaint must be signed and state the name and address of the complainant and the party complained of as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of.

(d) Informal complaints are usually assigned to the Division of the Board's staff which deals with the subject matter involved. This Division then brings the matter to the attention of the utility and directs the latter to submit information deemed to be pertinent as well as a statement of its position.

(e) Following a study and review of the complainant's and utility's positions and supporting data and after such informal conferences as may be held, an attempt is made to affect an amicable adjustment of the dispute.

(f) A letter is then forwarded to the complainant with a copy to the utility reflecting the results, if any, of the processing of the informal complaint.

(g) Informal complaints shall be without prejudice to the right of any party to file a petition or of the Board to institute a formal proceeding.

(h) While informal complaints are recommended wherever practicable as a method designed for amicable adjustment of disputes, no mandatory or prohibitory order will be issued on an informal complaint.

(i) A party desiring a decision on order of the Board must file a petition.

14:1-5.14 Petitions for approval of a merger or consolidation

(a) Petitions for approval of a merger or consolidation of one public utility of New Jersey with that of another public utility shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4 and 5.9, as well as N.J.A.C. 14:11-1.7, to the extent applicable, and shall contain in the petition, or as attached exhibits, the following information:

1. A copy of the agreement of merger or consolidation;

2. Copies of corporate resolutions of the stockholders of each of the corporations authorizing the transaction;

3. Copies of recent balance sheets of each company and a *pro forma* balance sheet of the continuing company;

4. Copies of recent income statements of the operation of each of the companies involved and a *pro forma* income statement of the continuing corporation, in sufficient detail;

5. Copies of certificates of incorporation of each corporation to be merged and amendments thereto, if not heretofore filed with the Board;

6. The total number of shares of each of the various classes of capital stock proposed to be issued, if any, by the surviving corporation; the par or stated value per share; and the total amount of new capital stock to be issued;

7. The percentage, and the manner in which, if any, the presently outstanding capital stock of the corporations involved will be exchanged for the new stock of the surviving corporation;

8. Whether any franchise cost is proposed to be capitalized on the books of the surviving corporation, and, if so, the reasons therefor, and in what manner and over what period the items are proposed to be amortized;

9. The names and addresses of the new officers, directors and principal stockholders and the number of shares to be held by each in the surviving corporation;

10. The various benefits to the public and the surviving corporation which will be realized as the result of the merger;

11. Proposed changes, if any, by the surviving corporation, in company policies with respect to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management affecting the public interest;

12. Proof of service of notice of the proposed merger to the public, the municipalities being served by the companies to be merged, and the public utilities serving in the area, pursuant to N.J.A.C. 14:1-4.5;

13. Proof of compliance with rules, regulations and statutes requiring approval from other State and Federal regulatory agencies having jurisdiction in the matter; and

14. A statement of the fees and expenses to be incurred in connection with the merger and the accounting disposition to be made thereof on the books of the surviving corporation.

14:1-5.15 Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writings outside the State of New Jersey, filed with the Board, as required under N.J.S.A. 48:3-7.8, shall conform to the provisions of N.J.A.C. 14:1-4 and N.J.A.C. 14:1-5.1 through 5.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1. A complete description of the specific books, records, accounts, documents and other writings proposed to be kept outside the State of New Jersey;

2. The exact location where the books and records will be kept;

3. If all books and records will not be kept outside the State, what remaining records will be kept at the New Jersey location;

4. The reason for proposing to keep its books and records at a location outside the State;

5. The availability of adequate required space, facilities and experienced personnel at the new location;

6. The cost to the petitioner of maintaining the books and records at the new location as compared with that of maintaining the records at the New Jersey location;

7. The extent of the financial advantage to the customers and other benefits to the public utility which will result from keeping the books and records outside the State;

8. Whether the books and records which will be kept at the location outside the State will be, on notice in writing of the Board,

produced at such time and place within this State as the Board may designate;

9. Whether the petitioner will pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination, if the Board grants said permission;

10. The location where the petitioner will continue to maintain an office within the State of New Jersey for the convenience of its customers to pay bills, file complaints and conduct other business with the utility; and

11. The name and address of the petitioner's statutory agent.

SUBCHAPTER 6. ANSWERS AND REPLIES

14:1-6.1 Form and content

(a) Any party against whom a petition is directed and who desires to contest the same or make any representation to the Board in connection therewith shall file an answer in writing thereto with the Board.

(b) The answer shall be so drawn as to apprise the parties and the Board fully and completely of the nature of the defense and shall admit or deny specifically and in detail all material allegations of the petition.

(c) Matters alleged by way of affirmative defense shall be separately stated and numbered.

(d) Answers shall not be required in any rate proceeding instituted by a public utility.

14:1-6.2 Time for filing

(a) Unless otherwise provided in these rules or ordered by the Board, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the Board within 10 days after service of the answer.

(b) Whenever the Board believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(c) Upon motion on notice to all parties to the proceeding, the Board may, in its discretion, extend or shorten the time to file an answer or reply.

SUBCHAPTER 7. CONFERENCES

14:1-7.1 Purposes

(a) The purpose of this subchapter is to foster early settlement of cases pending before the Board prior to the case being transmitted to the Office of Administrative Law and to provide a vehicle for the parties to file pre-transmittal motions with the Board for retention and disposition of certain issues. Pre-transmittal settlement conferences of parties or their attorneys may be held to provide opportunity for a settlement, subject to approval of the Board, of a proceeding or any of the issues therein, and for the submission and consideration of facts, argument, offers of settlement or proposals of adjustments, as time, the nature of the proceeding and the public interest may permit.

(b) Pre-transmittal conferences of parties or their attorneys may be held to expedite the disposition of any hearing. At such conferences there may be considered, in addition to the matters set forth in (a) above, the following:

1. Identification and simplification of the issues;

2. Admissions or stipulations of facts;

3. Identification of those matters or issues which should either be retained for disposition by the Board or be transmitted to the Office of Administrative Law; and

4. Such other matters as may be properly dealt with to aid in expediting the proceeding.

14:1-7.2 Initiation of conferences

(a) The Board or a Board-designated officer, with or without motion, may direct that a conference be held at any stage prior to transmittal to the Office of Administrative Law or at any time when the Board certifies a case unto itself pursuant to N.J.S.A. 52:14F-8(b).

(b) On motion of a party, the Board-designated officer may direct the parties or their attorneys to appear for a conference to consider the matters set forth in N.J.A.C. 14:1-7.1(b).

14:1-7.3 Stipulation of conference results

(a) Upon conclusion of the pre-transmittal conference, the parties or their attorneys shall reduce the results thereof to the form of a written stipulation reciting the matters agreed upon, and three copies thereof shall be filed with the Board within 10 days of the date of the conference. If no stipulations are reached, the matter shall be immediately transmitted to the Office of Administrative Law.

(b) Such stipulations shall be signed by the parties or their attorneys, may be received in evidence as part of the record and, when so received, shall be binding on the parties with respect to the matters therein stipulated.

(c) Such stipulations are subject to review by the Board at a regularly scheduled agenda meeting.

14:1-7.4 Authority of Board-designated officers

(a) Any Board-designated officer shall have the authority to conduct and preside over pre-transmittal conferences in the interest of fostering resolution of issues.

(b) When appropriate, a Board-designated officer may submit a pre-transmittal order which shall be reviewed by the Board at an agenda meeting, if acceptable, shall be adopted as its own order.

SUBCHAPTER 8. CONTESTED CASE HEARINGS

14:1-8.1 Contested case procedures

The hearing in any matter which is determined by the Board to be a contested case shall be conducted pursuant to the procedures in the Administrative Procedures Act, N.J.S.A. 52:14B-1 and 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of *[Public Utilities]* ***Regulatory Commissioners*** Rules of Special Applicability, N.J.A.C. 1:14.

14:1-8.2 Argument on exceptions

After receipt of the initial decision, the exceptions and answers thereto, if any, will be disposed of by the Board based on the exceptions, answers and briefs filed unless the Board, in its discretion, requires or permits oral argument, in which case the Board will schedule the matter for argument before it.

14:1-8.3 Review of initial decision by the Board on its own motion

The Board may institute on its own motion a review of any aspect of the initial decision and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

14:1-8.4 Method of reopening

(a) At any time after the conclusion of a hearing in a proceeding or adjournment thereof *sine die,* but before the entering and issuance by the Board of its final decision or order, any party to the proceeding may file with the Board a motion to reopen the hearing for the purpose of taking additional evidence. Such motion shall set forth clearly the reasons for reopening of the hearing, including any material changes of fact or of law alleged to have occurred since the last hearing.

(b) If, after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing, the Board will issue an order for the reopening of same.

14:1-8.5 Motions to reopen

(a) After issuance of the final decision, a party may file for the reopening of the proceeding. Upon filing by any party of a motion for the reopening of a proceeding, appropriate notice thereof shall be given forthwith by the moving party to all other parties, or their attorneys of record, by service of a copy of the motion for reopening.

(b) Within 10 days following the service of a motion to reopen, any party to the proceeding may serve upon the moving party and file with the Board an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such motion.

(c) As soon as practicable after the filing of answers to a motion to reopen or default thereof, as the case may be, the Board will grant or deny such motion. The action by the Board may be conditioned on reasonable terms.

14:1-8.6 Rehearing, reargument or reconsideration

(a) A motion for rehearing, reargument or reconsideration of a proceeding may be filed by any party within 15 days after the issuance of any final decision or order by the Board.

1. Such motion shall state in separately numbered paragraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reasons for failure to previously adduce said evidence.

(b) The Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

14:1-8.7 Motions and answers on rehearing

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. The moving party shall also give such notice, as the Board may direct, of the filing of the motion to all other persons to whom notice of the original hearing had been given.

(b) Any answer to the motion shall be filed within 10 days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection to the granting of the motion.

(c) Any motion hereunder which is not granted or otherwise expressly acted upon by the Board within 60 days after the filing thereof, shall be deemed denied.

(d) The filing or granting of any motion under this rule shall not operate as a stay of the Board's decision or order. A stay will be granted only for good cause shown.

SUBCHAPTER 9. UNCONTESTED CASE PROCEEDINGS

14:1-9.1 Uncontested case proceedings

This subchapter applies only to a matter which the Board determines to constitute an uncontested case. Where the Board determines to hold a hearing in an uncontested case, said hearing shall be conducted pursuant to this subchapter and, in the absence of a specific provision herein, pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of *[Public Utilities]* ***Regulatory Comissioners*** Rules of Special Applicability, N.J.A.C. 1:14.

14:1-9.2 Designation

The Board may by general order in writing designate as a presiding officer such person or persons, as provided by statute, as its representative or representatives in and on its behalf to conduct any hearing in any uncontested proceeding now or hereafter pending before the Board.

14:1-9.3 Filing

Pleadings, correspondence or other documents pertaining to an uncontested case shall be filed pursuant to N.J.A.C. 14:1-6. Copies of such correspondence shall be filed with the presiding officer and with the parties of record.

14:1-9.4 Cameras and recording devices

Cameras or recording devices may be used at uncontested case proceedings in accordance with the standards and procedures of N.J.A.C. 14:1-1.8.

14:1-9.5 Appearances

Any person appearing in a representative capacity in any uncontested case proceeding shall conform to the requirements of N.J.A.C. 14:1-3.

14:1-9.6 Service

Whenever a party has the right or is required to do some act within a prescribed period after the serving of a notice or other paper upon said party, and the notice or paper is served upon said party by mail, three days from the date of mailing shall be added to the prescribed period.

14:1-9.7 Motions

All motions shall be deemed denied if not decided within 60 days after the filing thereof, whether referred to the Board or to be decided by the presiding officer. The Board or presiding officer may waive this rule on their own motion or for good cause shown by a party.

SUBCHAPTER 10. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS

14:1-10.1 Orders and decisions

Upon issuance of an order or decision of the Board, the party to whom the same is directed must notify the Board on or before the date specified in said order or decision whether or not compliance has been made in conformity therewith.

14:1-10.2 Recommendations

Upon the making of any recommendation by the Board, the party to whom the same is directed must within 15 days after the making of the recommendation, unless otherwise specifically required, notify the Board of the acceptance or rejection thereof. Failure to comply with this rule will be deemed an acceptance of the recommendation.

14:1-10.3 Extension of time limits

In instances where the Board's decision or order contains a specific time or date for compliance, and the petitioner desires extension of such time limit, petition to the Board shall be made in writing at least five days before the expiration of the time limit.

14:1-10.4 Answers to communications

Unless otherwise specified, any letter or telegram from the Board directing investigation of any matter under its jurisdiction must be complied with by the utility and a report received by the Board within 15 days from the date of the letter or telegram. If circumstances prevent compliance with this rule, the utility must advise the Board, in writing within the above prescribed period, of its inability to comply and the reasons therefor.

(a)

BOARD OF REGULATORY COMMISSIONERS

Return of Deposits

Adopted Amendment: N.J.A.C. 14:3-7.5

Proposed: March 2, 1992 at 24 N.J.R. 686(b).

Adopted: April 29, 1992 by the Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Filed: April 30, 1992 as R.1992 d.225, **without change.**

Authority: N.J.S.A. 48:2-13 and 48:2-29.5

BRC Docket Number: AX91121774.

Effective Date: June 1, 1992.

Expiration Date: May 6, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

14:3-7.5 Return of deposits

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

(c) Simple interest at a rate equal to the average yields on new six month Treasury Bills for the 12 month period ending each September 30 shall be paid by the utility on all deposits held by it, provided the deposit has remained with the utility for at least three months. Said rate shall become effective on January 1 of the

following year. The Board shall perform the annual calculation to determine the applicable interest rate and shall notify the affected public utilities of said rate.

1.-3. (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Highway Redesignation
Route 139 in Hudson County

Adopted Repeal and New Rule: N.J.A.C. 16:28-1.113

Proposed: March 16, 1992 at 24 N.J.R. 928(a).
Adopted: April 16, 1992, Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: May 1, 1992 as R.1992 d.227, **without change.**

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

Effective Date: June 1, 1992.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.113 Route 139

(a) The rate of speed designated for the certain parts of State highway Route 139 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Hudson County:

i. In Jersey City:

(1) 45 miles per hour from the junction of Route U.S. 1 and 9 at Tonnelle Avenue to the easterly terminus of the Route at Jersey Street (Holland Tunnel Plaza); thence

(2) 35 miles per hour on Underwood Place, Hoboken Avenue and between John F. Kennedy Boulevard and Palisades Avenue.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Stopping and Parking
Route U.S. 206 in Mercer County

Adopted Amendment: N.J.A.C. 16:28A-1.57

Proposed: March 16, 1992 at 24 N.J.R. 929(a)
Adopted: April 16, 1992, by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid
Filed: May 1, 1992 as R.1992 d.228, **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. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-198

Effective Date: June 1, 1992.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
The Department has deleted references to specific parking restrictions and has substituted the more general phrase "areas covered by other approved parking restrictions" to include handicapped and any other type of parking restriction which may exist.

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

16:28A-1.57 Route U.S. 206

(a) The certain parts of the State highway Route U.S. 206 described in this subsection shall be designated and established as "no stopping or standing" zones. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected:

1.-6. (No change.)

7. No stopping or standing in Lawrence Township, Mercer County:

i. Along both sides:

(1) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in *[approved designated bus stops and time limit parking areas]* ***areas covered by other approved parking restrictions***.

8.-23. (No change.)

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

TREASURY-TAXATION

(c)

DIVISION OF TAXATION

Corporation Business Tax
Entire Net Income

Adopted Amendments: N.J.A.C. 18:7-5.1, 5.10 and 14.17

Proposed: May 20, 1991 at 23 N.J.R. 1522(a).
Adopted: May 6, 1992 by Leslie A. Thompson, Director, Division of Taxation.
Filed: May 6, 1992 as R.1992 d.231, **with substantive changes** not requiring additional public notice (See N.J.A.C. 1:30-4.3).

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

Effective Date: June 1, 1992.
Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

Michael Guariglia, Esq., of McCarter and English, writing on behalf of the Taxation Section of the New Jersey State Bar Association, submitted the following comments:

COMMENT: The third sentence of example 2 should read "recognize but defer."

RESPONSE: The Division agrees to make this change.

COMMENT: The rules under N.J.A.C. 18:7-5.10 do not add substantive guidelines for the implementation of Section 10.

RESPONSE: The Division does not agree that the proposal does not add substantive guidelines. See definition of the term "fair and reasonable tax" at N.J.A.C. 18:7-5.10(a)3.

The rule also puts taxpayers on notice that the Division will begin auditing items used in computing line 28 of Schedule A of CBT-100 (taxable income before net operating loss deduction and special deductions) and adjusting these items either above line 28 or below line 28 of Schedule A.

As noted, the proposal at N.J.A.C. 18:7-5.10(a)3 defines the term "fair and reasonable tax" as "the tax that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) had independent economic interests." In general, when arriving at a fair and reasonable tax, the Division will utilize IRC 482 standards in auditing and adjusting items above line 28 of Schedule A. Where the taxpayer can demonstrate that it has met the standards of IRC 482, no adjustments are likely to be made to items above line 28 of Schedule A.

The Division believes that there will be instances where the change should be made below, instead of above, line 28 of Schedule A. One such area is the one described with respect to the management fee

position in the comment letter and is discussed below. The Division believes that it can not accept such position without additionally inquiring into the "nexus" issue of those corporations receiving the management fee. This issue already exists in the recent investment company regulation with respect to management fees and whether they constitute "receipts" or "reimbursements." See 22 N.J.R. 3159(a) (1990). However, the Divison does reserve the right in a particular instance to use other criteria that may produce a "fair and reasonable" tax. IRC 482 is not the only provision of the Internal Revenue Code dealing with transactions between related taxpayers, and IRC 482 standards have frequently been the subject of difficult controversies. cf. Dan R. Bucks recent article at XLIV National Tax Journal 311 (1991).

In addition it should be noted that the language of N.J.S.A. 54:10A-10(a) does go beyond IRC 482 situations since, for example, N.J.S.A. 54:10A-10(a) refers to "any person or persons directly or indirectly interested" rather than being restricted to "two or more organizations, trades or businesses" as under IRC 482.

COMMENT: The commenter suggested that the Division use a 50 percent standard rather than a 10 percent standard in N.J.A.C. 18:7-5.10(a)4 and 5.10(d) and adopt the attribution rule of IRC 318.

RESPONSE: The Division replied that the 10 percent ownership standard was adopted by analogy to the 10 percent standard of the interest add back provisions. It was intended that this standard be more explicit than other possible language such as a mere reference to "owned or controlled directly or indirectly by the same interests," for example. The Division, however, agreed to modify the standard of control to 20 percent or more in deference to the request made by the committee subject to later review and amendment based upon audit experience. (cf. The promulgated GAAP for Equity Method of Accounting for Investments in Common Stock, APB-18 (as amended), and FASB Interpretation-35, Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, have a 20 percent or more standard.) In addition, the Division agreed to adopt the stock attribution rules found in IRC 318 to assist taxpayers in their planning. It should be emphasized however that this standard is applicable to situations arising under N.J.S.A. 54:10A-10(b) but not N.J.S.A. 54:10A-10(a).

COMMENT: The commenter suggested that the result in N.J.A.C. 18:7-5.10(d) Example 2 be changed to reflect the general concept adopted by the Internal Revenue Service for purposes of pricing intercompany services to charge an amount equal to the cost of the services if certain conditions are satisfied.

RESPONSE: The Division replied that with respect to Example 2, at subsection (d) in a particular case the Division may take into account that, for purposes of pricing intercompany services, the method Federally would be to charge an amount equal to the cost of the services when one related entity sells to another related entity, and does not sell similar services or products to unrelated third parties. However, other issues may also be implicated in a particular audit such as "nexus" rules for affiliates, for example. It may also be noted that N.J.S.A. 54:10A-10(b) gives the Director the ability to include a "fair profit" in taxpayer's income. Accordingly, Example 2 was revised in accordance with Federal standards along the lines requested by the commenter. See IRC Reg. §1.482-2(b)(7).

COMMENT: The commenter suggested that N.J.A.C. 18:7-5.10(e) Example 2 be modified to reflect comparable sales to independent retailers.

RESPONSE: The Division agreed to modify N.J.A.C. 18:7-5.10(e)2 Example somewhat in order to reflect sales by the corporation to independent retailers, in order to parallel the Federal methodology used under IRC 482 more closely. It should be noted, however, that outside indices may be used where no comparables may exist since other integrated oil company prices may also not reflect true independent pricing.

COMMENT: The commenter suggested that N.J.A.C. 18:7-14.17(h) be modified as inconsistent with the basic tenet of the CBT which would respect the taxpayer's method of accounting.

RESPONSE: The Division responded that this provision is based upon the literal language of N.J.S.A. 54:10A-4(k)(3). As such, the Division declines to make the revision recommended by the Bar Association committee.

Patrick J. Deo, CPA, writing on behalf of the State Taxation Committee of the New Jersey Society of Certified Public Accountants, submitted the following comments.

COMMENT: The commenter suggested that the Division add further clarification and examples, for example a definition of "arm's-length" prices, fees, rates, methods to be used in allocating between related parties and documentation acceptable to the Division to establish "arms-length" dealing.

RESPONSE: The Division responded that at present it did not wish to delay the initial implementation of the rules pending the adoption of further alternative fact patterns. The Division, in the future, will examine additional fact patterns to determine whether the adoption of such patterns would be beneficial to the public. The Division would welcome any specific proposals that the Society wished to submit in this area.

Based upon further review, the Division would propose to undertake when appropriate to employ Federal standards such as IRC 482 standards in arriving at a fair and reasonable tax. It should be noted that the language of N.J.S.A. 54:10A-10(a) goes beyond IRC 482 and that other Internal Revenue Code sections also address intercompany problems. In addition certain standards under IRC 482 are by no means clear. See examples in the article by Dan R. Bucks at XLIV National Tax Journal 311 (1991). Where it is appropriate the Division will use IRC 482 principles as a benchmark in certain audits.

COMMENT: The commenter suggested that unequal results may be caused by the unequal statutes of limitation for assessments and refunds.

RESPONSE: The Division responded that it would attempt to recognize equitable principles to prevent unjust results due to the disparity between the five year assessment statute and the two year refund statute.

COMMENT: The commenter raised a question about the standard of at least a 10 percent stock interest and suggested that a 50 percent standard be used.

RESPONSE: The Division responded that it would agree to follow the suggestion in part, noting that the 10 percent standard had been derived by analogy to the interest add back statute.

The Division agreed to modify the proposal to a 20 percent or more standard. (cf. The promulgated GAAP for Equity Method of Accounting for Investments in Common Stock, APB-18 (as amended), and FASB Interpretation-35, Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, have a 20 percent or more standard.) In addition, in lieu of defining "direct or indirect," the Division will adopt the stock attribution rules of IRC 318 to assist taxpayers in their planning. It should be noted that this standard applies only to audits under N.J.S.A. 54:10A-10(b). No such limits are placed on the Division under N.J.S.A. 54:10A-10(a).

COMMENT: The commenter observed that N.J.A.C. 18:7-14.17(h) was contrary to N.J.A.C. 18:7-6.3 which required New Jersey CBT returns to adhere to the accounting method adopted Federally.

RESPONSE: The Division noted that N.J.A.C. 18:7-14.17(h) is based upon N.J.S.A. 54:10A-4(k)(3). The Division considered that it did not have authority to limit a taxpayer's withdrawal until the installment period was over, which was an alternative proposed by the commenter.

COMMENT: The commenter inquired as to the applicability of two examples.

RESPONSE: The Division responded that (1) in the case of a corporation acquiring nexus the year after making an installment sale, the corporation would nevertheless report installment gain on its Federal and State returns the following year; (2) where expenses were incurred in New Jersey in the year of the sale but are not deducted until the following year for Federal income tax purposes, the Division agreed that expenses otherwise not deductible until the subsequent year would be deductible in the year of the sale for tax clearance purposes.

Carolyn Cobb, Senior Counsel, writing on behalf of the American Council of Life Insurance submitted the following comments.

COMMENT: The commenter felt that the proposal did not supply sufficient guidance and did not follow Federal or State statutory standards. The commenter suggested adoption of IRC 482 standards.

RESPONSE: The Division commented that the proposal at N.J.A.C. 18:7-5.10(a)3 defines the term "fair and reasonable tax" as the tax that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) had independent economic interests. In arriving at a fair and reasonable tax, the Division will undertake to employ IRC 482 standards in most cases. But the Division will not be guided by it in all cases. The Division reserves the right in particular instances to use other criteria that may produce a "fair and reasonable" tax, since the language of N.J.S.A. 54:10A-10 goes beyond the scope of IRC 482 (compare N.J.S.A. 54:10A-10(a)), and IRC 482 is not the only Internal Revenue Code provision which relates to audits of related taxpayers. It should be noted that applying IRC 482

standards to a particular case is not a panacea; many disputes continue to arise Federally under the provision.

In this context the Division may take into account in a given case that, for purposes of pricing intercompany services, and method Federally would be to charge an amount equal to the cost of the services when one related entity sells to another related entity, and does not sell similar services or products to unrelated third-parties. However, other issues may also be implicated in a particular audit such as "nexus" rules for affiliates, for example. It may also be noted that N.J.S.A. 54:10A-10(b) gives the Director the ability to include a "fair profit" in taxpayer's income. Accordingly, the Division declines to modify N.J.A.C. 18:7-5.10(e) Example 2 at this time, but may reconsider the position at a future time based upon actual audit experience.

COMMENT: The comment claimed that the proposal does not give sufficient standards to guide taxpayers and criticized the Division for adopting a "new" standard allowing the State to determine a "fair and reasonable tax." The comment states that any promulgated rule should conform to the statutory standards, not legislate new ones.

RESPONSE: The Division responded that under N.J.S.A. 54:10A-10 the Director (commissioner) is given discretion "to make any other adjustments in any tax report or tax returns as may be necessary to make a fair and reasonable determination of the amount of tax payable under this act" (emphasis added). Thus, the Division believes it is in fact implementing a statutory standard as noted in the response to the first point above where the term is defined in the regulation.

COMMENT: The commenter then commented that it lacked confidence in New Jersey's ability to implement the new standard in an even handed fashion. To support this thought, the commenter cited statute law that provides a longer assessment limitation period than refund limitations period and the fact that New Jersey law does not provide for interest on refund claims.

RESPONSE: The Division pointed out that such statutory provisions are matter of legislative policy and discretion and that the Division does not have the authority to override statutes in its administrative practices. The Division also cited other evidence to the effect that the Division has been exercising its authority in an even handed fashion.

Summary of Changes Between Proposal and Adoption:

The Division adopted a number of specific changes as the result of comments made by the public and as a result of further review made by the Division after the comment period had ended. These include a technical correction in N.J.A.C. 18:7-5.1(c) Example 2, an increase in the level of stock ownership constituing a "substantial portion of stock" and modifications to N.J.A.C. 18:7-5.10(d) Example 2 and N.J.A.C. 18:7-5.10(e) Example 2.

In addition, the Division added several explicit standards similar to those contained under IRC 482 for guidance and use in audit adjustments made under the language of N.J.S.A. 54:10A-10(b). These were made in response to public comments requesting additional guidance for taxpayers. It should be noted, nevertheless, that disputes pursuant to this section of the Corporation Business Tax Act may prove to be complex. See *Sundstrand Corporation v. Commissioner,* 96 *T.C.* 226 (1991) and Intercompany Transfer Pricing in the 1990's, by James R. Mogle, 69 Taxes 961 (1991).

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

18:7-5.1 Entire net income; definition

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

(c) Consistent with N.J.A.C. 18:7-11.15, entire net income shall be determined on a separate entity basis as if the contemporaneous Federal return had not been a consolidated return.

Example 1: Corporation A is part of a consolidated group filing for Federal purposes which as a group incurred a net operating loss for the year. Corporation A, however, on a separate entity basis had net income of $100,000 before its charitable contribution expense of $15,000 is taken into account. Based on a separate, non-consolidated calculation under the Internal Revenue Code, and the contribution limitations applicable to all corporations for the period under review (that is, 10 percent), Corporation A's reportable net income for New Jersey purposes is $90,000 ($100,000 – ($100,000 × .10)).

Example 2: Corporation B is part of a consolidated group filing for Federal purposes which sold goods in the ordinary course of business to Corporation C, also a member of the same consolidated group filing. The selling price between Corporation B and C was at arm's length and included a profit element in it. The Federal corporate consolidated filing would *[not]* recognize ***but defer*** the gain on the sale of the goods between Corporation B and C since Corporation C had not disposed of the property outside the group at year end. For New Jersey purposes, however, Corporation B must report the gain on the sale of the property for net income purposes, and Corporation C must include the full sales price of the property in its inventory value.

(d) (No change.)

18:7-5.10 Right of Director to correct distortions of net income, net worth, allocation factors; adjustments and redeterminations

(a) Whenever it shall appear to the Director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in a manner so as either directly or indirectly to distort its true entire net income or its true entire net worth under the Act or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under the Act, or whereby the activity, business, receipts, expenses, assets, liabilities, net income or net worth of the taxpayer are improperly or inaccurately reflected, the Director is authorized and empowered, in his discretion and in whatever manner he may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or entire net worth or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Act.

1.-2. (No change.)

3. For purposes of this section, "fair and reasonable tax" is the tax that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) had independent economic interests.

4. For purposes of this section, "substantial portion of stock" is the direct or indirect ownership of *[10]* ***20*** percent or more of the outstanding shares of any class of stock. ***For purposes of arriving at this level of ownership the stock attribution rules of IRC section 318 will be used.***

5. Under N.J.S.A. 54:10A-10(b) interest should be charged on loans or advances made by one related party to another from the day after the debt arises until the debt is satisfied. With respect to intercompany trade receivables of related taxpayers, interest is not required to be charged on an intercompany trade receivable before the first day of the third calendar month.

i. If the creditor is regularly engaged in the business of making loans or advances, the arm's length interest rate should be charged. Upon failure to do so, the Division of Taxation can determine what interest should have been charged. Where the creditor is not in the business of loaning money or making advances, either an arm's length rate based on the facts and circumstances or a safe haven rate is acceptable. However, the safe haven rule does not apply to any loan or advance in which the interest or principal amount is expressed in a currency other than U.S. dollars.

ii. For interest paid or accrued on a loan or advance, a safe haven rate is one that is between 100 percent and 130 percent of the Applicable Federal Rate (AFR) as determined under Internal Revenue Code Section 1274(d) in effect on the date that the loan or advance is made. Adjustments for inadequate interest would be made at 100 percent of the AFR and adjustments for excessive interest would be made at 130 percent of the AFR. In the case of a sale-leaseback transaction, the lower limit would be 110 percent of the AFR. In determining the rate of interest actually charged on a written loan or advance, any original issue discount included in income by the lender or any bond premium deducted by the lender is to be taken into account.

6. Where a service by one member of a group to another member is rendered for less than an arm's length charge, the Division of Taxation may make appropriate allocations to reflect an arm's length charge for that service. The arm's length charge is equal to the costs or deductions incurred by the member performing the service, except in cases where the service is an integral part of the business activity of either member.

7. If tangible property is made available by one member of the group to another, the latter should be charged the arm's length rental charge.

8. Where one member of a group of controlled entities sells or otherwise disposes of tangible property to another at other than an arm's length price, a proper allocation will be made between the seller and the buyer using the following methods.

i. Comparable uncontrolled price method: This method must be used if there are comparable uncontrolled sales (sales between outsiders or a member and an outsider where the property sold and the circumstances involved are identical, or nearly identical, to those in the controlled sale). To the extent they are not identical, adjustments are made.

ii. Resale price method: If there are not comparable uncontrolled sales, the resale price method must be used if the standards for its application are met. A typical situation where this method is required is where a manufacturer sells products to a related distributor which, without further processing, resells the products to unrelated parties.

iii. Cost plus method—If the standards for application of the resale price method are not satisfied, either that method or the cost plus method is used, depending on which is more feasible and will produce a more accurate arm's length price. Normally, the cost plus method is appropriate where a manufacturer sells products to a related entity which performs substantial manufacturing, assembly, or other processing of the product or adds significant value by use of its intangible property (trademark, for example) before resale.

9. Under both the comparable uncontrolled price method and the resale price method, market conditions faced by the affiliate are taken into account. Thus, goods may be sold, for a period, at a price which is below the full cost of manufacture in order to establish or maintain a market.

i. Assuming that the requirements of one of the three methods in (a)8 are met, it must be used unless the taxpayer can show that some other method is clearly more appropriate. Where none of the three methods can reasonably be applied, some other appropriate method can be used.

ii. Where a taxpayer makes controlled sales of many different products or many sales of the same product and it is impractical to calculate an arm's length price for each product or sale, it is permissible to apply the proper method of pricing to product lines or other groupings. Also, the Division of Taxation may use statistical sampling techniques to verify or determine the arm's length price of all sales to a related entity.

10. The Division will apply equitable principles to prevent unjust situations from occurring.*

(b) The application of this section is not limited to an agreement, understanding or arrangement existing between a taxpayer and any other corporation or any person or firm for the purpose of avoiding or evading tax under the Act. It is also applicable where adjustments and redeterminations relate to transfer pricing and other transactions between related persons or entities where evasion or tax avoidance are not a consideration. The Director may initiate adjustments under this section solely in the interests of determining a fair and reasonable tax, and without respect to any benefit arising out of inter-corporate relationships or the relationships of any person holding a substantial portion of the stock of a taxpayer. The Division shall not be limited to indices, trade practices, cost sheets, Internal Revenue Reports or any other factor in determining the appropriate transfer price for goods, services, intangibles or other dispositions made to related parties. Where the Director determines that there is an adjustment to net worth or net income under this section, he or she may also make a corresponding adjustment to the allocation factor.

(c) Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, the Director may adjust and redetermine items on any affected taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey. The following example is an illustration only and in no way shall be interpreted as a standard for calculating wages in a particular case.

Example: Corporation D entered into an employment agreement with its sole shareholder's spouse for the performance of services as an accounting clerk. The agreement called for the shareholder's spouse to monitor 10 accounts. For the service performed, the spouse is to receive an annual salary of $100,000 along with a substantial benefit package. The Director, upon audit, learns that the spouse works only five hours per week in completely performing the duties. The Director, based upon the going wage for such services, determines that the total compensation package would not exceed $10,000 a year and adjusts the taxpayer's expense to determine properly the net income and the taxpayer's wage fraction of the allocation factor and to provide dividend treatment for the disallowed wage compensation.

(d) Where any taxpayer, *[10]* ***20*** percent ***or more*** of whose capital stock is owned either directly or indirectly by or through the same interests as those of the taxpayer, conducts any activity, transaction, or business with such interests which either directly or indirectly creates an artificial loss, net income, or allocation factor, the Director may adjust and redetermine such items on any taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey.

Example 1: Corporation E, the great grandparent of the taxpayer, borrows $1 million from the taxpayer. The agreement calls for the principal and interest at the rate of two percent per annum to be paid at the end of one year. Upon audit, the Director determines that a market interest rate given the economic conditions at the time of the loan and the circumstances of the borrower is 13 percent per annum. Therefore, he adds the additional income to the taxpayer's net income as reported, and adjusts the expense on the great grandparent's return, if it files in New Jersey.

Example 2: Corporation F is the parent company of over 10 subsidiaries and provides all administrative services for the 10 subsidiaries. Corporation F receives dividend income from its subsidiaries, interest income from other investments, and service fee income from the subsidiaries for the administrative services it performs on their behalf ***which are an integral part of the business activity of the parent***. All costs incurred by the parent are charged to the subsidiaries based solely upon the total assets of each subsidiary. Upon audit, the Director determines that the service fee includes no profit element and that the allocation of the costs of the administrative services bears no relationship to the services provided to each subsidiary. Accordingly, the Director imputes an element of profit, and assigns the charges to each subsidiary by a method reflecting the actual costs incurred in providing the services to each subsidiary.

(e) The following examples are merely illustrative and are in no way intended to limit the scope of the Director's discretion to inquire into transfer pricing or the determination of a fair and reasonable tax:

Example 1: K Corporation, the manufacturer of a proprietary product, sells goods to its distributors and wholesale customers at a 50 percent profit. It also sells goods to related foreign corporations at a 5 percent gross profit for marketing by them overseas.

On a separate entity basis, in an arm's length transaction these sales would yield a 50 percent gross profit and the price which might have been paid or received for the goods includes an amount sufficient to reflect that 50 percent gross profit.

The Director may include additional profits in entire net income sufficient to reflect the arm's length price which might have been paid or received.

Example 2: L Corporation is the parent corporation in a vertically integrated oil company. Its marketing subsidiary is a taxpayer. The marketing corporation reports a significantly lower gross profit than other taxpayers selling the same generic products in volume.

L Corporation has set its transfer prices to its marketing subsidiary at a ***price $0.02 per gallon*** higher *[amount]* than published New York tanker port prices for its product because it deems, in good faith, that its brand name value and economies of scale are more properly attributable to the parent corporation. It also uses this transfer *[pricing]* ***price*** to sell *[goods]* ***its product*** to ***all*** its independent retailers.

The fair price which might have been paid for the *[goods]* ***product*** sold by the marketing subsidiary *[may]* ***would not*** be based upon "New York tanker prices" plus the lesser of representative contract carrier costs or the actual costs incurred for delivery. ***The Director would recognize the $0.02 per gallon higher price since that is the same price used for comparable sales to all uncontrolled entities for the audit period.***

[The Director may increase entire net income reported by the marketing subsidiary to reflect this comparative uncontrolled pricing.]

(f) Whenever the Director deems it necessary, in order properly to reflect entire net income or entire net worth of the taxpayer, he or she may determine the year or period in which an item of income, deduction, asset or liability shall be included, without regard to the method of accounting used by the taxpayer.

(g) The Director may require any person or corporation to submit whatever information under oath or affirmation, or to permit whatever examination of its books, papers and documents, as may be necessary to enable him or her to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not the person or corporation is subject to the tax imposed by the Act.

18:7-14.17 Tax Clearance Certificate

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

(g) The Director may require as a condition of issuing any Tax Clearance Certificate evidence by affidavit, or by any means that seems to him or her appropriate, that any foreign corporation which is not an authorized foreign corporation and which is a party to the transaction causing any corporation to seek a Tax Clearance Certificate has, itself, paid all taxes which it owes.

For example: A foreign corporation which is not subject to the corporation business tax or any property tax in New Jersey may be obligated to withhold personal income taxes or to remit sales and use tax. Such taxes must be paid whether or not withheld from employees or charged to customers.

(h) The Director may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

Example: A foreign corporation sold a piece of property located in this State at a substantial gain that it has elected to report on the installment method of accounting for Federal income tax purposes. Before it has recognized all of the gain on this sale, it withdraws from the State and cancels its certificate of authority to do business.

(i) In order properly to reflect the entire net income of the taxpayer, the Director may include all the unrecognized gain on the taxpayer's final return, notwithstanding any inconsistency in the timing of income for Federal and State tax purposes.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Definitions
Cashiers' Cage; Master Coin Bank; Coin Vaults
Slot Booths
Adopted Amendments: N.J.A.C. 19:45-1.1, 1.14, 1.15 and 1.34

Proposed: October 21, 1991 at 23 N.J.R. 3085(a).

Adopted: May 6, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: May 8, 1992 as R.1992 d.233, **without change.**

Authority: N.J.S.A. 5:12-69(a), (70)(g), (j) and (l); 99(a)(4) and (9).

Effective Date: June 1, 1992.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: TropWorld Casino and Entertainment Resort supported the proposal in its entirety, and the Division of Gaming Enforcement did not object to it. The Sands Hotel, Casino and Country Club (Sands) did not object to the portion of the proposal which permits the creation of coin vaults.

RESPONSE: Accepted.

COMMENT: Harrah's Casino Hotel (Harrah's) supported the proposed amendment, with the exception of the dual key control requirement in N.J.A.C. 19:45-1.14(f). Harrah's states that its coin vault is located in its casino cage, which is already protected by a double-door mantrap. Harrah's believes that the dual key control requirement will add a level of security which is not necessary in this situation. Harrah's also indicated that the requirement would create an operational problem for its coin vault, since a security guard would need to be summoned to the cage each time the coin vault is opened.

RESPONSE: Accepted in part and rejected in part. A coin vault is defined in N.J.A.C. 19:45-1.14(e) as a coin storage area which is located outside the cage; the dual lock requirement in N.J.A.C. 19:45-1.14(f) only applies to coin vaults that are located outside the cashiers' cage. Adoption of the proposed amendment would not affect Harrah's coin storage area, which is located within the casino cage and could continue to operate with its single lock system.

COMMENT: Sands and Boardwalk Regency Corporation (Caesars) object to the addition of N.J.A.C. 19:45-1.15(b), which would require that casino licensees maintain "a reserve bankroll in a minimum amount approved by the Commission." They contend that this subsection is a new requirement that should not be necessary in light of section 84(a) of the Casino Control Act, which requires, among other things, that casino licensees must be financially stable.

RESPONSE: Rejected. As noted in the summary of this proposal, the subsection in question is not a new regulation, but simply a recodification of N.J.A.C. 19:45-1.14(c). The Commission sees no reason to amend or delete it at this time.

COMMENT: Caesars objected to the proposal because it believes that the definition of a coin vault in N.J.A.C. 19:45-1.14(e) is too broad, and could be construed to include change banks or excess coin stored at slot booths. Caesars also contends that the double lock requirement in N.J.A.C. 19:45-1.14(f)2 is unnecessary, and believes that only one lock, controlled by the cashiers' cage or the master coin bank, should be sufficient.

RESPONSE: Rejected. The definition of coin vaults is purposely broad, and in the Commission's view, should remain that way. However, it would not include slot booths or change banks, as Caesars has suggested, since N.J.A.C. 19:45-1.14(f)1 requires that such coin vaults be located "in an area not open to the public," that is, a secure area off the casino floor, with restricted access. Slot booths and change banks are located on the casino floor, in areas of public access. With regard to Caesars' comments concerning the two lock system, the Commission is adopting the proposal as published, but is also publishing a proposal for public comment that would require that coin vaults be secured by one lock.

COMMENT: Merv Griffin's Resorts Casino Hotel (Resorts) indicated that its master coin bank and coin vault, which have operated since 1978 with a double door entry system, both controlled by the master coin bank, do not comply with the proposed new requirements, and would have to be redesigned. Resorts suggests that, under the circumstances, its master coin bank and coin vault operations should be permitted to continue and operate in their present fashion by a "grandfather clause."

RESPONSE: Accepted in part and rejected in part. N.J.A.C. 19:45-1.14(d) now requires that any master coin bank that is located outside the cage must be equipped with a silent alarm and a double door entry and exit system, commonly known as a "mantrap." Resorts' master coin bank is not located behind a mantrap, as the Commission's current regulations require, because it was built in 1977 and predates the regulatory requirements governing casino cages. Although Resorts' cage configuration and design do not comply with the present regulation, the Commission has previously indicated that such an arrangement would be "grandfathered in," but that any future changes to Resorts' cage would have to be made in accordance with all regulations in effect at that time.

Resorts' coin vault is located within its master coin bank. As noted in the above response to Harrah's comments, the double locks required by N.J.A.C. 19:45-1.14(f)2 are not necessary in such a situation. Accordingly, the existing design of Resorts' coin vault would also be grandfathered in, even though it does not comply with the requirements of proposed N.J.A.C. 19:45-1.14(f)2. As noted above, any future changes to the coin vault would need to meet all then-existing regulatory requirements.

Full text of the adoption follows.

19:45-1.1 Definitions

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

...

"Coin vault" is defined in N.J.A.C. 19:45-1.14.

...

19:45-1.14 Cashiers' cage; master coin bank; coin vaults

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

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

(d) Each master coin bank located outside the cage shall meet all the requirements of (c) above.

(e) Each establishment may have separate areas for the storage of coin and slot tokens ("coin vaults") in locations outside the cage or master coin bank, as approved by the Commission.

(f) Each coin vault shall be designed, constructed and operated to provide maximum security for the materials housed and activities performed therein, and shall include at least the following:

1. A fully enclosed room, located in an area not open to the public;

2. A metal door with two separate locks, the keys to which shall be different from each other. One key shall be maintained and controlled by the casino security department in a secure area within the security department. Access to that key may be gained only by a casino security department supervisor. The other key shall be maintained and controlled by the casino accounting department. Each department shall establish a sign-in and sign-out procedure for removal and replacement of these keys;

3. An alarm device that signals the monitors of the casino licensee's closed circuit television system and the Division's on-site office whenever the door to the coin vault is opened; and

4. Closed circuit television cameras capable of accurate visual monitoring and taping of any activities in the coin vault.

(g) Each casino licensee shall file with the Commission and Division the names of all persons authorized to enter the cage, the master coin bank and any coin vaults; all persons possesing the combination or keys to the locks securing the entrance to the cage, master coin bank and coin vaults; as well as all persons possessing the ability to operate alarm systems for the cage, master coin bank and coin vaults.

19:45-1.15 Accounting controls for the cashiers' cage, master coin bank, and coin vaults

(a) (No change.)

(b) At the opening of every shift, in addition to the imprest funds normally maintained by the general cashiers, each casino licensee shall have on hand in the cage or readily available thereto, a reserve cash bankroll in a minimum amount approved by the Commission.

(c) The cashiers' cage shall be physically segregated by personnel and function as follows:

1.-3. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall be, but are not limited to, the following:

i.-iv. (No change.)

v. Prepare the daily bank deposit for cash and checks;

vi. Receive from general, chip and check bank cashiers, documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage; and

vii. Be responsible for the reserve cash bankroll.

5. (No change.)

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

(f) Coin vaults authorized pursuant to N.J.A.C. 19:45-1.14(e) shall be under the control of the casino accounting department. The storage of coin or slot tokens in, or the removal of coin or slot tokens from, any coin vaults shall be properly documented, and the amount of coin and slot tokens in each coin vault shall be reconciled at the end of each gaming day.

19:45-1.34 Slot booths

(a) Each establishment may have on, or immediately adjacent to, the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-11. (No change.)

12. The exchange with the cashiers' cage or master coin bank of any coin, currency, slot tokens, chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier or master coin bank cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons, the slot booth shall not be allowed to obtain coin or slot tokens, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage, the master coin bank, or a coin vault approved pursuant to N.J.A.C. 19:45-1.14(e). Such exchanges must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booths.

(b) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedure for Acceptance, Accounting for and Redemption of Patron's Cash Deposits
Adopted Amendment: N.J.A.C. 19:45-1.24

Proposed: March 16, 1992 at 24 N.J.R. 933(a).
Adopted: May 6, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: May 8, 1992 as R.1992 d.234, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g) and 99(a)4.

Effective Date: June 1, 1992.
Expiration Date: March 24, 1993.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement and the Sands Hotel Casino and Country Club have no objection to the adoption of the proposed amendment.

RESPONSE: Accepted.

Full text of the adoption follows.

19:45-1.24 Procedure for acceptance, accounting for and redemption of patron's cash deposits

(a)-(l) (No change.)

(m) A patron may obtain a refund of his or her deposit or any unused portion of a deposit by requesting the refund from a general cashier and returning his or her copy of the Customer Deposit Form. The general cashier shall verify the customer's identification and shall:

1.-2. (No change.)

3. Prepare necessary documentation evidencing such refund, which documentation may include a counter check or any other document which contains the following information:

i.-v. (No change.)

(n)-(q) (No change.)

(a)

CASINO CONTROL COMMISSION

Temporary Adoption of New Rules and Amendments Gaming Equipment; Rules of the Games Pokette

Authority: N.J.S.A. 5:12-5, 69(e), 70(f) and 100(e)

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments and new rules concerning the game of pokette should be adopted on a permanent basis. The experiment shall be conducted in accordance with temporary rules which will be posted in each casino participating in the experiment and will also be available from the Commission upon request.

Specifically, the test would allow any casino licensee which wishes to participate in the experiment, and which meets all terms and conditions established by the Commission, to offer the game of pokette to the public beginning on or after June 22, 1992, on a specific date to be determined by the Commission, which date will be posted in each casino participating in the experiment. The experiment would continue for the maximum period of time authorized by N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission pursuant to the terms of the experiment.

Should the temporary amendments and new rules prove successful, the Commission will take the steps necessary to permanently adopt them in accordance with the Administrative Procedure Act and N.J.A.C. 1:30.

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session Wednesday, June 17, 1992

Take notice that the following agenda items are scheduled for Notice of Proposal in the June 15, 1992 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony will be held for the purpose of receiving public comment on Wednesday, June 17, 1992 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, June 12, 1992.

Rule Proposals:

N.J.A.C. 6:8-9, Educational Improvement Plans for Special Needs Districts (new rules).

N.J.A.C. 6:21, Pupil Transportation, School Bus and Small Vehicle Specifications (amendments and new rules).

N.J.A.C. 6:29-2.4, Attendance at School by Pupils or Adults Infected by Human Immunodeficiency Virus (HIV) (amendment).

N.J.A.C. 6:64, Public School and College Libraries (amendment).

Please note: Publication of the above items is subject to change depending upon the actions taken by the State Board of Education at the May 6, 1992 monthly public meeting.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF REGULATORY POLICY

Notice of Availability of Grant Funds Sewage Infrastructure Improvement Act Grants

Take notice that in accordance with the Sewage Infrastructure Improvement Act (SIIA), N.J.S.A. 58:25-23 et seq. and the rules for the Sewage Infrastructure Improvement Act Grants, N.J.A.C. 7:22A, the Department of Environmental Protection and Energy (Department) announces the following availability of funds:

Grants for the Final Mapping and Investigation of the Stormwater Sewer System.

The Department has allocated $5.535 million in State funds from the Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund for final mapping and investigation of the stormwater sewer system. This money is available to municipalities in Monmouth, Ocean, Atlantic and Cape May counties that have stormwater sewer systems that discharge into salt waters. This money stall be distributed based upon the equation in N.J.A.C. 7:22A-4.10. The Department is also allocating an additional $677,327 in Federal funding from section 205(j) of the Clean Water Act.

The original funding formula contained in the adopted Phase II rules, N.J.A.C. 7:22A-4.10, did not account for the number of outfalls within each municipality. The Department is using the Federal funds to adjust the original grant amounts to account for outfalls numbers. This is being accomplished by determining the ratio of the number of outfalls within a municipality to the total number of outfalls for all municipalities affected by the SIIA. This number is then multiplied by the amount of Federal money available, giving an adjusted grant amount for all municipalities involved. If a municipality's adjusted grant amount is greater than their original grant amount, the municipality's original grant amount is being compensated with Federal funds. As a result, the Federal funds are being utilized to insure that the grant amounts are more equitable.

All municipalities that are eligible for funding under the SIIA have been notified and have applied for grant money. Applicants have received notice of approval or disapproval of their application. If any municipality has questions concerning this funding, they may contact:

Laurie Sands
Office of Regulatory Policy
Department of Environmental Protection and Energy
CN 029
Trenton, NJ 08625
609-633-7021

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan Public Notice

Take notice that on April 24, 1992, pursuant to the provisions of the New Jersey 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 Sussex County Water Quality Management Plan was adopted by the Department. This amendment proposal, which was requested by Hill Wallack and Masanoff on behalf of Mr. Thomas Albano, Mag-Al, Inc., allows for an on-site groundwater disposal system to serve the proposed Seneca Garden Apartments in Jefferson Township. The projected wastewater flow for this facility is 15,400 gallons per day based on a projected population of 154 in 82 apartment units.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Sussex County Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Sussex County Water Quality Management (WQM) Plan. The amendment proposal has been submitted by the Sussex County Department of Planning and Development. This amendment proposal is for the Frankford Township Wastewater Management Plan (WMP). The WMP allows for a new sewage treatment plant (STP), discharging to ground water, to serve the proposed 72,000 square foot High Point Financial Corporation building and a new treatment facility to serve the Branchville Water Supply Treatment Facility in Frankford Township. The WMP also specifies the non-surface discharge service areas for facilities with design capacities of less than 20,000 gallons per day (gpd) with wastewater flows not to exceed 340 gpd/acre in the Paulinskill Watershed, and not to exceed 390 gpd/acre in the Papakating (Wallkill) Watershed.

This notice is being given to inform the public that a plan amendment has been proposed for the Sussex County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, P.O. Box 709, Newton, New Jersey 07860; and the NJDEPE, Office of Regulatory Policy, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 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 either the Office of Regulatory Policy at (609) 633-7021 or the Sussex County Department of Planning and Development at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment at which time all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on Wednesday, July 1, 1992 at 6:10 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. Interested persons may submit written comments on the amendment to Ms. Lyn Halliday,

Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEPE during its review. Sussex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast and Sussex County Water Quality Management Plans

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Northeast and Sussex County Water Quality Management (WQM) Plans. The amendment proposal has been submitted by Elam and Popoff on behalf of Jefferson Township. This amendment proposal is for the Jefferson Township Wastewater Management Plan (WMP). The WMP allows for three new sewage treatment plants (STPs), discharging to ground water, to serve the proposed Henderson Cove and Seneca Gardens developments, both in the Musconetcong River and drainage basin, the Moosepac proposed development in the Rockaway and Pequannock River drainage basins. The WMP also allows for the continuation of the discharge to a tributary of Lake Shawnee from the Jefferson Township Board of Education Stanlick School STP. The service area of the existing White Rock STP will be expanded to include two proposed developments and an existing shopping center. The White Rock STP will be expanded to treat this flow. In addition, the WMP delineates the ground water discharge service areas for facilities with design capacities of less than 20,000 gallons per day.

This notice is being given to inform the public that a plan amendment has been proposed for the Northeast and Sussex County WQM Plans. All information related to the Sussex County WQM Plan and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, P.O. Box 709, Newton, New Jersey 07860; and the NJDEPE, Office of Regulatory Policy, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 08625. All information related to the Northeast WQM Plan and the proposed amendment is located at the NJDEPE address cited above. This information 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 either the Office of Regulatory Policy at (609) 633-7021 or the Sussex County Department of Planning and Development at (201) 579-0500.

Interested persons may submit written comments on the proposed Northeast WQM Plan amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. John Elam, Elam and Popoff, P.O. Box 1038, Fair Lawn, New Jersey 07410. All comments regarding the proposed amendment to the Northeast WQM Plan 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 NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE 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 NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment at which time all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on Wednesday, July 1, 1992 at 6:10 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. Interested persons may submit written comments on the amendment to Ms. Lyn Halliday, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEPE during its review. Sussex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on April 24, 1992, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment proposal, which was requested by the Township of Franklin, adopts a Wastewater Management Plan (WMP) for the Township of Franklin, Warren County. The WMP provides for the construction of the Brandywine Development Sewage Treatment Plant (STP) within the Broadway section of the Township. The industrial and commercial zoned areas of the Township and the existing Angel Valley Trailer Park and Franklin Township Elementary School have been identified for non-surface discharge under 20,000 gallons per day (gpd). The remainder of the Township is designated for non-surface discharge under 2,000 gpd. The Warren County Vocational School STP will remain in operation.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that on March 27, 1992, pursuant to the provisions of the New Jersey 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 Mercer County Water Quality Management Plan was adopted by the Department. This amendment proposal, which was requested by the Stony Brook Regional Sewerage Authority, adopts a Wastewater Management Plan (WMP) for the Borough of Hopewell, Mercer County. The WMP updates population and wastewater flow information.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Notice of Action of Petition for Rulemaking and Emergency Rulemaking

Extend the Shelf-Life Expiration Date for Milk to 12 Days Following the Date of Pasteurization and Emergency Rulemaking Permitting a 12 Day Date Code Pending Consideration of a Rule Change

Petitioners: Steven Kudatzky and Deborah I. Hollander of Duane, Morris and Heckscher, on behalf of the New Jersey Milk Industry Association.

Take notice that on April 6, 1992, the Department of Health received a petition from Steven Kudatzky and Deborah I. Hollander of Duane, Morris and Heckscher on behalf of the New Jersey Milk Industry Association, Inc., requesting that the Department extend the shelf-life expiration date for milk to 12 days following the date of pasteurization and issue an emergency rule permitting a 12 day date code while the petition is being considered (see 24 N.J.R. 1824(e)).

The petition was properly considered with a thorough review by the Department's Food and Milk Program located in the Division of Epidemiology and Communicable Disease Control. As a result of such consideration, the petition for emergency rulemaking is hereby denied for the following reasons.

The petitioner contended that the milk industry in New Jersey was at a competitive disadvantage by placing a 10 day expiration date code on their fluid milk products destined for sale in New Jersey when out-of-State milk processors were not required to abide by New Jersey's expiration date rules. This is incorrect. Out-of-State milk processors who are shipping fluid milk products into New Jersey must comply with the Department of Health's shelf-life dating requirements. Since Pennsylvania has a different rule for the code dating of milk, Pennsylvania processors doing business in New Jersey would be required to maintain the same segregation of coded products which the petitioner cites as being a major economic hardship to New Jersey firms. Therefore, both New Jersey and Pennsylvania milk processors would be subject to the same production, storage, and loadout practices necessary in a multi-date code marketing situation.

In addition, insufficient information was presented in the subject petition to enable the Department to assess the additional costs to the milk industry that the disparity in coding requirements has reportedly created. The petition failed to demonstrate an economic "emergency" necessary for the Department of Health, with the concurrence of the Governor, to pursue an emergency rule pursuant to N.J.S.A. 52:14B-4(c).

Regarding the second part of the petition which requested that the Department extend the shelf-life date for milk to 12 days, the Department found merit in this proposal.

A review of the data available to the Department of Health from monthly sampling of finished milk products collected at the processing plants, conversations with regulatory personnel in neighboring states as well as from the periodic shelf-life studies performed by Pennsylvania State University, indicate that current industry processing methods may allow for a 12 day date code on fluid milk products and still provide the consumer with a reasonable time in which to consume the product before it sours.

Under current budgetary constraints, the Department of Health at this time cannot mount a major shelf-life study for the keeping quality of milk. The petition, however, indicates that the milk industry has already accumulated data in this area. The Department is requesting this material from the New Jersey Milk Industry Association. Contingent upon receipt and satisfactory review of this information, the Department will act on this component of the petition and propose a change in the shelf-life dating rules subject to a formal public comment period.

HUMAN SERVICES

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds Community Based Day Treatment Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: Community Based Day Treatment Program.

B. Purpose for which the grant program funds shall be used: This program is intended to provide a community based day treatment program to serve approximately 22 youth, aged 13 through 17 years old, in the western end of Union County. This will include the towns of Plainfield, Rahway, Scotch Plains, and others in this area. The youth will be referred to this program by the Division of Youth and Family Services, probation offices, Family Court, the Department of Corrections, schools and parents. There is a need in this part of Union County for a program to service youth who, because of behavioral and/or emotional problems, are unable to function within the normal school and community settings, yet are not appropriate for residential, therapeutic or correctional placement.

C. Amount of money in the grant program: State Grant-in-Aid funds from the Division of Youth and Family Services in the amount of $290,917 is available for this program. The funding for and supervision of the teacher, teacher's aide, and equipment will be provided by the Department of Corrections. Funding will be continuous and no match is required.

D. Organizations which may apply for funding under this program: Public or private, not-for-profit or for-profit agencies which will base the program in the western end of Union County. Agencies must demonstrate the capacity to develop and carry out a program that will provide appropriate and effective services to the decribed population.

E. Qualifications needed by an applicant to be considered for funding: The program must provide a structured setting for the population described above, for four to six month periods of intensive services, after which the youth should be stabilized in the community and able to return to a normal school setting. The youth should also have received training in employable skills, and avoided the need for residential placement. The program should also provide supportive services to the participants for up to a 12 month period after completing the program, depending on their particular needs. The program must operate in the western end of Union County.

F. Procedure for eligible organizations to apply: Agencies interested in applying for these funds may obtain a copy of the Request for Proposal from Tom Comerford, New Jersey Division of Youth and Family Services, 208 Commerce Place, 2nd floor, Elizabeth, New Jersey 07201, telephone number (908) 820-3000. Agencies interested in applying for these funds may also obtain technical assistance from Mr. Comerford, or Ms. Doris Jones, Manager of the Division of Youth and Family Services' Union County Office, both at the above-listed address and telephone number.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit eight copies of the completed Request for Proposal and all required supporting materials and copies to Ms. Delores Underwood, New Jersey Division of Youth and Family Services, 208 Commerce Place, 2nd floor, Elizabeth, New Jersey 07201.

H. Deadline by which applications must be submitted: The completed application and all required supporting materials and copies must be postmarked by Friday, June 26, 1992, or, if hand-delivered, must be received before 4:30 P.M. on Friday, June 26, 1992, at the offices of the New Jersey Division of Youth and Family Services, 208 Commerce Place, 2nd floor, Elizabeth, New Jersey 07201.

I. Date by which applicants shall be notified of acceptance or rejection: August 7, 1992.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Availability of Grant Funds
Community Alternative to Residential Placement

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: Community Alternative to Residential Placement.

B. Purpose for which the grant program funds shall be used: This program is intended to serve 12 to 15 children in need of therapeutic intervention, aged nine through 17, who reside in Gloucester County. These children have an extensive history of dysfunction in their homes, schools and communities, and at the time of referral to the program will have been identified by the Gloucester County Case Assessment Resource Team as in need of residential placement. The provision of comprehensive and individualized services to improve the behavioral, emotional and cognitive skills of the youth will enable them to cope more effectively with their families, schools, teachers and peer groups. Treatment services must include the following:

1. Comprehensive evaluations, which must be completed in order to develop an individualized treatment plan for each child, to include a general psychological assessment, a detailed social history, and psychiatric, neuropsychological, and academic evaluations;
2. Individual and family psychotherapy, focusing on teaching skills to assist the individual in coping and succeeding in life;
3. Pediatric psychiatric intervention, to insure that the child's biological limitations are acknowledged in the treatment plan, and to monitor the child's medications;
4. Vocational and educational evaluation and support;
5. Crisis intervention, which must be available 24 hours a day, seven days a week;
6. Advocacy services to assist the child in effectively integrating with the community. Staff should be prepared to represent the child with the child's school and other agencies;
7. Recreational activities, to enhance the learning of necessary social skills, particularly after school and during the summer months; and
8. Respite homes to provide relief to families but most importantly as a therapeutic intervention.

C. Amount of money in the grant program: Funding in the amount of $500,000 in State Grant-in-Aids funds is available for this program. This funding will be continuous and there is no match requirement.

D. Organizations which may apply for funding under this program: There are no restrictions on the type of organization (that is, public or private, not-for-profit or for-profit), or geographical location of those eligible to apply for funding under this program.

E. Qualifications needed by an applicant to be considered for funding: Applicants may be new or existing providers. The clinical director of the program must be, at a minimum, State of New Jersey licensed clinical psychologist and/or a State of New Jersey Board-certified psychiatrist. Respite homes utilized by the selected provider must be able to meet the standards set by N.J.A.C. 10:128, Manual of Requirements for Children's Group Homes, or other regulations as they may become applicable for homes serving this population.

F. Procedure for eligible organizations to apply: Agencies interested in applying for these funds may obtain a copy of the Request for Proposal from Tina Minnis, County Service Specialist, New Jersey Division of Youth and Family Services, Southern Regional Office, 392 N. White Horse Pike, Box 594, Hammonton, New Jersey 08037, telephone number (609) 567-0010.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit one original and five copies of the completed Request for Proposal and all required supporting materials and copies to Tina Minnis, County Service Specialist, New Jersey Division of Youth and Family Services, Southern Regional Office, 392 N. White Horse Pike, Box 594, Hammonton, New Jersey 08037.

H. Deadline by which applications must be submitted: The completed application and all required supporting materials and copies must be postmarked by July 10, 1992, or, if hand-delivered, must be received before 3:00 P.M. on July 10, 1992, at the offices of the New Jersey Division of Youth and Family Services, 392 N. White Horse Pike, Box 594, Hammonton, New Jersey.

I. Date by which applicants shall be notified of acceptance or rejection: August 24, 1992.

(b)

NEW JERSEY COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Notice of Availability of Grant Funds
Regional Technology Assistance Centers

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Commission for the Blind and Visually Impaired announces the availability of the following grant program funds.

A. Name of program: Regional Technology Assistance Centers.

B. Purpose: To increase the number of persons who are blind or visually impaired in competitive employment through the appropriate use of rehabilitation engineering and low and high tech equipment by establishing three regional technology assistance centers on Commission sites throughout the State. The regional technology assistance centers will evaluate the technology needs of persons who are blind or visually impaired, make recommendations relative to these needs, install equipment at work sites, provide training, and provide on-going support to both consumers and employers, with the goal of securing and maintaining employment.

C. Amount of available funding for the program: $100,000 for each regional center per year. $300,000 will be available each year for three years.

D. Organizations which may apply for funding under this program: Profit or not-for-profit organizations, agencies, institutions, and schools including computer centers and rehabilitation engineering services. An applicant may apply to serve one or more regions.

E. Qualifications needed by an applicant to be considered for funding: Experience and knowledge of rehabilitation technology and low and high tech adaptive equipment needs for persons who are blind and visually impaired; ability to evaluate equipment needs for a specific job, knowledge of equipment to be recommended, ability to train consumers on this equipment, ability to interact with employers to provide engineering support to assure proper functioning on the work location, and ability to be available for follow-along and trouble shooting.

F. Application procedures: RFP available as of June 7, 1992 from the address indicated below or by telephone.

G. Address to which applications must be submitted:
Program Development/Contract Unit
New Jersey Commission for the Blind and Visually Impaired
153 Halsey Street, PO Box 47017
Newark, NJ 07101
(201) 648-4799 or (201) 648-2899

H. Deadline by which applications must be submitted: July 24, 1992.

I. Date the applicant is to be notified of acceptance or rejection: September 3, 1992.

OTHER AGENCIES

(c)

CASINO CONTROL COMMISSION

Notice of Receipt of Petition for Rulemaking
Jackpot Payouts of Cash
N.J.A.C. 19:45-1.40

Petitioner: Marina Associates.
Authority: N.J.S.A. 5:12-5 and 5:12-69(a).

Take notice that on April 14, 1992, Marina Associates filed a rulemaking petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:45-1.40.

The petitioner's proposal would increase the dollar threshold of the jackpot payout limits for the job classifications of slot attendant, slot supervisor and slot shift manager as it relates to the preparation and execution of Jackpot Payout Slips as currently authorized in N.J.A.C. 19:45-1.40(g) and 1.40(h).

The proposed amendments to N.J.A.C. 19:45-1.40(g) and 1.40(h) would increase the authority of casino slot personnel to attest to and

pay jackpots as follows: slot attendants—up to $10,000; slot supervisors—up to $25,000; and slot shift managers-$25,000 and over.

The petitioner contends that the proposed amendments would enable casino licensees to more effectively utilize slot operations resources. Increasing the dollar threshold of the jackpot payout limits for the affected positions will allow for increased customer service as jackpot payout transactions could be completed in a more expeditious and efficient manner.

After due notice, the petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

(a)

CASINO CONTROL COMMISSION

Notice of Receipt of Petition for Rulemaking Blackjack Table Layouts

N.J.A.C. 19:46-1.10

Petitioner: Adamar of New Jersey, Inc.
Authority: N.J.S.A. 5:12-69(c) and N.J.A.C. 19:40-3.6.

Take notice that on April 16, 1992, Adamar of New Jersey, Inc. filed a rulemaking petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:46-1.10.

The petitioner's proposal would permit a casino licensee to utilize, after Commission approval, blackjack layouts with inscriptions different from those currently set forth in N.J.A.C. 19:46-1.10(c) in conjunction with authorized blackjack variations.

The petitioner contends that the proposed amendment to N.J.A.C. 19:46-1.10 will ensure that the gaming public is afforded a more accurate presentation of the rules of the game.

After due notice, the petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	4/21/97
1:5	9/13/96
1:6	4/21/97
1:6A	3/19/95
1:7	4/21/97
1:10	4/21/97
1:10B	9/13/96
1:11	4/21/97
1:13	4/21/97
1:13A	4/3/94
1:14	7/15/96
1:20	4/21/97
1:21	4/21/97
1:30	1/25/96
1:31	4/21/97

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	EXPIRED RULES
2:9	8/19/96
2:16	1/22/96
2:17	5/31/96
2:18	8/5/96
2:19	10/1/95
2:20	10/1/95
2:21	8/5/96
2:22	7/6/92
2:23	7/18/93
2:24	4/2/95
2:32	6/1/92
2:33	3/6/94
2:34	1/2/95
2:48	10/25/95
2:50	5/1/97
2:51	5/31/92
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	8/20/95
2:71	7/8/93
2:72	7/8/93
2:74	7/8/93
2:76	7/31/94
2:90	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	1/11/95
3:6	3/1/96
3:7	9/12/95
3:11	5/1/94
3:13	1/21/97
3:16	6/18/95
3:17	6/13/96
3:18	1/19/93
3:19	3/15/96
3:21	1/24/97
3:22	5/12/94
3:23	7/6/92
3:24	8/18/94
3:25	8/17/92
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:29	8/5/96
3:32	10/3/93
3:33	9/18/94
3:38	10/5/92
3:41	10/11/95
3:42	4/4/93

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:8	1/16/95
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/5/95
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	12/27/94
5:13	12/24/92
5:14	11/9/95
5:15	5/1/94
5:18	1/4/95
5:18A	1/4/95
5:18B	1/4/95
5:18C	2/5/95
5:19	2/1/93
5:20	9/3/96
5:22	2/5/95
5:23	3/1/93
5:24	7/10/95
5:25	2/19/96
5:25A	4/20/97
5:26	2/7/96

N.J.A.C.	Expiration Date
5:27	5/2/95
5:28	12/13/95
5:29	2/19/96
5:30	6/29/93
5:31	12/1/94
5:33	8/6/95
5:34	12/3/95
5:37	1/7/96
5:50	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	4/22/97
5:71	6/4/95
5:80	4/20/95
5:91	2/7/96
5:92	2/7/96
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	1/11/96
6:2	2/6/94
6:3	7/8/93
6:5	10/22/95
6:7	1/2/95
6:8	12/11/96
6:11	9/21/95
6:12	3/8/96
6:20	7/16/95
6:21	11/22/94
6:22	7/16/95
6:22A	12/19/93
6:24	1/11/96
6:28	4/10/94
6:29	2/8/95
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	8/10/95
6:46	4/10/94
6:51	8/5/96
6:53	4/10/97
6:64	1/11/93
6:68	2/26/95
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	6/5/92
7:1C	6/15/95
7:1D	11/28/93
7:1E	9/3/96
7:1F	4/16/97
7:1G	9/29/94
7:1H	7/13/95
7:1I	7/18/93
7:2	10/7/96
7:3	3/21/93
7:4A	9/18/94
7:5	11/19/95
7:5A	6/24/93
7:5B	6/24/93
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	3/16/97
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/93
7:9	1/18/96
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:18	7/3/96
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/16/93
7:22	12/27/96
7:22A	2/5/95
7:23	6/9/94
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/95
7:45	2/6/94
7:50	Exempt
7:60	3/2/97

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/14/95
8:8	4/12/94
8:9	2/14/96
8:13	9/8/92
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
8:21A	EXPIRED RULES
8:22	7/11/96
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	4/12/96
8:31	1/16/95
8:31A	2/20/95
8:31B	8/17/95
8:31C	4/20/97
8:33	7/27/95
8:33A	2/20/92
8:33B	7/27/95
8:33C	EXPIRED RULES
8:33E	6/23/92
8:33F	11/16/94

N.J.A.C.	Expiration Date
8:33G	7/17/94
8:33H	5/16/95
8:33I	EXPIRED RULES
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:33Q	11/19/95
8:34	11/15/93
8:38	4/3/94
8:39	6/20/93
8:40	12/6/96
8:41	2/13/93
8:41A	2/18/97
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	11/19/92
8:43A	7/27/95
8:43E	12/11/92
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	2/7/95
8:51	9/17/95
8:52	12/11/96
8:53	8/4/91
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/4/96
8:65	6/17/96
8:66	3/5/95
8:66A	3/5/95
8:70	8/19/93
8:71	2/17/94
8:80	4/6/97

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	5/4/95
9:3	9/27/93
9:4	9/26/96
9:5	4/1/96
9:6	4/30/95
9:6A	1/4/93
9:7	2/28/93
9:8	10/15/95
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	4/11/95
9:15	8/21/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	12/11/96
10:3	11/21/93
10:6	1/7/96
10:7	1/21/97
10:11	1/16/95
10:12	12/23/96
10:13	7/18/93
10:14	5/16/93
10:15	1/1/95
10:15A	1/1/95
10:15B	1/1/95
10:15C	1/1/95
10:31	6/5/94
10:36	6/30/92
10:37	11/2/95
10:38	4/29/96
10:39	5/7/95
10:40	5/11/94
10:41	3/20/94
10:42	8/19/96
10:43	8/21/94
10:44A	11/21/93
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:47	11/2/95
10:48	12/19/95
10:49	7/13/95
10:50	2/27/96
10:51	10/9/95
10:52	2/8/95
10:53	4/27/95
10:54	2/15/96
10:55	3/8/95
10:56	8/21/96
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	12/19/93
10:63	11/28/94
10:64	2/22/96
10:65	2/19/96
10:66	12/15/93
10:67	2/19/96
10:68	6/28/96
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/7/96
10:71	12/24/95
10:72	8/27/92
10:73	7/15/96
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	12/20/94
10:87	1/27/94
10:89	5/24/95
10:90	10/14/92
10:91	9/4/95
10:95	Exempt
10:97	5/15/94
10:99	6/4/95
10:109	2/4/96
10:120	7/9/96
10:121	7/16/95
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:123	7/13/95
10:124	12/7/92
10:125	6/4/95
10:126	11/7/93
10:126A	5/7/95
10:127	8/26/93
10:128	2/19/96
10:129	7/13/95
10:130	7/2/95
10:131	12/7/92
10:132	10/25/96
10:141	2/7/94

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:2	2/5/95
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	11/2/92
10A:8	11/16/92
10A:9	2/18/97
10A:10	8/17/92
10A:16	EXPIRED RULES
10A:17	2/3/97
10A:18	7/6/92
10A:19	8/21/94
10A:20	2/18/97
10A:21	2/4/96
10A:22	7/5/93
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/97
10A:35	4/15/96
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/28/93
11:7	10/19/92
11:10	7/12/95
11:12	9/27/96
11:13	11/12/92
11:15	10/26/94
11:16	1/31/96
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/7/93
12:19	7/2/95
12:20	8/14/94
12:35	7/16/95
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/21/93
12:61	12/16/96
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/11/96
12:110	1/19/93
12:112	9/6/93
12:120	5/3/95
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95
12A:100	7/17/96
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	7/24/95
13:3	4/25/93
13:4	1/17/96
13:10	3/27/94
13:13	7/16/95
13:14	9/16/96
13:18	3/30/95
13:19	8/18/94
13:20	12/13/95
13:21	12/13/95
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	9/26/93
13:27	2/20/95
13:28	5/16/93
13:29	5/23/95
13:30	3/12/95
13:31	11/20/96
13:32	10/23/92
13:33	3/12/95
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	8/27/95
13:39	6/19/94
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:44E	7/1/96
13:45A	11/9/95
13:45B	4/17/94
13:46	9/4/95
13:47	1/27/97
13:47A	10/5/92
13:47B	2/21/94

N.J.A.C.	Expiration Date
13:47C	6/9/94
13:47K	9/17/95
13:48	1/17/96
13:49	12/16/93
13:51	9/16/96
13:54	11/18/96
13:59	7/30/95
13:60	1/16/97
13:61	3/5/95
13:62	3/19/95
13:63	8/19/96
13:70	1/25/95
13:71	1/25/95
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94
13:80	9/17/95
13:81	8/6/95

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	6/1/97
14:3	5/6/96
14:5	12/2/96
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	EXPIRED RULES
14:12	11/4/96
14:17	4/24/94
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96
14:38	4/1/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:6	1/16/95
14A:8	1/16/95
14A:11	1/16/95
14A:13	EXPIRED RULES
14A:14	1/30/94
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	8/19/96
15:5	EXPIRED RULES
15:10	4/15/96

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	10/1/95
16:1A	6/16/94
16:4	9/16/96
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	9/4/95
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	11/20/94
16:21B	12/3/95
16:22	12/18/95
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	4/8/96
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	2/8/95
16:38	10/15/95
16:41	7/28/92
16:41B	7/2/95
16:41C	5/4/97
16:43	5/10/95
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:47	4/20/97
16:49	2/8/95
16:51	2/14/97
16:53	7/17/94
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	3/28/96
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	2/26/95
16:72	3/20/96
16:73	5/18/97
16:74	12/16/96
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	12/17/95
16:79	9/12/96
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	6/8/95
17:5	11/30/95
17:6	11/22/93
17:7	12/19/93
17:8	10/15/95
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	5/2/96
17:19	3/8/95
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	8/17/95
17:29	9/26/95
17:30	3/11/97
17:32	3/21/93
17:33	4/17/94

N.J.A.C.	Expiration Date
17:40	11/19/95
17:41	4/1/96

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:18A	2/3/97
18:19	3/14/94
18:21	2/19/96
18:22	2/24/94
18:23	2/24/94
18:23A	9/4/95
18:24	6/7/93
18:25	2/19/96
18:26	6/7/93
18:35	6/7/93
18:36	3/19/95
18:37	7/23/95
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3A	11/4/96
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:6	5/6/96
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/8/93
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:31	8/20/95
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/96
19:52	1/6/97
19:53	4/28/93
19:54	3/24/93
19:61	3/2/97
19:65	EXPIRED RULES
19:75	1/13/94

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the April 6, 1992 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.1992 d.1 means the first rule adopted in 1992.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MARCH 16, 1992

NEXT UPDATE: SUPPLEMENT APRIL 20, 1992

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
23 N.J.R. 1723 and 1854	June 3, 1991	23 N.J.R. 3679 and 3840	December 16, 1991
23 N.J.R. 1855 and 1980	June 17, 1991	24 N.J.R. 1 and 164	January 6, 1992
23 N.J.R. 1981 and 2071	July 1, 1991	24 N.J.R. 165 and 318	January 21, 1992
23 N.J.R. 2079 and 2204	July 15, 1991	24 N.J.R. 319 and 508	February 3, 1992
23 N.J.R. 2205 and 2446	August 5, 1991	24 N.J.R. 509 and 672	February 18, 1992
23 N.J.R. 2447 and 2560	August 19, 1991	24 N.J.R. 673 and 888	March 2, 1992
23 N.J.R. 2561 and 2806	September 3, 1991	24 N.J.R. 889 and 1138	March 16, 1992
23 N.J.R. 2807 and 2898	September 16, 1991	24 N.J.R. 1139 and 1416	April 6, 1992
23 N.J.R. 2899 and 3060	October 7, 1991	24 N.J.R. 1417 and 1658	April 20, 1992
23 N.J.R. 3061 and 3192	October 21, 1991	24 N.J.R. 1659 and 1840	May 4, 1992
23 N.J.R. 3193 and 3402	November 4, 1991	24 N.J.R. 1841 and 1932	May 18, 1992
23 N.J.R. 3403 and 3548	November 18, 1991	24 N.J.R. 1933 and 2102	June 1, 1992
23 N.J.R. 3549 and 3678	December 2, 1991		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1	Uniform administrative procedure	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
1:1-10.6	Discovery in conference hearings	24 N.J.R. 675(a)	R.1992 d.212	24 N.J.R. 1873(a)
1:6, 1:7, 1:10, 1:10A, 1:11, 1:13, 1:20, 1:21	Special hearing rules	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
1:31	Organization of OAL	24 N.J.R. 321(a)	R.1992 d.213	24 N.J.R. 1873(b)
	Most recent update to Title 1: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
AGRICULTURE—TITLE 2				
2:22	Insect control	24 N.J.R. 1662(a)		
2:24-4	Volunteer Inspector Program: noncommercial apiaries and bees	24 N.J.R. 1140(a)		
2:32	Sire Stakes Program	24 N.J.R. 1142(a)		
2:50	Milk producers	24 N.J.R. 893(a)	R.1992 d.229	24 N.J.R. 2048(a)
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing nonagricultural uses of enrolled lands	24 N.J.R. 893(b)		
2:76-6.15	Farmland Preservation Program: pre-existing nonagricultural uses on lands permanently deed restricted	24 N.J.R. 896(a)		
	Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)			
BANKING—TITLE 3				
3:1-6.6	Entity examination charges	24 N.J.R. 1420(a)		
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)	R.1992 d.149	24 N.J.R. 1380(a)
3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)		
3:1-16.1	Mortgage processing: administrative change regarding definition of "receipt"	———	———	24 N.J.R. 1791(a)
3:1-19	Consumer checking accounts	24 N.J.R. 1662(b)		
3:4-1	Capital requirements for depository institutions	24 N.J.R. 1665(a)		
3:12-1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1–5.5, 5.7	Qualified corporations as fiscal or transfer agents	24 N.J.R. 675(b)		
3:23	Department license fees	24 N.J.R. 1667(a)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)	R.1992 d.226	24 N.J.R. 2048(b)
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period	23 N.J.R. 3686(c)		
	Most recent update to Title 3: TRANSMITTAL 1992-3 (supplement March 16, 1992)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
PERSONNEL—TITLE 4A				
4A:1, 2, 5, 7, 9, 10	Preproposal regarding readoption of chapters	24 N.J.R. 1667(b)		
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
	Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.3	Maintenance of hotels and multiple dwellings: administrative correction regarding completion of inspections by municipality or county	————	————	24 N.J.R. 1791(b)
5:10-25	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)		
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	24 N.J.R. 1668(a)		
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)	R.1992 d.144	24 N.J.R. 1385(a)
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-2.4A	Uniform Fire Code: administrative correction concerning Type Ac life hazard uses	————	————	24 N.J.R. 1475(a)
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-3	State Fire Prevention Code: administrative corrections	————	————	24 N.J.R. 1875(a)
5:18A-2.9, 4.6	Fire Code enforcement: conflict of interest	24 N.J.R. 678(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
5:22-1, 2	Rehabilitation of one and two-unit residences and multiple dwellings: exemptions from taxation	24 N.J.R. 1669(a)		
5:23	Uniform Construction Code	24 N.J.R. 1420(b)		
5:23-1.1, 3.4, 3.11, 3.20, 3.20A	Uniform Construction Code: indoor air quality	24 N.J.R. 167(a)	R.1992 d.183	24 N.J.R. 1475(b)
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)		
5:23-2.15, 2.18, 2.20, 3.14	Uniform Construction Code: special inspections	24 N.J.R. 1147(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-2.23, 3.4, 3.11, 4.24, 12.4, 12.5, 12.6	Elevator Safety Subcode: exempt structures	24 N.J.R. 170(a)	R.1992 d.147	24 N.J.R. 1397(a)
5:23-3.7, 3.8, 4.20	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)		
5:23-3.10, 5	UCC: enforcing agency classification; licensing of enforcement officials	24 N.J.R. 1446(a)		
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-3.21	Uniform Construction Code: one and two-family dwellings in flood zones	24 N.J.R. 680(a)	R.1992 d.208	24 N.J.R. 1879(a)
5:23-4.3	Elevator Safety Subcode: enforcement	24 N.J.R. 1148(a)		
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)	R.1992 d.230	24 N.J.R. 2052(a)
5:23-4.5, 4.11, 4.14	UCC enforcement: conflict of interest	24 N.J.R. 678(a)		
5:23-4.17	Municipal construction officials: annual budget report	24 N.J.R. 169(a)	R.1992 d.148	24 N.J.R. 1399(a)
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-4.18, 4.20	Uniform Construction Code: gas service entrances	24 N.J.R. 1846(a)		
5:23-4.20	Departmental fees: administrative correction regarding electrical fixtures and receptacles	————	————	24 N.J.R. 1879(b)
5:23-5.4	Uniform Construction Code: enforcement interns	24 N.J.R. 1669(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:24-3	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)	R.1992 d.188	24 N.J.R. 1476(a)
5:25-2.5, 5.2, 5.4, 5.5	New home warranty and builders' registration: violations and penalties; claim eligibility	24 N.J.R. 1149(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(a)	R.1992 d.188	24 N.J.R. 1476(a)
5:26-9.1, 9.2	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:70	Congregate Housing Services Program	24 N.J.R. 513(a)	R.1992 d.214	24 N.J.R. 1880(a)
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)	R.1992 d.216	24 N.J.R. 1880(b)
5:100-2.3, 2.4, 2.5	Ombudsman for Institutionalized Elderly: resident advance directives	24 N.J.R. 1455(a)		
5:100-2.3, 2.4, 2.5	Ombudsman for Institutionalized Elderly: extension of comment period on resident advance directives	24 N.J.R. 1847(a)		
	Most recent update to Title 5: TRANSMITTAL 1992-3 (supplement March 16, 1992)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
EDUCATION—TITLE 6				
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-3.4	Tuition rates for county special services schools: administrative correction	———	———	24 N.J.R. 1882(a)
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 898(a)		
6:22-6.1	Accommodation of pupils in substandard school facilities: administrative correction	———	———	24 N.J.R. 1882(b)
6:26	Establishment of pupil assistance committees	24 N.J.R. 1670(a)		
6:28	Special education	24 N.J.R. 1150(a)		
6:46	Private vocational schools	24 N.J.R. 514(a)	R.1992 d.203	24 N.J.R. 1793(a)
6:46	Private vocational schools: correction to chapter expiration date	———	———	24 N.J.R. 1883(a)
6:53	Vocational education safety and health standards	24 N.J.R. 516(a)	R.1992 d.204	24 N.J.R. 1793(b)
6:79-1	Child nutrition programs (recodify to 6:20-9)	24 N.J.R. 324(a)	R.1992 d.202	24 N.J.R. 1791(c)
	Most recent update to Title 6: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1A	Water supply loan programs	24 N.J.R. 707(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)	R.1992 d.186	24 N.J.R. 1484(a)
7:1F	Industrial Survey Project	24 N.J.R. 717(a)	R.1992 d.209	24 N.J.R. 1883(b)
7:1H	County environmental health standards: request for public input	23 N.J.R. 2237(a)		
7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 178(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: waiver of sunset provision of Executive Order No. 66(1978)	24 N.J.R. 912(a)		
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-9.2	Freshwater wetlands protection: public hearing and request for public comment on Statewide general permits	24 N.J.R. 975(a)		
7:7A-17.3	Freshwater wetlands protection: administrative correction regarding civil administrative penalties	———	———	24 N.J.R. 1333(a)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)	R.1992 d.219	24 N.J.R. 1884(a)
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
7:9A-3.2, 3.16	Individual subsurface sewage disposal systems	24 N.J.R. 202(a)	R.1992 d.187	24 N.J.R. 1491(a)
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)	R.1992 d.238	24 N.J.R. 2053(a)
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)	R.1992 d.237	24 N.J.R. 2056(a)
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System: change of public hearing and extension of comment period	24 N.J.R. 344(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)	R.1992 d.146	24 N.J.R. 1333(b)
7:13-7.1	Redelineation of East Ditch in Pequannock Township, Morris County	24 N.J.R. 203(a)	R.1992 d.173	24 N.J.R. 1493(a)
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)	R.1992 d.145	24 N.J.R. 1334(a)
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)	R.1992 d.145	24 N.J.R. 1334(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14A-2.5	NJPDES program: administrative correction regarding permit conditions	_____	_____	24 N.J.R. 1493(b)
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
7:25-5	1992-93 Game Code	24 N.J.R. 1847(b)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-18.1	Filleting of flatfish at sea	24 N.J.R. 1456(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions	23 N.J.R. 2458(a)		
7:26-4.3	Resource recovery facilities: administrative correction regarding compliance monitoring fees	_____	_____	24 N.J.R. 2058(a)
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4.6	Solid waste program fees: extension of comment period	24 N.J.R. 1458(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26B	Environmental Cleanup Responsibility Act rules: extension of comment period	24 N.J.R. 1281(a)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-16.1, 16.3, 16.4, 16.5	Air pollution by volatile organic compounds: administrative corrections	_____	_____	24 N.J.R. 1889(a)
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-14.4	Therapeutic x-ray and accelerator installations: administrative correction	_____	_____	24 N.J.R. 1494(a)
7:50-4.70	Pinelands Comprehensive Management Plan: administrative correction	_____	_____	24 N.J.R. 1891(a)
	Most recent update to Title 7: TRANSMITTAL 1992-3 (supplement March 16, 1992)			
HEALTH—TITLE 8				
8:20-1.2	Birth Defects Registry: reporting requirements	24 N.J.R. 171(a)	R.1992 d.184	24 N.J.R. 1494(b)
8:24-1.3, 2.5, 3.3, 13.2	Retail food establishments: "community residence"; eggs and egg dishes	24 N.J.R. 915(a)		
8:31A-7.4, 7.5	SHARE Hospital system: rebasing and Minimum Base Period Challenge	24 N.J.R. 734(b)		
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)	R.1992 d.185	24 N.J.R. 1495(a)
8:31C-1.5, 1.6	Residential alcoholism treatment facilities: target occupancy penalty	24 N.J.R. 1463(a)		
8:33-5.1	Certificate of Need moratorium: exceptions	24 N.J.R. 173(a)	R.1992 d.172	24 N.J.R. 1496(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:40-3.3, 5.2, 6.14	Licensure of invalid coach and ambulance services	_____	_____	24 N.J.R. 1498(a)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)	R.1992 d.215	24 N.J.R. 1891(b)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: clarification of proposal summary regarding reporting of HIV infection	24 N.J.R. 59(a)		
8:65-2.5	Controlled Dangerous Substances: physical security controls	24 N.J.R. 174(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)	R.1992 d.205	24 N.J.R. 1795(a)
8:65-10.8	Controlled dangerous substances: exempt chemical preparations	_____	_____	24 N.J.R. 1895(a)
8:71	Interchangeable drug products (see 23 N.J.R. 3336(a); 24 N.J.R. 145(a))	23 N.J.R. 1509(a)	R.1992 d.222	24 N.J.R. 1897(b)
8:71	Interchangeable drug products (see 23 N.J.R. 3334(b); 24 N.J.R. 144(b))	23 N.J.R. 2610(a)	R.1992 d.135	24 N.J.R. 948(a)
8:71	Interchangeable drug products (see 24 N.J.R. 145(b))	23 N.J.R. 3258(a)	R.1992 d.136	24 N.J.R. 948(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)	R.1992 d.137	24 N.J.R. 949(a)
8:71	Interchangeable drug products (see 24 N.J.R. 947(b))	24 N.J.R. 61(a)	R.1992 d.221	24 N.J.R. 1897(a)
8:71	Interchangeable drug products	24 N.J.R. 735(a)	R.1992 d.220	24 N.J.R. 1896(a)
8:71	Interchangeable drug products	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products	24 N.J.R. 1674(a)		
8:80	HealthStart Plus: eligibility criteria	24 N.J.R. 62(a)	R.1992 d.160	24 N.J.R. 1338(a)
8:100	State Health Plan	24 N.J.R. 1164(a)		
8:100-16	State Health Plan regarding Long-Term Care Services: correction to Economic Impact statement	24 N.J.R. 1675(a)		

Most recent update to Title 8: TRANSMITTAL 1992-3 (supplement March 16, 1992)

HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1, 3.2, 3.4, 3.5	Teaching university	24 N.J.R. 1464(a)		
9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)	R.1992 d.163	24 N.J.R. 1340(a)
9:7-9.1, 9.2, 9.4, 9.8	Paul Douglas Teacher Scholarship Program	24 N.J.R. 8(a)	R.1992 d.164	24 N.J.R. 1341(a)
9:9-7.2, 7.3, 7.8	NJCLASS program: family income limit, maximum loan amount, repayment	24 N.J.R. 1675(b)		
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)	R.1992 d.223	24 N.J.R. 1898(a)
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	24 N.J.R. 1859(a)		
9:16-1	Primary Care Physician and Dentist Loan Redemption Program	24 N.J.R. 1192(a)		

Most recent update to Title 9: TRANSMITTAL 1991-7 (supplement December 16, 1991)

HUMAN SERVICES—TITLE 10

10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:35	County psychiatric facilities	24 N.J.R. 208(a)		
10:36	Patient supervision of State psychiatric hospitals	24 N.J.R. 1728(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:49	New Jersey Medicaid Program: basic requirements for recipients and providers	24 N.J.R. 1728(b)		
10:49-10	Prepaid health care services for Medicaid eligibles	24 N.J.R. 64(a)	R.1992 d.167	24 N.J.R. 1342(a)
10:52-1.6	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:53-1.5	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only eligibility computation amounts and income standards	24 N.J.R. 651(a)	R.1992 d.191	24 N.J.R. 1498(b)
10:72-1.1, 3.4, 4.1	New Jersey Care: Medicaid eligibility of children	24 N.J.R. 1860(a)		
10:81-11.7	Child support and paternity: administrative correction	_____	_____	24 N.J.R. 1499(a)
10:82-1.2, 1.6, 1.7, 1.10, 1.11, 2.1, 2.2, 2.3, 2.6–2.9, 2.11–2.14, 2.19, 2.20, 3.13, 3.14, 4.4, 4.5, 4.15, 5.10, 5.11	Assistance Standards Handbook: AFDC program revisions regarding Standard of Need, prospective budgeting, and AFDC-N equalization	24 N.J.R. 1194(a)		
10:82-5.3	Assistance Standards Handbook: child care rates	24 N.J.R. 213(a)	R.1992 d.175	24 N.J.R. 1500(a)
10:82-5.11	AFDC supplemental payments: administrative correction	_____	_____	24 N.J.R. 1499(a)
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-3.1, 3.3, 4.1	General Assistance allowance determination: household size concept	24 N.J.R. 926(a)		
10:89-3.4	Emergency energy assistance: administrative change	_____	_____	24 N.J.R. 1502(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122-2.1, 2.8	Child care centers: licensing fees	24 N.J.R. 71(a)	R.1992 d.176	24 N.J.R. 1502(b)
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
10:123-3.4	Personal needs allowance for SSI and General Assistance recipients in residential health care facilities and boarding houses	24 N.J.R. 330(a)	R.1992 d.177	24 N.J.R. 1503(a)
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)		
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)		
	Most recent update to Title 10: TRANSMITTAL 1992-3 (supplement March 16, 1992)			
CORRECTIONS—TITLE 10A				
10A:1	Department administration, organization, and management	24 N.J.R. 1465(a)		
10A:5-1.3, 7	Temporary close custody	24 N.J.R. 1676(a)		
10A:16	Medical and health services	24 N.J.R. 1677(a)		
10A:18	Inmate mail, visits, and telephone use	24 N.J.R. 1204(b)		
10A:20-4	Residential Community Release Agreement Programs: administrative correction to adoption notice	———	———	24 N.J.R. 953(a)
10A:23	Lethal injection	24 N.J.R. 1677(a)		
10A:34	Municipal and county correctional facilities	24 N.J.R. 683(a)	R.1992 d.193	24 N.J.R. 1796(a)
	Most recent update to Title 10A: TRANSMITTAL 1992-2 (supplement February 18, 1992)			
INSURANCE—TITLE 11				
11:1-31	Surplus lines insurer eligibility	24 N.J.R. 9(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)		
11:3-2	Personal automobile insurance plan	24 N.J.R. 331(a)		
11:3-3	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:3-15.6, 15.7, 15.9	Automobile insurance Buyer's Guide and Coverage Selection Form	24 N.J.R. 523(a)	R.1992 d.218	24 N.J.R. 1898(b)
11:3-16.5, 16.8, 16.10, 16.11, App.	Private passenger automobile insurance: rate filing requirements	23 N.J.R. 3199(a)	R.1992 d.189	24 N.J.R. 1504(a)
11:3-20.5, App.	Automobile insurance: Excess Profits Report	24 N.J.R. 529(a)		
11:3-29.2, 29.4, 29.6	Automobile PIP coverage: medical fee schedules	23 N.J.R. 3203(a)	R.1992 d.170	24 N.J.R. 1347(a)
11:3-33	Appeals from denial of automobile insurance	24 N.J.R. 546(a)	R.1992 d.192	24 N.J.R. 1510(a)
11:3-40	Insurers required to provide automobile coverage to eligible persons	24 N.J.R. 336(a)	R.1992 d.207	24 N.J.R. 1796(b)
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.27	Real Estate Commission: administrative correction concerning requirements for broker's licensure examination	———	———	24 N.J.R. 1799(a)
11:5-1.38–1.42	Real Estate Commission: dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3424(b)	R.1992 d.232	24 N.J.R. 2058(b)
11:5-1.38–1.42	Real Estate Commission: extension of comment period regarding dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3739(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:16-4	Automobile insurance: fraud and theft prevention/ detection plans	23 N.J.R. 3236(a)	R.1992 d.190	24 N.J.R. 1505(a)
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	24 N.J.R. 546(a)	R.1992 d.192	24 N.J.R. 1510(a)
	Most recent update to Title 11: TRANSMITTAL 1992-3 (supplement March 16, 1992)			
LABOR—TITLE 12				
12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		
12:235-9.4	Workers' Compensation: appeal procedures regarding discrimination complaint decisions	24 N.J.R. 1684(a)		
	Most recent update to Title 12: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A				
	Most recent update to Title 12A: TRANSMITTAL 1992-1 (supplement February 18, 1992)			
LAW AND PUBLIC SAFETY—TITLE 13				
13:18-6.9	Replacement license plates fee upon verification of motor vehicle liability coverage	24 N.J.R. 1467(a)		
13:20-34.2, 34.3, 34.5, 34.7	License plate identifying marks	24 N.J.R. 1467(b)		
13:20-42	Purple Heart emblems on license plates	24 N.J.R. 219(a)	R.1992 d.168	24 N.J.R. 1365(a)
13:30-8.4	Announcement of practice in special area of dentistry	23 N.J.R. 3429(a)	R.1992 d.165	24 N.J.R. 1365(b)
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)	R.1992 d.169	24 N.J.R. 1367(a)
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6.17	Corporate medical practice: stay of operative date regarding allowable fees for medications and health aids	———	———	24 N.J.R. 1905(a)
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)	Expired	
13:37	Certification of homemaker-home health aides: open public forum	24 N.J.R. 1861(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-3.9	Pharmaceutical practice: reciprocal registration	24 N.J.R. 553(a)	R.1992 d.235	24 N.J.R. 2062(a)
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)	R.1992 d.166	24 N.J.R. 1371(a)
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40-6.1	Board of Professional Engineers and Land Surveyors: fee schedule	24 N.J.R. 1231(a)		
13:41-3.2	Board of Professional Planners: fee schedule	24 N.J.R. 554(b)	R.1992 d.240	24 N.J.R. 2062(b)
13:43-3.1, 4.1	Board of Shorthand Reporting: fee schedule	24 N.J.R. 1232(a)		
13:44D-1.1, 2.1, 4.6	Public movers and warehousemen: moving vehicle requirement	24 N.J.R. 341(a)	R.1992 d.199	24 N.J.R. 1800(a)
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:44E-2.7	Chiropractic practice: referral fees	24 N.J.R. 1470(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)		
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)		
13:45A-26.1, 26.2, 26.4, 26.14	Automotive dispute resolution: motor vehicles purchased or leased in State	24 N.J.R. 53(a)	R.1992 d.236	24 N.J.R. 2063(a)
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:70-13A.8	Thoroughbred racing: stay pending appeal of officials' decision	24 N.J.R. 555(a)		
13:70-15.1	List of racing officials: administrative correction	———	———	24 N.J.R. 2063(b)
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)	R.1992 d.200	24 N.J.R. 1800(b)
13:71-3.3	Harness racing: stewards appeal hearings	24 N.J.R. 555(b)		
13:71-3.8	Harness racing: stay pending appeal of officials' decision	24 N.J.R. 556(a)		
13:71-20.6	Harness racing: passing lane in homestretch	24 N.J.R. 686(a)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)	R.1992 d.201	24 N.J.R. 1801(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	24 N.J.R. 54(a)	R.1992 d.155	24 N.J.R. 1373(a)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	24 N.J.R. 54(b)	R.1992 d.156	24 N.J.R. 1373(b)
13:75-1.7	Violent Crimes Compensation Board: denial of compensation	24 N.J.R. 1862(a)		
13:75-1.29	Violent Crimes Compensation Board: petitions for rulemaking	24 N.J.R. 55(a)	R.1992 d.157	24 N.J.R. 1374(a)
13:75-1.30	Violent Crimes Compensation Board: burden of proof	24 N.J.R. 55(b)	R.1992 d.158	24 N.J.R. 1374(b)
	Most recent update to Title 13: TRANSMITTAL 1992-3 (supplement March 16, 1992)			
PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14				
14:0	Open Network Architecture (ONA): preproposal and public hearing regarding Board regulation of enhanced telecommunications services	23 N.J.R. 3239(a)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)	R.1992 d.224	24 N.J.R. 2063(c)
14:3-7.5	Interest rate on customer deposits	24 N.J.R. 686(b)	R.1992 d.225	24 N.J.R. 2073(a)
14:3-11	Solid waste collection regulatory reform	24 N.J.R. 1459(a)		
14:5A	Nuclear generating plant decommissioning: periodic cost review and trust funding reporting	23 N.J.R. 3239(b)		
14:6-5	Natural gas service: preproposal on inspection and operation of master meter systems	24 N.J.R. 1862(b)		
14:9B	Private domestic wastewater treatment facilities	24 N.J.R. 1863(a)		
14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)		
14:10-7	Telephone access to adult-oriented information	24 N.J.R. 1238(a)		
14:11	Board of Regulatory Commissioners: administrative orders	24 N.J.R. 1684(b)		
14:18-3.19	Cable television: interest on uncorrected billing errors	24 N.J.R. 1470(b)		
	Most recent update to Title 14: TRANSMITTAL 1991-11 (supplement December 16, 1991)			
ENERGY—TITLE 14A				
14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		
	Most recent update to Title 14A: TRANSMITTAL 1991-5 (supplement December 16, 1991)			
STATE—TITLE 15				
15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		
15:5	Division of the State Museum	24 N.J.R. 1239(a)		
15:10-1.5, 7	Distribution of voter registration forms through public agencies	24 N.J.R. 736(a)		
15:10-1.5, 7	Distribution of voter registration forms through public agencies: extension of comment period	24 N.J.R. 1688(a)		
	Most recent update to Title 15: TRANSMITTAL 1991-2 (supplement August 19, 1991)			
PUBLIC ADVOCATE—TITLE 15A				
	Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)			
TRANSPORTATION—TITLE 16				
16:25-1.1, 1.7, 2.1, 7A.1, 7A.3, 7A.4, 11.3	Utility accommodation	23 N.J.R. 3739(c)	R.1992 d.194	24 N.J.R. 1801(b)
16:28-1.6, 1.56	Speed limit zones along U.S. 40 in Salem, Gloucester, and Atlantic counties; and along U.S. 40 and 322 in Atlantic County	24 N.J.R. 687(a)	R.1992 d.198	24 N.J.R. 1803(a)
16:28-1.25	Speed limit zones along Route 23 in Wayne	24 N.J.R. 1688(b)		
16:28-1.41	Speed limit zone along U.S. 9 and parts of Route 444 in Bass River Township	24 N.J.R. 342(a)	R.1992 d.171	24 N.J.R. 1518(a)
16:28-1.44, 1.72	Speed limit zones along Route 27 in Princeton, Franklin Township, and South Brunswick, and U.S. 206 in Trenton and Lawrence Township	24 N.J.R. 342(b)	R.1992 d.159	24 N.J.R. 1374(c)
16:28-1.113	Speed limits along Route 139 in Jersey City	24 N.J.R. 928(a)	R.1992 d.227	24 N.J.R. 2074(a)
16:28A-1.7, 1.19, 1.20, 1.46, 1.57, 1.100	Restricted parking and stopping along U.S. 9 in Cape May, Route 28 in Elizabeth, Route 29 in West Amwell, U.S. 130 in South Brunswick, U.S. 206 in Mercer County, and Route 50 in Atlantic and Cape May counties	24 N.J.R. 689(a)	R.1992 d.195	24 N.J.R. 1804(a)
16:28A-1.15, 1.54	No stopping or standing zones along Route 23 in Hardyston Township and Route 181 in Jefferson Township	24 N.J.R. 1240(a)		
16:28A-1.18	Bus stop zone along Route 27 in Rahway	24 N.J.R. 692(a)	R.1992 d.196	24 N.J.R. 1806(a)
16:28A-1.32	No stopping or standing zones along U.S. 46 in Clifton	24 N.J.R. 1689(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.36, 1.55, 1.64, 1.73, 1.97	Restricted parking and stopping along Route 57 in Warren County, U.S. 202 in Bernardsville, Route 41 in Cherry Hill, Route 32 in South Brunswick, and U.S. 1 Business in Lawrence Township	24 N.J.R. 693(a)	R.1992 d.197	24 N.J.R. 1806(b)
16:28A-1.57	No stopping or standing zone along U.S. 206 in Lawrence Township	24 N.J.R. 929(a)	R.1992 d.228	24 N.J.R. 2074(b)
16:32-1	Designated routes for double-trailer trucks	24 N.J.R. 929(b)		
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)	R.1992 d.181	24 N.J.R. 1518(b)
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:41-8	Repeal (see 16:41C)	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:41A	Repeal (see 16:41C)	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:41C	Roadside sign control and outdoor advertising	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:44-1.8	Renewal of contractor classification rating	24 N.J.R. 703(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)	R.1992 d.181	24 N.J.R. 1518(b)
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47-App. B, E, E1, J	State Highway Access Management Code	23 N.J.R. 2831(b)	R.1992 d.182	24 N.J.R. 1631(a)
16:54	Licensing of aeronautical and aerospace facilities: preproposed new rules	24 N.J.R. 80(a)		
16:73	NJ TRANSIT: Reduced Fare Transportation Program for Elderly and Handicapped	24 N.J.R. 556(b)	R.1992 d.217	24 N.J.R. 1905(b)

Most recent update to Title 16: TRANSMITTAL 1992-3 (supplement March 16, 1992)

TREASURY-GENERAL—TITLE 17

17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:16-20.1, 20.3	State Investment Council: international government and agency obligations	24 N.J.R. 1690(a)		
17:26	Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J)	24 N.J.R. 1255(a)		
17:30	Urban Enterprise Zone Authority	24 N.J.R. 343(a)	R.1992 d.161	24 N.J.R. 1375(a)
17:32-6, 7, 8	State Planning Rules: letters of clarification; consistency review of plans; Resource Planning and Management Map	24 N.J.R. 1241(a)		

Most recent update to Title 17: TRANSMITTAL 1992-2 (supplement February 18, 1992)

TREASURY-TAXATION—TITLE 18

18:3-2.1	Tax rates on alcoholic beverages	23 N.J.R. 3433(a)	R.1992 d.162	24 N.J.R. 1375(b)
18:7-4.5, 5.2	Corporation Business Tax: indebtedness and entire net worth	24 N.J.R. 175(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)	R.1992 d.231	24 N.J.R. 2074(c)
18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)		

Most recent update to Title 18: TRANSMITTAL 1992-2 (supplement March 16, 1992)

TITLE 19—OTHER AGENCIES

19:4-6.28	HMDC Official Zoning Map: heavy industrial zoning	24 N.J.R. 1690(b)		
19:8-1.1, 2.11	Garden State Arts Center: admission and activity restrictions	24 N.J.R. 557(a)	R.1992 d.178	24 N.J.R. 1515(a)
19:8-2.12	Emergency services charges on Garden State Parkway	24 N.J.R. 557(b)	R.1992 d.179	24 N.J.R. 1516(a)
19:9-1.9	Turnpike Authority: 53-foot semitrailers	24 N.J.R. 931(a)	R.1992 d.211	24 N.J.R. 1905(c)
19:16	PERS: labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:16	Compulsory interest arbitration of labor disputes in public fire and police departments: summary of public comments and agency responses to preproposal	24 N.J.R. 704(a)		
19:25-20.8, 20.19	ELEC: legislative agent annual registration and filing fee	24 N.J.R. 1245(a)		
19:25-20.8, 20.19	Legislative agent annual registration and filing fee: extension of comment period	24 N.J.R. 1692(a)		
19:61-2.2	Executive Commission on Ethical Standards: agency codes of ethics	23 N.J.R. 3436(b)	R.1992 d.180	24 N.J.R. 1517(b)
19:65	Casino Reinvestment Development Authority: project criteria and conditions	24 N.J.R. 1692(b)		

Most recent update to Title 19: TRANSMITTAL 1992-2 (supplement March 16, 1992)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-2.1	Organization of Commission	Exempt	R.1992 d.150	24 N.J.R. 1375(c)
19:41-2.2	Surveillance of gaming operations	24 N.J.R. 1246(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:41-9.4–9,7, 9.11, 9.11A, 9.12, 9.20	Fees for services of Commission and Division of Gaming Enforcement	24 N.J.R. 1247(a)		
19:42-10	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)		
19:42-10.4	Disposition of fee matters and penalties: administrative correction	_____	_____	24 N.J.R. 1516(b)
19:43-1.2	Determination of casino service industries	23 N.J.R. 1963(a)		
19:43-1.3	Application for casino service industry license	24 N.J.R. 1249(a)		
19:44-8.3	Implementation of pai gow	24 N.J.R. 558(a)		
19:44-8.3	Implementation of pai gow poker	24 N.J.R. 569(a)		
19:44-8.3	Pai gow poker: temporary adoption of amendments	_____	_____	24 N.J.R. 1517(a)
19:44-9.4	Gaming school tables	24 N.J.R. 1471(a)		
19:45-1.1, 1.14, 1.15, 1.34	Master coin bank and coin vaults	23 N.J.R. 3085(a)	R.1992 d.233	24 N.J.R. 2078(a)
19:45-1.10, 1.11, 1.46A	Location and surveillance of automated coupon redemption machines	24 N.J.R. 1472(a)		
19:45-1.11	Casino management information systems department	23 N.J.R. 3434(a)	R.1992 d.151	24 N.J.R. 1376(a)
19:45-1.11, 1.12	Implementation of pai gow	24 N.J.R. 558(a)		
19:45-1.11, 1.12	Implementation of pai gow poker	24 N.J.R. 569(a)		
19:45-1.11, 1.12	Pai gow poker: temporary adoption of amendments	_____	_____	24 N.J.R. 1517(a)
19:45-1.12	Supervision of table games	24 N.J.R. 1249(b)		
19:45-1.15, 1.40	Slot machine jackpot payout slips	24 N.J.R. 932(a)		
19:45-1.16, 1.17, 1.36	Internal design and operation of bill changers	24 N.J.R. 1472(b)		
19:45-1.24	Refund of patron cash deposits: use of counter check as documentation	24 N.J.R. 933(a)	R.1992 d.234	24 N.J.R. 2079(a)
19:45-1.27	Casino patron credit information	24 N.J.R. 178(a)	R.1992 d.152	24 N.J.R. 1378(a)
19:45-1.27, 1.27A	Voluntary suspension of patron's credit privileges	23 N.J.R. 3434(b)	R.1992 d.153	24 N.J.R. 1377(a)
19:45-1.37, 1.44	Slot machines and bill changers	24 N.J.R. 58(a)	R.1992 d.210	24 N.J.R. 1906(a)
19:45-1.38	Movement of slot machines and bill changers	23 N.J.R. 2920(a)	R.1992 d.121	24 N.J.R. 974(a)
19:45-1.41	Slot machine hopper fill procedure	23 N.J.R. 2921(a)		
19:45-1.42	Slot drop team requirements	24 N.J.R. 57(a)	R.1992 d.154	24 N.J.R. 1379(a)
19:46-1.7	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:46-1.10	Additional wagers in blackjack	23 N.J.R. 3251(a)	R.1992 d.174	24 N.J.R. 1516(c)
19:46-1.12	Minibaccarat betting areas	24 N.J.R. 568(a)		
19:46-1.13B, 1.15–1.19	Implementation of pai gow poker	24 N.J.R. 569(a)		
19:46-1.13B, 1.15–1.19	Pai gow poker: temporary adoption of new rules and amendments	_____	_____	24 N.J.R. 1517(a)
19:46-1.13C, 1.15, 1.16, 1.19A, 1.19B, 1.20	Implementation of pai gow	24 N.J.R. 558(a)		
19:46-1.25	Internal design and operation of bill changers	24 N.J.R. 1472(b)		
19:46-1.26	Slot machines and bill changers	24 N.J.R. 58(a)	R.1992 d.210	24 N.J.R. 1906(a)
19:46-1.27	Slot machine density	24 N.J.R. 706(a)		
19:47-2.2, 2.17	Additional wagers in blackjack	23 N.J.R. 3251(a)	R.1992 d.174	24 N.J.R. 1516(c)
19:47-2.3, 2.7	Payout odds and payment of blackjack	23 N.J.R. 1781(b)		
19:47-2.11	Splitting pairs in blackjack	24 N.J.R. 1872(a)		
19:47-5.2	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:47-8.2, 10	Game of pai gow	24 N.J.R. 558(a)		
19:47-8.2, 11	Pai gow poker	24 N.J.R. 569(a)		
19:47-8.2, 11	Pai gow poker: temporary adoption of new rules and amendments	_____	_____	24 N.J.R. 1517(a)

Most recent update to Title 19K: TRANSMITTAL 1992-3 (supplement March 16, 1992)

RULEMAKING IN THIS ISSUE—Continued

Filing Deadlines

July 6 issue:
- **Proposals** ..... **June 5**
- **Adoptions** ..... **June 12**

July 20 issue:
- **Proposals** ..... **June 19**
- **Adoptions** ..... **June 26**

August 3 issue:
- **Proposals** ..... **July**
- **Adoptions** ..... **July 1**

August 17 issue:
- **Proposals** ..... **July 2**
- **Adoptions** ..... **July 2**

NOTES

OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

NEW JERSEY ADMINISTRATIVE CODE

☐ **FULL SET** (INCLUDES ALL TITLES BELOW) $1600

INDIVIDUAL TITLES

1.	Administrative Law	$ 70
2.	Agriculture	$ 70
3.	Banking	$ 70
4A.	Personnel (formerly Civil Service)	$ 70
5.	Community Affairs (two volumes)	$140
5A.	Military and Veterans' Affairs	$ 70
6.	Education (two volumes)	$140
7.	Environmental Protection (six volumes; includes NJPDES)	$420
7:14A.	NJPDES Program Rules only	$ 70
8.	Health (four volumes)	$280
9.	Higher Education	$ 70
10.	Human Services (four volumes)	$280
10A.	Corrections	$ 70
11.	Insurance (two volumes)	$140
12.	Labor (two volumes)	$140
12A.	Commerce, Energy and Economic Development	$ 70
13.	Law and Public Safety (four volumes; includes ABC and AGC)	$280
13:2,3.	Alcoholic Beverage Control and Amusement Games Control only	$ 70
14/14A.	Public Utilities/Energy	$ 70
15.	State	$ 70
15A.	Public Advocate	$ 70
16.	Transportation (two volumes)	$140
17.	Treasury-General	$ 70
18.	Treasury-Taxation (two volumes)	$140
19.	Expressway Authority, Hackensack Meadowlands Commission, Highway Authority, Turnpike Authority, Public Employment Relations Commission, Sports and Exposition Authority, Election Law Enforcement Commission, Economic Development Authority, Public Broadcasting Authority, Executive Commission on Ethical Standards, Atlantic County Transportation Authority (two volumes)	$140
19K.	Casino Control Commission	$ 70
	Gubernatorial Executive Orders	$ 70
	Full Code Index	$ 70

(Prices include first year of Update Service. Thereafter, Annual Update Service, $40 per volume. Full Set, $750.)

New Jersey Register (one year, 24 issues)

By second class mail, $125 ☐

By first class mail, $215 ☐

NEW JERSEY ADMINISTRATIVE REPORTS

New Jersey Administrative Reports (1982-1991). Volumes 1 through 13, hardbound. Plus, *Cumulative Index* $299

Individual volumes ..... $35 each

Order from OAL Publications

Now Publishing!

New Jersey Administrative Reports 2d

Comprehensive State Agency coverage, administrative law decisions, September 1991 and after. For subscription information and brochure, write or call:

Barclays Law Publishers
File No. 52030
P.O. Box 60000
San Francisco, CA 94160-2030
(800) 888-3600

Prepayment is required for all subscriptions.

Please return form with your payment to:

OAL Publications
9 Quakerbridge Plaza
CN 049
Trenton, New Jersey 08625

Use this form for the Administrative Code, Register, and N.J.A.R. (1982-1991), only. To order N.J.A.R. 2d, call 800-888-3600.

Name and Delivery Address:

_____

_____

_____

Billing Address, if different:

_____

_____

_____

Telephone Number _____

Amount Enclosed (specify publications) _____

_____

10/91