

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 18, 1992

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 15, 1992

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **September 2, 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.

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NEW JERSEY REGISTER

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

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RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Mortgage Bankers and Mortgage Brokers

Proposed Readoption with Amendments: N.J.A.C. 3:38

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

Authority: N.J.S.A. 17:1-8 and 8.1; 17:11B-5 and -13.

Proposal Number: PRN 1992-336.

Submit comments by September 2, 1992 to:
Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 3:38 expires on October 5, 1992. The Department of Banking has reviewed the rules and, with the following exceptions, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

Subchapter 1, consistent with the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq. ("the Act"), sets forth the requirements for licensing to engage in mortgage banking and brokering. In particular, this subchapter sets the biennial license fee at \$1,000 and the application fee at \$200.00. Each applicant must pass a licensing examination and must obtain a surety bond. Pursuant to rules recently adopted by the Department, each applicant for a license as a mortgage banker must have a tangible net worth of at least \$250,000, and each applicant for a license as a mortgage broker must have a tangible net worth of at least \$50,000. There is a limited grandfather provision for persons licensed as mortgage bankers on December 16, 1991, but such persons must attain the required net worth by December 31, 1995.

Subchapter 1 also requires a licensee to apply to the Commissioner for permission to establish a branch office. The term "branch office" is defined to mean 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. New Jersey branch offices must be licensed.

The rules do not now clarify which out-of-State branches must be licensed and therefore supervised by a licensed individual. Pursuant to proposed amendments to the readoption, the Department requires branch licenses for out-of-State locations only when the following activities are conducted there on a regular basis: (1) mortgage loan applications are distributed to and/or received from New Jersey consumers in person; (2) lock-in or commitment agreements are signed in person by New Jersey consumers; (3) the licensee communicates with New Jersey consumers in person regarding available loan products; and/or (4) the licensee collects fees in person from New Jersey consumers.

Subchapter 2 specifies which records a licensee under the Act must maintain. The rules currently provide that a licensee may obtain approval of the Commissioner to maintain its records at either a licensed site located outside New Jersey or at an unlicensed location in New Jersey. Pursuant to the proposed amendments to the readoption, a licensee may maintain its records at a licensed location inside the State. As an alternative, a licensee with the permission of the Department may keep its records at an unlicensed location in this State or at a licensed or unlicensed location outside this State. As a condition for approval, the licensee must enter into an agreement with the Department governing the maintenance and production of the records. Subchapter 3 provides, consistent with the Act, that the Department may examine the books and records of the licensee, and provides that the cost of examination is borne by the licensee.

Subchapter 4 limits the types of fees which a licensee may charge, consistent with the Act. These fees have recently been defined in the Department's mortgage processing rules, N.J.A.C. 3:1-16.2, which apply to all mortgage lenders including banks, savings banks and savings and loan associations. In addition, the mortgage processing rules define the third party charges which a licensee may charge.

Chapter 38 regulates some loans which are exempted from the mortgage processing rules. In particular, the mortgage processing rules are concerned with only closed-end loans which are made for personal, family or household purposes. Chapter 38 concerns all residential loans made by licensees which are secured by one- to six-family dwellings. Accordingly, for purposes of consistency, the Department proposes to adopt by reference the definitions of application fee, credit report fee, appraisal fee, commitment fee, warehouse fee, third party charge, discount point and lock-in fee as they are contained in N.J.A.C. 3:1-16.2. In addition, the Department adopts the limitations on licensees taking these fees and charges which are contained in the mortgage processing rules.

For example, the mortgage processing rules specify exactly which third party charges a licensee may collect, and permits a licensee to apply to the Department for authority to collect such a third party charge not included on the list. Further, these rules clarify that a licensee may not impose a credit report fee or appraisal fee in excess of the amount paid or to be paid to the person providing the service. It is proposed that these provisions be incorporated by reference.

Subchapter 5 as recently adopted sets forth the persons that must be licensed under the Act, and the persons that are exempted from licensing. In addition, this subchapter requires a licensee to register the solicitors which it employs.

Subchapter 6 concerns the appeal procedure which the Department provides consistent with the Administrative Procedures Act before any license is denied, suspended or revoked, or before a penalty is imposed.

Social Impact

These rules set a procedure for the initial licensing and continued relicensing of mortgage bankers and mortgage brokers in this State. The rules have permitted the Department to monitor and examine on a regular basis the books and records of licensees to determine whether the business of the licensee is being conducted in accordance with the Act and rules. Failure to readopt these rules would therefore diminish the Department's ability to determine compliance to the detriment of consumers.

Economic Impact

The rules proposed for readoption define with specificity which persons must be licensed under the Act. To the extent that these licensing provisions alert persons that they must obtain a license from the Department of Banking to engage in mortgage banking or brokering, and such persons become licensed, the proposed rules will impose on such persons the costs of licensing. 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). Finally, pursuant to rules recently adopted, at 24 N.J.R. 2048(b), which will become operative on January 1, 1993, licensees will need to register solicitors at a cost of \$25.00 per person every two years.

Consistent with the Act, these rules proposed for readoption place limits on the types of fees which a licensee may charge. This may have a negative economic impact on licensees desiring to charge fees not listed in these rules.

Regulatory Flexibility Analysis

Virtually all mortgage lenders and brokers are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption and amendments do impose reporting requirements on these licensees. In particular, the rules and amendments require licensees to register solicitors with the Department. No differentiation based on business size is made regarding this requirement, because it is essential that the Department maintain a record of all solicitors including those employed with small businesses. Otherwise, the Department would not be able to monitor compliance with these rules, including the requirement that solicitors be employed by only one licensee.

The licensing provisions clarify who must meet the Act's licensing requirements. Due to this clarification, persons not otherwise clearly

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subject to licensure are put on notice that they must be licensed. Nearly all of these persons are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. 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. The fees imposed for these services are set forth in the Economic Impact Statement.

No differentiation is made in these licensing requirements based on business size because the State Legislature has directed the Department in the Act to license all mortgage bankers and brokers regardless of the size. Small licensees need the same supervision as larger licensees. Although the application fee and the per diem examination charge are the same for all licensees, small businesses typically require fewer days of examination, so they are charged a proportionately lower examination charge. To this extent, differentiation in the fees is made based on business size.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:38.

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

3:38-1.9 Office requirements

(a) (No change.)

(b) [A licensee shall apply to the Commissioner for permission to establish a branch office or offices.] **A licensee shall obtain a branch office license from the Commissioner for each branch office located in this State.**

(c) **A licensee shall also obtain a branch office license for each branch office located outside this State where, on a regular basis:**

1. **Mortgage loan applications are distributed to and/or received from New Jersey consumers in person;**
 2. **Lock-in or commitment agreements are signed in person by New Jersey consumers;**
 3. **The licensee or its solicitors communicates with New Jersey consumers in person regarding available loan products; and/or**
 4. **The licensee collects fees in person from New Jersey consumers.**
- Recodify 1.-3. as (d)-(f) (No change in text.)
Recodify (c)-(f) as (g)-(j) (No change in text.)

3:38-2.1 Methods and accounting

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

(e) A licensee may keep its mortgage banker or broker records at either: [a licensed site located in a state other than this State, or an unlicensed site located in this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking.]

1. **A licensed branch office in this State; or**
 2. **An unlicensed site in or out of this State, or a licensed branch office outside of this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking.**
- The approval of the Department will be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at the site. The provisions of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations, and the right of the Department to rescind the agreement.

3:38-4.1 [Permitted charges] Fees permitted

(a) No licensee shall charge [for any fees or services in the application for or the processing of a loan commitment or at the closing of a loan other than the following, except as otherwise permitted by State or Federal law] **a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise authorized by State or Federal law, either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda.**

1. Application fee[: Defined as any fee imposed by the licensee for accepting and processing the mortgage loan application];
2. Credit report fee;
3. Appraisal fee;

4. Commitment fee[: Defined as a fee, exclusive of third party charges, imposed by the licensee as consideration for binding the licensee to make a loan in accordance with the terms and conditions of its commitment];

5. Warehouse fee[: Defined as a fee charged to the licensee for the cost associated with holding the mortgage loan pending its sale to a permanent investor];

6. Reimbursement for third party fees paid [by or to be paid by the licensee] **or actually incurred by a lender on behalf of a borrower;**

7. Discount points or fractions thereof; and

8. Lock-in fees.

(b) (No change.)

(c) **No broker shall charge or collect from a borrower on its own behalf any fees other than an application fee and discount points or fractions thereof.**

(d) **The terms application fee, credit report fee, appraisal fee, commitment fee, warehouse fee, third party charge, discount point and lock-in fee are defined by reference according to N.J.A.C. 3:1-16.2. In addition, the restrictions and limitations on the ability of a licensee to collect these fees set forth in N.J.A.C. 3:1-16.2 are also incorporated by reference.**

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Definitions; Life Hazard Uses; Permits

Proposed Amendments: N.J.A.C. 5:18-1.5, 2.4A, 2.4B, 2.7 and 2.8

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

Authority: N.J.S.A. 52:27D-198 and 201.

Proposal Number: PRN 1992-334.

Submit comments by September 2, 1992 to:

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

The agency proposal follows:

Summary

Effective October 7, 1991, at 23 N.J.R. 2999(a), the Department adopted certain amendments to the Uniform Fire Code. In the summary of public comments and agency responses, the Department noted action on the new categories of life hazard uses that had been proposed on August 5, 1991 at 23 N.J.R. 2234(a) was being reserved so that the codes council of the Fire Safety Commission would have an opportunity to review the matter further. These proposed amendments, which are the result of that review, are intended to supersede the reserved portions of the earlier proposal.

The Department, following the recommendations of the codes council and the Fire Safety Commission, proposes to classify the following types of facilities and uses as life hazard uses: hardware stores and home improvement centers of at least 3,000 square feet, but less than 12,000 square feet, of gross floor area; moderate hazard factory and industrial uses defined as Use Group F-1; transfer from one container to another of liquefied petroleum gas or liquefied natural gas at any location, other than service stations, not registered for storage and use; warehouses, storehouses and freight depots used for the storage and handling of ordinary combustible materials and having an area of at least 12,000 square feet; and storage of liquefied natural gas or liquefied petroleum gas in containers with a capacity exceeding 1,000 gallons or an aggregate capacity exceeding 2,000 gallons. The life hazard use classification, and hence the fee, varies with the size and capacity of the facility, in most of these cases. The proposed amendments also establish less expensive permit requirements for storage and handling of flammable or combustible liquids in closed containers with a capacity not exceeding 660

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gallons and extends permit requirements to outdoor used tire storage, waste material handling plants, and outside storage of forest products not otherwise classified.

Social Impact

The proposed amendments are intended to protect public safety by requiring periodic inspection of these additional facilities which, in the judgment of the codes council and the Fire Safety Commission, require regulation because of their potential for hazard to human life, including the lives of both building occupants and firefighters, and property.

Economic Impact

The annual registration fees for life hazard uses are set forth in N.J.A.C. 5:18-2.8(a). The fees for the life hazard use types into which various categories of facilities and uses are assigned by these amendments are as follows: type Ai—\$331.00; type Bb—\$208.00; type Bd—\$414.00; type Bf—\$622.00; type Bg—\$662.00; type Bh—\$828.00; type Bi—\$997.00; type Bj—\$1,036.00; type Bk—\$1,242.00; type Bl—\$1,450.00; type Bm—\$1,656.00. Permit fees of \$35.00 for type 1 permits, \$276.00 for type 3 permits, and \$414.00 for type 4 permits are set forth in N.J.A.C. 5:18-2.8(c). The economic impact on any facility depends on the life hazard use type to which it is assigned.

Regulatory Flexibility Analysis

The proposal adds definitions for "hardware store", and use groups F-1 and F-2, and specifies the life hazard use category of a number of activities, such as transfer from one container to another of liquefied petroleum or natural gas, and the permits required.

Though the amendments distinguish among facilities based upon size, with lesser fees required for various types of smaller facilities, they do not distinguish on the basis of the nature of the ownership. The Department has determined that inspection requirements should be the same, regardless of whether or not the owner is a "small business," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In the interest of public safety, no differential treatment can be allowed. The scaling of fees to facility size, however, should tend to benefit 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. Where 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.

...
"Hardware store" means a building or location of less than 12,000 square feet offering for sale a variety of merchandise including, but not restricted to, limited amounts of tools and associated equipment, garden supplies and paints, and also offering limited quantities of building materials including, but not limited to, plumbing, electrical and carpentry supplies. The establishment may also provide services such as glazing, sharpening and repairs.

...
"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, that 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.-8. (No change.)

9. **"Use Group F"**: All buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified as Use Group F; including, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials.

i. **"Use Group F-1"**: **Factory and industrial uses which are not otherwise classified as low-hazard Use Group F-2, shall be classified as a moderate-hazard factory and industrial use, Use Group F-1.**

ii. **"Use Group F-2"**: **Factory and industrial uses which involve the fabrication or manufacturing of noncombustible materials that, during finishing, packing or processing, do not contribute to a significant fire hazard, shall be classified as Use Group F-2. The following manufacturing processes are indicative of, and shall be classified as, Use Group F-2: beverages, nonalcoholic; brick and masonry; ceramic products; foundries; glass products; gypsum; ice; metal fabrication and assembly; and water pumping plants.**

10.-19. (No change.)

5:18-2.4A Type Aa through Aj life hazard uses

(a)-(h) (No change.)

(i) Type Ai life hazard uses are as follows:

1. (No change.)

2. **Hardware stores and home improvement centers of 3,000 or more but less than 12,000 square feet of gross floor area.**

5:18-2.4B Type Ba through Bo life hazard uses

(a) (No change.)

(b) Type Bb life hazard uses are as follows:

1.-3. (No change.)

4. **[(Reserved)] Transfer from one container to another of liquefied petroleum gas or liquefied natural gas at any location, other than motor vehicle or marine motor craft service stations, not registered for storage and use.**

5. **Spraying or dipping operations, as regulated by N.J.A.C. 5:18-3.7(a), [involving paint, varnish, lacquer, stain, or other flammable or combustible liquids] in all approved areas of less than 100 square feet, as defined in N.J.A.C. 5:18-3.7(c)1 or 3.7(d)1.**

(c) (No change.)

(d) Type Bd life hazard uses are as follows:

1.-6. (No change.)

7. **Spraying or dipping operations, as regulated by N.J.A.C. 5:18-3.7(a), [involving paint, varnish, lacquer, stain, or other flammable or combustible liquids] in all approved areas of 100 or more but less than 250 square feet, as defined in N.J.A.C. 5:18-3.7(c)1 or 3.7(d)1.**

(e) (No change.)

(f) Type Bf life hazard uses are as follows:

1.-20. (No change.)

21. **Factories and other industrial uses of Use Group F-1, not otherwise classified, of 12,000 or more but less than 24,000 square feet in gross floor area.**

22. **Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 12,000 or more, but less than 24,000 square feet in gross floor area.**

23. **Any installation of liquefied petroleum gas or liquefied natural gas utilizing storage containers of over 1,000 gallons individual water capacity or with an aggregate water capacity exceeding 2,000, but not more than 4,000, gallons.**

(g) Type Bg life hazard uses are as follows:

1.-9. (No change.)

10. **Spraying or dipping operations, as regulated by N.J.A.C. 5:18-3.7(a), [involving paint, varnish, lacquer, stain, or other flammable or combustible liquids] in all approved areas of 250 or more but less than 500 square feet, as defined in N.J.A.C. 5:18-3.7(c)1 or 3.7(d)1;**

11.-29. (No change.)

30. **Factories and other industrial uses of Use Group F-1, not otherwise classified, of 24,000 or more, but less than 50,000 square feet, in gross floor area;**

[30.]31. **Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of [100,000] 24,000 or more, but less than [150,000] 50,000, square feet in gross floor area.**

(h) Type Bh life hazard uses are as follows:

1.-3. (No change.)

4. **Any installation of liquefied petroleum gas or liquefied natural gas utilizing storage containers of over 4,000 gallons aggregate water capacity.**

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(i) Type Bi life hazard uses are as follows:

1. (No change.)
2. **Factories and other industrial uses of Use Group F-1, not otherwise classified, of 50,000 or more, but less than 100,000 square feet in gross floor area.**
3. **Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 50,000 or more, but less than 100,000 square feet in gross floor area.**

(j) Type Bj life hazard uses are as follows:

- 1.-5. (No change.)
6. **Spraying or dipping operations, as regulated by N.J.A.C. 5:18-3.7(a), [involving paint, varnish, lacquer, stain, or other flammable or combustible liquids] in all approved areas of 500 square feet or more, as defined in N.J.A.C. 5:18-3.7(c)1 or 3.7(d)1.**
- 7.-21. (No change.)

(k) Type Bk life hazard uses are as follows:

- 1.-4. (No change.)
5. **Factories and other industrial uses of Use Group F-1, not otherwise classified, of 100,000 or more, but less than 150,000 square feet in gross floor area.**
6. **Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 100,000 or more, but less than 150,000 square feet in gross floor area.**

(l) Type Bl life hazard uses are as follows:

- 1.-2. (No change.)
3. **Factories and other industrial uses of Use Group F-1, not otherwise classified, of 150,000 or more, but less than 200,000 square feet in gross floor area.**
4. **Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 150,000 or more, but less than 200,000 square feet in gross floor area.**

(m) Type Bm life hazard uses are as follows:

- 1.-3. (No change.)
4. **Factories and other industrial uses of Use Group F-1, not otherwise classified, of 200,000 or more square feet in gross floor area;**
5. **Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials, not otherwise classified, of 200,000 or more square feet in gross floor area.**

(n)-(o) (No change.)

5:18-2.7 Permits required:

- (a) (No change.)
- (b) **Permits shall be required, and shall be obtained from the fire official, for any of the [following listed] activities [or uses] specified in this section except where they are an integral part of a process by reason of which a use is required to be registered and regulated as a life hazard use. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.**
 1. **Type 4 permits shall not be required when [the storage or activity requiring a permit is carried on at a premises registered as a life hazard use in accordance with this subchapter, or when] the storage or activity is incidental or auxiliary to the agricultural use of a farm property.**
 2. (No change.)
 3. **Type 1 permit:**
 - i.-ii. (No change.)
 - iii. **Tents and temporary tensioned membrane structures without appurtenances, such as platforms and special electrical equipment, which exceed 900 square feet or 30 feet in any dimension (excluding canopies), whether single or made up of multiple smaller units when used for purposes which would constitute a life hazard use [were the use to be] if found in a building;**
 - iv. (No change.)
 - v. **The use of any open flame or flame producing device, in connection with any public gathering, for purposes of entertainment, amusement, or recreation [in places of public assembly];**

vi.-ix. (No change.)

x. **The storage or handling of class I flammable liquids in closed containers of aggregate amounts of more than 10 gallons, but not more than 660 gallons inside a building, or more than 60 gallons, but not more than 660 gallons outside a building.**

xi. **The storage or handling of class II or IIIA combustible liquids in closed containers of aggregate amounts of more than 25 gallons, but not more than 660 gallons inside a building, or more than 60 gallons, but not more than 660 gallons outside a building.**

4. (No change.)

5. **Type 3 permit:**

i. (No change.)

ii. **[Any wrecking yard or junk yard] Wrecking yards, junk yards, outdoor used tire storage, waste material handling plants, and outside storage of forest products not otherwise classified; or**

iii. (No change.)

6. **Type 4 permit:**

i.-ii. (No change.)

iii. **The storage, handling, and processing of flammable, combustible, and unstable liquids in closed containers and portable tanks [as required by subchapter 3 of this Code] in aggregate amounts of more than 660 gallons;**

iv. (No change.)

v. **Any installation of liquified petroleum gas or liquified natural gas utilizing storage containers of over 2,000 gallons individual water capacity or with an aggregate water capacity exceeding 4,000 gallons;]** Recodify existing vi.-vii. as v.-vi. (No change in text.)

7. (No change.)

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

5:18-2.8 Fees: registration, certificate of smoke detector compliance and permit

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

(c) **The application fee for a permit shall be as follows:**

1.-3. (No change.)

4. **Type 4—\$414.00;**

i. **Exception: There shall be no fee for Type 4 permits for storage or activity at a premises registered as a life hazard use in accordance with this subchapter.**

5. (No change.)

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

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Tent Permits

Proposed Amendment: N.J.A.C. 5:23-3.14

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

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1992-338.

Submit comments by September 2, 1992 to:

Michael L. Ticktin, Esq.

Chief, Legislative Analysis

Department of Community Affairs

CN 802

Trenton, NJ 08625-0802

The agency proposal follows:

Summary

In a previous proposal and adoption (21 N.J.R. 1654(a), published June 19, 1989, 22 N.J.R. 2001(a), published May 30, 1990) the Department attempted to sort out the then overlapping jurisdictions of the Uniform Construction Code (UCC) and the Uniform Fire Code (UFC) relating to tents. The goal was to make it clear that construction permits would be required for temporary structures other than tents, as well as for tents with "appurtenances" such as electrical equipment, stages, bleachers, etc. Uniform Fire Code permits were to be required for tents without appurtenances if the tents were more than 900 square feet in area or more than 30 feet in any linear dimension.

Since it has been the practice that the Uniform Fire Code not be directly cited in the Uniform Construction Code, the language adopted by the Department has not completely clarified the issue for the public. This proposed amendment would spell out when the Uniform Fire Code shall be consulted.

Social Impact

This proposed amendment will spell out more clearly when construction code or fire code permits are needed for tents, thereby both reducing confusion and furthering public safety.

Economic Impact

This amended language will ensure that the public does not misconstrue code provisions that govern when construction code or fire code permits are required for tents. It is not the intention of the Department that there be any duplication of effort or overlap of authority.

Regulatory Flexibility Analysis

The proposed amendment clarifies which uses of tents must be inspected, and by whom. The inspection and construction permit requirements apply to both large and 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 this amendment should have no differential effect on small businesses. The clarification should be beneficial to all and the requirements equally binding on all because they affect public safety. Therefore, no differentiation based on business size has been provided in the rules. Any differentiation is based upon structural factors which affect public safety, such as square feet covered and dimensions.

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

5:23-3.14 Building subcode

- (a) (No change.)
- (b) [The following articles] **Articles** or sections of the [following] subcode are modified as follows:
 - 1.-4. (No change.)
 - 5. The following amendments are made to Article 6 of the building subcode entitled "Special Use and Occupancy Requirements":
 - i.-xi. (No change.)
 - xii. Section 626.1.1 is deleted in its entirety and the following language is substituted in lieu thereof:
 - (1)-(2) (No change.)
 - (3) Tents without appurtenances: No **construction** permit is required for the erection, operation or maintenance of any tent or tensioned membrane without appurtenances [if]. **If** the tent or structure is [no] more than 900 square feet in area [and] or [no] more than 30 feet in any dimension (excluding canopies), whether it is one unit or composed of multiple units, **the requirements of the Uniform Fire Code, N.J.A.C. 5:18, shall be enforced by the appropriate officials.** Tents used exclusively for recreational camping purposes shall be exempt from [the above] **construction permit** requirements.

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code; Planned Real Estate
Development Full Disclosure
Fees; Reports**

**Proposed Amendments: N.J.A.C. 5:23-4.5, 4.19, 4.20,
4.21, 4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19,
12.5 and 12.6; 5:26-2.3 and 2.4**

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

Authority: N.J.S.A. 52:27D-124 and 45:22A-35.

Proposal Number: PRN 1992-333.

Submit comments by September 2, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

The Department proposes to revise the State of New Jersey training fee so that the existing fee of \$0.0016 per cubic foot volume will continue to be used with new buildings and additions and a fee of \$0.80 per \$1,000 of value will be used for all other construction. Fees for construction code enforcement by the Department in those municipalities in which it serves as the local enforcing agency and for plan review, private enforcing agency authorization and reauthorization fees, industrialized/modular building and component labels, licenses, asbestos hazard abatement variations, permits and certificates of occupancies, authorization and reauthorization of asbestos safety control monitors, certification of asbestos safety technicians, elevator inspection and registration, and planned real estate development exemption requests and applications for registration are proposed to be increased by an average of eight percent.

Current elevator fees became effective July 1, 1991. Other construction code fees became effective April 1, 1991. Current planned real estate development fees became effective July 3, 1989. Increases are necessary at this time because of increases in the cost of maintaining the same level of service, notably salary and fringe benefit increments and increased charges assessed by the Treasury for office rent.

The form number for the State Training Fee Report is changed to reflect introduction of a new form conforming to the proposed rule.

Social Impact

The construction code enforcement and planned real estate development programs are now entirely fee-supported. Only if these programs are adequately funded can they provide prompt and efficient service to developers and property owners who require approvals in order to proceed with projects, while assuring building safety in order to protect occupants of buildings, firefighters and the public generally.

Economic Impact

As a result of these amendments, there will be an increase of approximately eight percent in the cost of the enumerated services and approvals obtained from the Department. The revision of the training fee formula will ensure that persons doing construction that does not create or add building volume will also pay their fair share of the Department's single broad-based construction fee, applicable both to construction inspected by the Department and construction inspected by local enforcing agencies. This is appropriate because the Department code enforcement program provides services to persons doing all types of construction in all parts of the State.

The increase in the Department's fees will automatically raise the fees of private enforcing agencies that provide subcode enforcement services to local enforcing agencies. This is so because those agencies' fees are required by statute to be the same as those of the Department. As the Department advised at the time of the last general fee increase, any municipality that contracts with a private enforcing agency, and that has not already done so, is advised to review its fee ordinances to make sure that fees automatically include the amount paid to the private

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enforcing agency, so that it is not placed in the position of having to make up any difference between fees collected and amounts required to be paid to the private enforcing agency.

Regulatory Flexibility Analysis

The proposed amendments raise fees paid to the Department for construction code enforcement, training, and planned real estate development applications. They are based on the cost of services provided. The amendments apply to all individuals and businesses regulated under N.J.A.C. 5:23 or 5:26, some of which are small businesses, as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The number of small businesses affected cannot be estimated reliably. The amendments require that specific fees be paid for specified services, based upon the nature and the extent of the work that is done. Statutory requirements allow no exemptions based on business size or form of organization. No differentiation based upon business size has been made in the rules, due to the need to protect the safety and welfare of the public through uniform application of inspection, training and approval requirements, which are the basis of the fees paid.

Private enforcing agencies, whether "small businesses" or not, will pay higher authorization and reauthorization fees under the proposed amendments, but will, on balance, benefit financially, since their fees will increase as a result of the automatic statutory link to the Department's fees.

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

5:23-4.5 Municipal enforcing agencies; administration and enforcement

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

(e) Quarterly reports: The following standardized report established by the Commissioner is required to be completed by the municipal enforcing agency for State of New Jersey training fees and must be submitted quarterly, with the accompanying fees, pursuant to N.J.A.C. 5:23-4.19:

Report No.	Name
[R-840A] R-840B	State Training Fee Report

(f)-(j) (No change.)

5:23-4.19 State of New Jersey training fees

(a) (No change.)

(b) Amount: This fee shall be in the amount of \$0.0016 per cubic foot volume of new [construction] **buildings and additions**. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. **The fee for all other construction shall be \$0.80 per \$1,000 of value of construction.**

1. (No change.)

(c) Remitting and reporting:

1. The municipality shall remit fees to the Bureau on a quarterly basis, in conjunction with report number [R-840A] **R-840B** (State Training Fee Report) in accordance with N.J.A.C. 5:23-4.5(e). Fees remitted shall be for the quarter. Checks shall be made payable to "Treasurer, State of New Jersey." [.]

5:23-4.20 Departmental fees

(a) (No change.)

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a Departmental plan review surcharge in the amount of 40 percent of each listed fee. When the Department performs plan review only, the plan review fee shall be in the amount of 25 percent of the new construction permit fee which would be charged by the Department pursuant to these [regulations] **rules**. The minimum fee shall be [\$43.00] **\$46.00**.

(c) Departmental (enforcing agency) fees:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices, and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein, plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be [\$43.00] **\$46.00**.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of [\$0.025] **\$0.027** per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be [\$0.014] **\$0.015** per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be [\$0.0007] **\$0.0008** per cubic foot for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), with the maximum fee for such structures on farms not to exceed [\$1,060.00] **\$1,145**.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of [\$22.00] **\$24.00** per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of [\$17.00] **\$18.00** per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of [\$14.00] **\$15.00** per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Department such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Department shall make the final decision regarding estimated cost.

(3)-(4) (No change.)

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) The fee shall be in the amount of [\$9.00] **\$10.00** per fixture connected to the plumbing system for all fixtures and appliances except as listed in (c)2ii(2) below.

(2) The fee shall be [\$60.00] **\$65.00** per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, back flow preventers, steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, active solar systems, sewer pumps, interceptors and fuel oil piping. There shall be no inspection fee charged for gas service entrances.

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) For from one to 50 receptacles or fixtures, the fee shall be in the amount of [\$33.00] **\$36.00**; for each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of [\$5.00] **\$6.00**; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacles or similar fixtures, and motors or devices of one horsepower or one kilowatt or less.

(2) For each motor or electrical device greater than one horsepower and less than or equal to 10 horsepower[;], and for transformers and generators greater than one kilowatt and less than or equal to 10 kilowatts, the fees shall be [\$9.00] **\$10.00**.

(3) For each motor or electrical device greater than 10 horsepower and less than or equal to 50 horsepower; for each service panel, service entrance or sub panel less than or equal to 200 amperes; and for all transformers and generators greater than 10 kilowatts and less than or equal to 45 kilowatts, the fee shall be [\$43.00] **\$46.00**.

(4) For each motor or electrical device greater than 50 horsepower and less than or equal to 100 horsepower; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 1,000 amperes; and for each transformer or generator greater than 45 kilowatts and less than or equal to 112.5 kilowatts, the fee shall be [\$85.00] **\$92.00**.

(5) For each motor or electrical device greater than 100 horsepower; for each service panel, service entrance or sub panel greater than 1,000 amperes; and for each transformer or generator greater than 112.5 kilowatts, the fee shall be [\$423.00] **\$457.00**.

(6) (No change.)

iv. Fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums:

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(1) The fee for 20 or fewer heads or detectors shall be [~~\$60.00~~] **\$65.00**; for 21 to and including 100 heads or detectors, the fee shall be [~~\$111.00~~] **\$120.00**; for 101 to and including 200 heads or detectors, the fee shall be [~~\$212.00~~] **\$229.00**; for 201 to and including 400 heads or detectors, the fee shall be [~~\$550.00~~] **\$594.00**; for 401 to and including 1,000 heads or detectors, the fee shall be [~~\$761.00~~] **\$822.00**; for over 1,000 heads or detectors, the fee shall be [~~\$972.00~~] **\$1,050**. In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.

(2) The fee for each standpipe shall be [~~\$212.00~~] **\$229.00**.

(3) The fee for each independent pre-engineered system shall be [~~\$85.00~~] **\$92.00**.

(4) The fee for each gas or oil fired appliance that is not connected to the plumbing system shall be [~~\$43.00~~] **\$46.00**.

(5) The fee for each kitchen exhaust system shall be [~~\$43.00~~] **\$46.00**.

(6) The fee for each incinerator shall be [~~\$338.00~~] **\$365.00**.

(7) The fee for each crematorium shall be [~~\$338.00~~] **\$365.00**.

3. Certificates and other permits: The fees are as follows:

i. The fee for a demolition or removal permit shall be [~~\$60.00~~] **\$65.00** for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building code), and structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), and [~~\$111.00~~] **\$120.00** for all other use groups.

ii. The fee for a permit to construct a sign shall be in the amount of [~~\$1.11~~] **\$1.20** per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be [~~\$43.00~~] **\$46.00**.

iii. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee that would be charged by the Department pursuant to these regulations. The minimum fee shall be [~~\$111.00~~] **\$120.00**, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms, including commercial farm buildings subject to N.J.A.C. 5:23-3.2(d), for which the minimum fee shall be [~~\$60.00~~] **\$65.00**.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be [~~\$161.00~~] **\$174.00**.

v. The fee for a certificate of continued occupancy shall be [~~\$111.00~~] **\$120.00**.

vi. (No change.)

vii. The fee for a certificate of approval certifying that work done under a construction permit has been satisfactorily completed shall be [~~\$26.00~~] **\$28.00**.

viii. The fee for plan review of a building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode shall be [~~\$254.00~~] **\$274.00** for one and two-family homes (use group R-3 of the building subcode), and for light commercial structures having the indoor temperature controlled from a single point, and [~~\$1,268.00~~] **\$1,369** for all other structures.

ix. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be [~~\$550.00~~] **\$594.00** for class I structures and [~~\$111.00~~] **\$120.00** for class II and class III structures. The fee for resubmission of an application for a variation shall be [~~\$212.00~~] **\$229.00** for class I structures and [~~\$60.00~~] **\$65.00** for class II and class III structures.

4. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be [~~\$43.00~~] **\$46.00** for each such device when they are tested (thrice annually) and [~~\$111.00~~] **\$120.00** for each device when they are broken down and tested (once annually).

5. Annual permit requirements are as follows:

i. (No change.)

ii. Fees for annual permits shall be as follows:

(1) One to 25 workers (including foremen) [~~\$618.00~~] **\$667.00**/worker; each additional worker over 25, [~~\$215.00~~] **\$232.00**/worker.

(2) Prior to the issuance of the annual permit, a training registration fee of [~~\$130.00~~] **\$140.00** per subcode shall be submitted by the applicant to the Department of Community Affairs, Bureau of Tech-

nical Assistance, Training Section along with a copy of the construction permit (Form F-170c). Checks shall be made payable to "Treasurer, State of New Jersey."

6.-8. (No change.)

5:23-4.21 Private enforcing agency authorization and reauthorization fees

(a) Authorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for approval as an inspection agency shall pay a fee of [~~\$2,600~~] **\$2,800** for each subcode for which authorization is sought.

(b) Reauthorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for reapproval as an inspection agency shall pay a fee of [~~\$1,300~~] **\$1,400** for each subcode for which authorization is sought plus an amount equal to five percent of the gross revenue earned from State Uniform Construction Code enforcement activities during the previous 12-month period. This fee shall be paid to the Department in 12 equal installments, beginning with the month immediately following the end of the 12-month period from which the fee is calculated. Payment shall be made prior to the last business day of each month.

5:23-4.22 Building element and manufactured home add-on unit insignia of certification fees

(a) Building element insignia of certification fee: An inplant inspection agency requesting the Department to issue component insignia(s) of certification for building elements shall pay a fee of [~~\$65.00~~] **\$70.00** for each such insignia.

(b) Manufactured (Mobile) Home add-on unit insignia of certification fee: An inplant inspection agency requesting the Department to issue insignia(s) of certification for manufactured (mobile) home add-on units shall pay a fee of [~~\$65.00~~] **\$70.00** for each such insignia.

5:23-4A.12 Fees for labels; labels

(a) Fees for labels shall be as follows:

1. An approved evaluation and inspection agency requesting the Department to issue labels of certification for industrialized/modular buildings shall pay a fee of [~~\$130.00~~] **\$140.00** for each label.

2. An approved evaluation and inspection agency requesting the Department to issue component labels of certification for building components shall pay a fee of [~~\$65.00~~] **\$70.00** for each label.

3. (No change.)

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

5:23-5.21 Renewal of license

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

(e) Lapsed license renewal requirements are as follows:

1. (No change.)

2. The late renewal application shall be accompanied by the appropriate renewal fee and an additional late fee of [~~\$40.00~~] **\$43.00** per year or fraction thereof.

3.-4. (No change.)

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

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a non-refundable fee as specified herein.

1. A non-refundable application fee of [~~\$40.00~~] **\$43.00** shall be charged in each of the following instances:

i.-iii. (No change.)

2. A non-refundable application fee of [~~\$20.00~~] **\$22.00** shall be charged for each administrative license applied for separately from a technical license.

3. (No change.)

4. Renewal fee: The two-year renewal application fee shall be [~~\$40.00~~] **\$43.00**.

5. Persons who have become ineligible to retain their administrative license by reason of failure to remove the provisional status of such license within the prescribed two-year period must submit a non-refundable application fee of [~~\$20.00~~] **\$22.00** in order to

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reapply for said administrative license without recourse to any further provisional status privilege.

6. (No change.)

5:23-8.6 Variations

(a) No variations from the requirements of this subchapter shall be made except upon written approval from the administrative authority having jurisdiction, after receiving a recommendation in writing from the asbestos safety control monitor firm. Any variation shall be consistent with N.J.A.C. 5:23-2.

1. Exception: When a building or part of a building is required to be occupied during an asbestos hazard abatement project, a written release shall be requested from the Department, and obtained by the authorized asbestos safety control monitor firm. The Department of Community Affairs shall review the application and approve or deny it within 20 business days of receipt of it. A copy of the plans and specifications must accompany the variation request from the authorized asbestos safety control monitor firm, in the Department along with the number of intended occupants and their purpose, location within the building and the time of day the occupants will be in the building. A variation for occupancy shall not be required for maintenance or security personnel. In addition, a variation request for occupancy is not required for a cleared area in a multi-phase project that has received a Temporary Certificate of Occupancy from the administrative authority having jurisdiction when such occupancy applies to contractors or related personnel involved with post-abatement activity.

i. The fee for an application for a variation for occupancy shall be [~~\$432.00~~] **\$467.00** and shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

(b) (No change.)

5:23-8.10 Fees

(a) The administrative authority having jurisdiction who issues the construction permit and the certificate of occupancy for an asbestos hazard abatement project shall establish by regulation or ordinance the following flat fee schedule:

1. An administrative fee of [~~\$65.00~~] **\$70.00** for each construction permit issued for an asbestos hazard abatement project.

2. An administrative fee of [~~\$13.00~~] **\$14.00** for each certificate of occupancy issued following the successful completion of an asbestos hazard abatement project.

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

5:23-8.18 Asbestos safety control monitor

(a)-(g) (No change.)

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the Department under this subcode for approval as an asbestos safety control monitor shall pay a fee of [~~\$3,250.00~~] **\$3,500** for the authorization that is sought, plus an amount equal to eight percent of the gross revenue earned from asbestos safety control monitor activities, payable quarterly. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

2. Reauthorization fee: Any asbestos safety control monitor submitting an application to the Department under this subcode for reapproval as an asbestos safety control monitor shall pay a fee of [~~\$1,625.00~~] **\$1,750** plus an amount equal to six percent of the gross revenue of four consecutive quarters starting with the previous year's last quarter. The fee shall be paid quarterly with the first quarter due with the application. The monies obtained from the preparation of plans and specifications shall not be included in the calculation of this quarterly fee.

5:23-8.19 Asbestos safety technician: certification requirements

(a)-(h) (No change.)

(i) No application for certification shall be acted upon unless said application is accompanied by a fee as follows:

1. An application fee shall be [~~\$40.00~~] **\$43.00**;

2. A renewal application fee shall be [~~\$40.00~~] **\$43.00**.

5:23-12.5 Registration fee

The initial registration fee for each elevator device in any structure that is not in Use Group R-3 or R-4 or that is not in an exempted R-2 structure shall be [~~\$50.00~~] **\$54.00**. A re-registration fee of [~~\$50.00~~] **\$54.00** shall be required for each structure containing one or more elevator devices, upon change of ownership.

5:23-12.6 Test and inspection fees

(a) The Department fees for witnessing acceptance tests and performing inspections shall be as follows:

1. The basic fees for elevator devices in structures not in Use Group R-3 or R-4, or in an exempted R-2 structures, shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors [~~\$225.00~~]
\$243.00;
 - (2) Over 10 floors [~~\$375.00~~]
\$405.00;
- ii. Hydraulic elevators [~~\$200.00~~]
\$216.00;
- iii. Roped hydraulic elevators [~~\$225.00~~]
\$243.00;
- iv. Escalators, moving walks [~~\$200.00~~]
\$216.00;
- v. Dumbwaiters [~~\$ 50.00~~]
\$ 54.00;
- vi. Stairway chairlifts, inclined and vertical wheelchair lifts and manlifts [~~\$ 50.00~~]
\$ 54.00.

2. Additional charges for devices equipped with the following features shall be as follows:

- i. Oil buffers (charge per oil buffer) [~~\$ 40.00~~]
\$43.00;
- ii. Counterweight governor and safeties [~~\$100.00~~]
\$108.00;
- iii. Auxiliary power generator [~~\$ 75.00~~]
\$ 81.00.

3. The Department fee for elevator devices in structures in Use Group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be [~~\$150.00~~]**\$162.00**. This fee shall be waived when signed statements and supportive inspection and acceptance test reports are filed by an approved qualified agent or agency in accordance with N.J.A.C. 5:23-2.19 and 2.20.

4. The fee for witnessing acceptance tests of, and performing inspections of, alterations shall be [~~\$50.00~~]**\$54.00**.

(b) The Department fees for routine and periodic tests and inspections for elevator devices in structures not in Use Group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be as follows:

1. The fee for the six month routine inspection of elevator devices shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors [~~\$140.00~~]
\$151.00;
 - (2) Over 10 floors [~~\$180.00~~]
\$194.00;
- ii. Hydraulic elevators [~~\$100.00~~]
\$108.00;
- iii. Roped hydraulic elevators [~~\$140.00~~]
\$151.00;
- iv. Escalators, moving walks [~~\$140.00~~]
\$151.00.

2. The fee for the one year periodic inspection and witnessing of elevator devices, which shall include a six month routine inspection, shall be as follows:

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i. Traction and winding drum elevators:	
(1) One to 10 floors	[\$200.00] \$216.00;
(2) Over 10 floors	[\$240.00] \$259.00;
ii. Hydraulic elevators	[\$150.00] \$162.00;
iii. Roped hydraulic elevators	[\$200.00] \$216.00;
iv. Escalators, moving walks	[\$320.00] \$346.00;
v. Dumbwaiters	[\$ 80.00] \$ 86.00;
vi. Manlifts, stairway chairlifts, inclined and vertical wheelchair lifts	[\$120.00] \$130.00.
3. Additional yearly periodic inspection charges for elevator devices equipped with the following features shall be as follows:	
i. Oil buffers (charge per oil buffer)	[\$ 40.00] 43.00;
ii. Counterweight governor and safeties	[\$ 80.00] \$ 86.00;
iii. Auxiliary power generator	[\$ 50.00] \$ 54.00.
4. The fee for the three year or five year inspection of elevator devices shall be as follows:	
i. Traction and winding drum elevators:	
(1) One to 10 floors (five year inspection)	[\$340.00] \$367.00;
(2) Over 10 floors (five year inspection)	[\$380.00] \$410.00;
ii. Hydraulic and roped hydraulic elevators:	
(1) Three-year inspection	[\$250.00] \$270.00;
(2) Five-year inspection	[\$150.00] \$162.00.
(c) When the Department is the enforcing agency, the fees set forth in (b) above shall be paid annually in accordance with the following schedule, which is based on the average of the fees to be collected over a five year period:	
1. Basic annual fee as follows:	
i. Traction and winding drum elevators	
(1) One to 10 floors	[\$370.00] \$400.00;
(2) Over 10 floors	[\$450.00] \$486.00;
ii. Hydraulic elevators	[\$270.00] \$292.00;
iii. Roped hydraulic elevators	[\$300.00] \$324.00;
iv. Escalators, moving walks	[\$460.00] \$497.00;
v. Dumbwaiters	[\$ 80.00] \$ 86.00;
vi. Stairway chairlifts, inclined and vertical wheelchair lifts, manlifts	[\$120.00] \$130.00.
2. Additional charges for devices equipped with the following features as follows:	
i. Oil buffers (charge per oil buffer)	[\$ 40.00] \$ 43.00;
ii. Counterweight governor and safeties	[\$ 80.00] \$ 86.00;
iii. Auxiliary power generator	[\$ 50.00] \$ 54.00.

5:26-2.3 Request for exemptions

(a) Any person who believes that a planned real estate development or retirement community may be exempt from the provisions of the Act, or who is contemplating a planned real estate development or retirement community [which] that he believes may be exempt, may apply to the Director for a Letter of Exemption.

1. Such application shall be in writing and shall list the reasons why such planned real estate development or retirement community, or proposed planned real estate development or proposed retirement community, may be exempt from the Act.

2. An application for exemption pursuant to N.J.A.C. 5:26-2.2(a) shall be accompanied by a fee of [\$104.00]**\$112.00.**

- [1.]i. (No change in text.)
- (b)-(e) (No change.)

5:26-2.4 Applications for registrations; submission and fees

(a) An application for registration shall consist of a statement containing the items set forth in N.J.A.C. 5:26-3 and shall be submitted in the manner and form as provided therein, together with the filing fee in the amount of [\$1,000.00] **\$1,080** plus [\$100.00] **\$108.00** per lot, parcel, unit or interest, made payable to the Treasurer, State of New Jersey. In the event lots, parcels, units or interests are added during registration, an additional fee of [\$100.00] **\$108.00** per lot, parcel, unit or interest shall be paid. There shall be no refunds for deletions.

- 1. (No change.)
- (b) (No change.)

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code
Licensing
Subcode Official Requirements
Proposed Amendment: N.J.A.C. 5:23-5.7**

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

Authority: N.J.S.A. 52:27D-124 et seq.

Proposal Number: PRN 1992-322.

Submit comments by September 2, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625-0802

The agency proposal follows:

Summary

Existing requirements at N.J.A.C. 5:23-5.5(d)5 allow a licensed building, electrical, fire protection or plumbing inspector to be eligible for licensure as an inspector at the same level or lower in any other subcode, except elevator safety, upon successful completion of the approved educational program, if applicable, and the appropriate examination.

N.J.A.C. 5:23-5.7(a)6 currently allows a person who is already licensed as a building, plumbing or electrical subcode official to be deemed to have satisfied the experience requirement for any other subcode official licenses, other than fire protection or elevator subcode official, because of their experience already gained through employment in their current license(s).

The various State inspector associations and certain course instructors approved by the Department to teach "continuing education" to licensees, have informed the State of their belief that, although many of the inspectors receiving reciprocal licenses under N.J.A.C. 5:23-5.5(d)5 are knowledgeable regarding written code provisions, they lack the experience to make decisions in the field if there are irregularities in a project or if there are any circumstances unenforced by specific code provisions.

The proposed change would continue to provide for the granting of reciprocal inspector's licenses, but would not allow the assumption of a subcode official's responsibilities prior to a demonstration of three years of field experience in a new subcode area.

The fire protection subcode already has a provision that states a "fire prevention subcode official shall have had at least three years' experience as a fire prevention or fire fighting official," which ensures that reciprocal licensing does not confer subcode official responsibilities on those with insufficient field experience.

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Social Impact

This proposed amendment will ensure that all those who earn reciprocal licenses based on their experience in a given subcode area have sufficient field experience to apply their knowledge before they are given additional responsibilities. This will ensure that code offices are properly staffed with officials who can protect the public's health, safety and welfare.

Economic Impact

This proposed amendment should have no direct economic impact. It is insurance that code officials, even those earning reciprocal licenses, have sufficient appropriate field experience, should result in more effective use of funds spent for salaries by municipalities, private agencies and the public, by ensuring a more qualified code enforcement workforce. Applicants for reciprocal licenses will incur no additional expenses directly associated with licensure.

Regulatory Flexibility Statement

This amendment imposes education and experience requirements on those licensed individuals who seek licensure in another subcode area, not including elevator inspection. Since there are no requirements placed upon businesses, a Regulatory Flexibility Analysis is not required.

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

5:23-5.7 Subcode official requirement

(a) A candidate for a license as a building, electrical, fire protection, plumbing or elevator subcode official shall meet the following qualifications:

1.-3. (No change.)

4. [Exception] **Exceptions to experience requirements follow:**

i. A candidate for a license as a fire protection subcode official **[must] shall possess at least the following experience:**

- [i.](1) Three years of experience as a fire prevention official; or
- [ii.](2) Three years of experience as a fire protection official; or
- [iii.](3) Three years of experience as a firefighter.

ii. A candidate for a license as a **building, plumbing or electrical subcode official who obtained the technical license in that subcode area under the provisions of N.J.A.C. 5:23-5.5(d)5 shall possess the following experience:**

(1) **Three years of experience as an inspector in that specific subcode area; or**

(2) **Three years of experience in a skilled trade directly related to that specific subcode area; or**

(3) **Two years of experience in that specific subcode area as an inspector or in construction, design or supervision with at least a bachelor's degree from an accredited institution of higher education in architecture or engineering or in architecture or engineering technology or in a major area of study directly related to building construction; or**

(4) **One year of experience in that specific subcode area as an inspector or in construction, design or supervision as a licensed engineer or registered architect, provided that such person possesses a license as an engineer or architect issued by the State of New Jersey at the time of application.**

5. (No change.)

[6. A person who is already licensed as a building, plumbing or electrical subcode official shall be deemed to have satisfied the experience requirement for any other subcode official license other than the fire protection or elevator subcode official license.]

[7.]6. (No change in text.)

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Uniform Construction Code
Licensing
Elevator Inspector H.H.S. requirements
Proposed Amendment: N.J.A.C. 5:23-5.19**

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

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1992-323.

Submit comments by September 2, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802

The agency proposal follows:

Summary

This proposal amends the description of elevator work experience required to apply for an H.H.S. (high-rise and hazardous structures) license. The existing phrase requiring "seven years in inspecting elevators" may be construed as allowing credit for time spent in training or in a support position, which is not the intent of the requirement.

The amended language will read "seven years as an elevator inspector." This makes it clear that a candidate for licensure must have actual hands-on experience as a person responsible for inspection tasks. The level of experience is consistent with H.H.S. licensing requirements in other disciplines under the State Uniform Construction Code. Under the Department's rules, there is no higher level of inspector than the H.H.S. inspector.

Social Impact

This proposed amendment will ensure that those applying for elevator inspector licenses are properly qualified by experience for the duties and responsibilities they will, if successful, be required to assume.

Economic Impact

It is not anticipated that this amendment will have an immediate economic impact. It will prevent under-qualified license applicants from going through the unnecessary time and expense of making applications. They will be on notice that work experience as a trainee or performing a support function will not fulfill the experience requirement for licensure as an H.H.S. inspector.

Regulatory Flexibility Statement

This amendment clarifies that the seven-year work experience requirement for those individuals who choose to apply to the Department for licensure as an elevator inspector in those structures classified as high-rise or hazardous is met only with years of experience in a position of responsibility for elevator inspection tasks. The amendment places no requirements on businesses; therefore, a regulatory flexibility analysis is not required.

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

5:23-5.19 Elevator inspector H.H.S. requirements

(a) A candidate for a license as an elevator inspector of high-rise and hazardous structures (H.H.S.) shall meet the following educational and/or experience requirements:

1. Seven years of experience consisting of one of the following, or combination thereof:

i. (No change.)

ii. Experience [in inspecting elevators] **as an elevator inspector;** or,

iii. (No change.)

2.-4. (No change.)

(b) (No change.)

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
New Home Warranty and Builders' Registration
State New Home Warranty Security Plan Warranty
Contributions**

Proposed Amendment: N.J.A.C. 5:25-5.4

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

Authority: N.J.S.A. 46:3B-10.

Proposal Number: PRN 1992-335.

Submit comments by September 2, 1992 to:

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

The agency proposal follows:

Summary

The premium paid by builders for homes enrolled in the State New Home Warranty Security Plan is now set at four-tenths of one percent of the purchase price of the home. This proposed amendment would eliminate the fixed rate and substitute a rate based upon a given builder's record with the State New Home Warranty Security Plan and the approved private plans. The New Home Warranty and Builders' Registration program has now been in effect for more than 13 years.

Under the proposed amendment, a builder who has had no payments resulting from claims, and no final determinations that a payment must be made, for 10 years will pay a rate of 0.2 percent. Rates will be 0.25 percent for builders with seven years without such claims or determinations, 0.3 percent for builders with five years without any such payments or determinations, 0.325 percent for builders with two years without any such payments or determinations, 0.375 percent for new builders, 0.5 percent for builders who have had such payments or determinations made within the previous two years, and 0.7 percent for builders who have had such payments or determinations made while paying a rate of 0.5 percent on account of a previous claim and payment or who are involved in bankruptcy proceedings. Builder entities with identity of ownership and control will be treated as a single builder for purposes of determining the appropriate rate. Builder entities with overlapping ownership or control will be rated as if the application were made by the entity with the least favorable rating. Nonbuilder sellers who are responsible for warranting new homes continue to have the option of being relieved of responsibility for follow-up services upon payment of a total premium of 0.8 percent.

Social Impact

Careful, responsible builders, who either have no claims made against them or correct all defects themselves, as envisioned by the New Home Warranty and Builders' Registration Act, so that State New Home Warranty Security Fund or an approved private plan fund, as the case may be, is not required to make any payments, are to be rewarded with lower contribution rates for each home that they sell that is enrolled in the State Plan. By creating an added incentive for careful building, the Department hopes to have a positive impact on the quality of new home construction.

In the interest of consumer protection, the Department has not excluded builder claim and payment records from the category of public records by N.J.A.C. 5:3-2.1. These records are therefore available for public inspection and for the securing of copies pursuant to P.L. 1963, c.73.

Economic Impact

The proposed amendment would result in an aggregate reduction of approximately 20 percent in the contributions paid by builders to the State New Home Warranty Security Plan. Reductions range from 50 percent for builders with 10 years of good experience to 6.25 percent for new builders. More than 1,340 builders (26 percent of all builders in the State Plan) will qualify for rate reductions of between 37 percent and 50 percent. The premium now paid for the enrollment of a \$200,000 house is \$800.00. This will be reduced to \$400.00 for a builder who has not been responsible for any payments from the fund, and has not been determined to be responsible for a payment to be made by the fund,

for at least 10 years. The premium on a \$200,000 house built by a new builder will be \$750.00 rather than \$800.00.

Such a reduction is appropriate because the Department has determined, based on an actuarial analysis, that the Plan has sufficient resources to cover all claims for which it might be liable and a reduction of this order in builder contributions is justified. The Department believes it to be in the public interest, however, that the benefit of any reduction should be accorded to those who have, over time, demonstrated the greatest degree of care and responsibility in their building practices. Consequently, reductions will be based upon the period of time during which the builder has not been responsible for any payments being made for any claim. It may be expected that, in a competitive market, the savings realized by builders with good claim records would be passed on to homebuyers. Builders who have had payments made within the last two years as a result of claims against them will pay a premium of 0.5 percent. Those who are responsible for additional payments while in the 0.5 percent category, or who are involved in bankruptcy proceedings, will be subject to a rate of 0.7 percent. These higher rates are based upon the fact that builders with a poor track record, or who are involved in bankruptcy proceedings, are more likely than others to be responsible for claims against the fund.

Regulatory Flexibility Analysis

The great majority of homebuilders in New Jersey are "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments provide a reduction in individual builder premiums to the New Home Warranty Security Fund for those builders who have had no claims, or are new builders; those builders who have had claims made on homes they have built within a specified time period will incur an increase in their rates. This proposed amendment does not distinguish between those homebuilders that are "small businesses" and those that are not because they are all equally obligated to conform to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the New Home Warranty and Builders' Registration Act (N.J.S.A. 46:3B-1 et seq.) whenever they build a house. The ability to be careful and to be responsible in correcting any problems that may arise is not a function of the size of the builder. Such care and responsibility is required of all, and all who demonstrate it will benefit in equal proportion from this amendment.

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

5:25-5.4 Warranty contributions, amount, date due

(a) Each builder not participating in an approved private plan shall contribute to the State plan in an amount equal to [0.4 of one percent] **a percentage** of the purchase price of the home, or **of** the fair market value of the home on its completion date if there is no good faith arms' length sale, **determined in accordance with (b) below**, each time he sells a home. When the cost of land is not included in the sale, the purchase price shall be deemed to be 125 percent of the contract amount and shall be the basis for calculating the premium and the dollar value placed on the Certificate of Participation.

1. Whenever the seller of a new home is not the builder who constructed it, or a builder taking from the builder who constructed it, such as a [mortgage] **mortgagee** in possession, receiver in bankruptcy, or executor of an estate, such person shall not be excused from payment of premiums or from taking corrective action on complaints, dispute settlement, or the like in the same manner as would any builder. Such person may contract with a builder for follow-up services that may be required pursuant to the warranty, or may, at his option, pay [an additional 0.4] **0.8** of one percent of the purchase price of the new home and be relieved of the obligation to provide such follow-up services. The State plan shall then stand in his place with regard to any claims made pursuant to this subchapter, but shall not stand in his place if the homeowner elects not to file a claim in accordance with this subchapter and elects, rather, to pursue any other remedy against the seller. The claims procedure established by this subchapter shall be the exclusive remedy whereby the State plan shall stand in the place of the seller. The Department shall inspect the new home for any defects. The list of defects shall be attached to the Certificate of Participation. Uncompleted portions shall be excluded from the warranty coverage

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until completed, in accordance with N.J.A.C. 5:25-3.4(a)1. The additional amount paid shall not be passed through the owner.

2-4. (No change.)

(b) The contribution percentage to be paid for each new home by a builder not participating in an approved private plan shall be determined as follows:

1. If, for at least 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.2;

2. If, for at least seven years but less than 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.25;

3. If, for at least five years but less than seven years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.3;

4. If, for at least two years but less than five years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.35;

5. If a builder has not previously been registered, or has been registered for less than two years and there has been no payment made, and no final determination that a payment must be made, under either the State Plan or approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.375;

6. If, within the previous two years, there has been any payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.5.

7. If, at any time while a builder's contribution percentage is 0.5 by reason of the builder's having been responsible for a payment having to be made on a claim under either the State Plan or an approved private plan, there is any further payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of another claim against the builder or a major structural defect, or if a petition in bankruptcy filed by or against a builder and the builder has not yet been discharged or is under the supervision of the court, the contribution percentage shall be 0.7.

8. Whenever a builder is or has been a builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, of any builder entity, the claim and payment record of that other entity, shall, if less favorable than that of the builder individually, be attributable to the builder for purposes of this subsection.

9. Whenever a builder is a corporation, partnership or subsidiary, the claim and payment record of any builder designee, officer, or stockholder or partner with at least a ten percent ownership interest, or of any corporation, partnership or subsidiary, having any builder designee, officer, or stockholder or partner with at least a 10 percent ownership interest, in common with the builder, shall, if less favorable than that of the builder, be attributable to the builder for purposes of this subsection.

10. If a builder is an individual or group of individuals who is or are the sole owner(s) of another builder that is a corporation, partnership or subsidiary, or if a builder is a corporation, partnership or subsidiary having the same builder designee, officers, and stockholders or partners with at least a ten percent ownership interest, as another builder, the claim and payment record of the one builder shall be attributable to the other for purposes of this subsection.

11. For purposes of this subsection, "10 years" shall mean the 120 month period immediately prior to the date of enrollment of a new home under the State Plan, "seven years" shall mean the

84 month period immediately prior to such date, "five years" shall mean the 60 month period immediately prior to such date, and "two years" shall mean the 24 month period immediately prior to such date; exclusive, in all cases, of any consecutive 12 month period in which no new homes were enrolled in the State Plan or in any approved private plan. Thus, for example, a builder who had no payments or adverse final determinations for 10 years but enrolled no homes during one of those years would not be eligible for the 10 year rate until another year had passed in which he both enrolled at least one new home and had no payments or adverse final determinations.

(c) The establishment of a contribution percentage for a builder that is in excess of the minimum amount shall be in addition to, and not to in lieu of, any punitive action taken pursuant to N.J.A.C. 5:25-2.5 or 2.6 or any surcharge levied pursuant to (a)4 above.

(d) The initial contribution percentage for each builder shall be established as of the effective date of this subsection. Thereafter, the contribution percentage rate for each builder shall be reviewed by the Division, and revised if necessary, when the builder's registration is renewed. The Department may change the contribution percentage, and make the change effective at a time prior to renewal at any time that a payment is made or there is a final determination that a payment must be made.

(e) There shall be no appeal from the establishment of a contribution percentage except upon the grounds that the record used by the Division for that purpose is either incorrect or incomplete. In any case in which a determination of builder responsibility for a payment was not appealed as required in this chapter or was unsuccessfully appealed, the builder shall not have the right to appeal a contribution percentage determination based on any such prior determination of builder responsibility.

(f) "Claim against the builder" shall include any claim covered by the one-year, two-year, and/or 10-year warranty, as set forth in N.J.A.C. 5:25-3.2. No major structural defect that a builder is not obligated to repair shall be charged against a builder for purposes of determining the builder's contribution percentage, if the Department finds that such major structural defect was entirely attributable to a product failure that was not known to the builder at the time of construction and was caused by factors beyond the builder's control.

(a)

**DIVISION OF LOCAL GOVERNMENT SERVICES
Property Tax and Mortgage Escrow Account
Transactions**

Proposed New Rules: N.J.A.C. 5:33-4

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

Authority: N.J.S.A. 17:16F-15 et seq., N.J.S.A. 54:4-64.

Proposal Number: PRN 1992-340.

Submit comments by September 2, 1992 to:

Marc Pfeiffer, Manager
Office of Administration and Local Government Research
Division of Local Government Services
CN 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

The Department of Community Affairs is proposing new rules concerning mortgage escrow accounts and property tax payments pursuant to authorizing legislation enacted as P.L. 1990, c.69 (N.J.S.A. 17:16F-5 et seq.) and amended by P.L. 1991, c.111, adopted April 19, 1991.

The enabling legislation creates statutory requirements affecting mortgage escrow accounting transactions between escrow account servicing organizations, property tax processing organizations, municipal tax collectors, and property owners. In addition to account maintenance transactions between the mortgagor and the mortgagee/servicer, the mortgagor and tax collector are affected by transactions initiated by the mortgagor or servicer.

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A mortgage escrow account is an account into which a property owner (mortgagor) has agreed with his/her mortgage loan holder (mortgagee) to pay monthly amounts, along with the principal and interest due on the mortgage loan. The mortgagor has also agreed that payments for property tax, homeowners' insurance, and other expenses are to be made by the mortgagee or its agent that services the escrow account, or pays property taxes (servicing organization). These payments are placed into a mortgage escrow account maintained by the mortgagor or an agent hired to maintain it. Under this system, as bills come due, the funds on deposit are used by the mortgagee or his agent to make payments for these expenses on behalf of the mortgagor.

The proposed rule making has three purposes:

1. To require specific documentation to be issued by and submitted to parties affected by mortgage escrow account transactions. Such documentation includes forms to be used by the mortgagor to give the municipal tax collector permission to forward property tax bills to the servicing organization. Transfer of responsibility for the escrow account, notice of tax sale, and requests and appeals being made by parties to escrow account transactions have been incorporated in forms that will assist in standardizing procedures.

2. To clarify responsibilities in interactions between municipal tax collectors and servicing organizations. Time requirements are established and specifically assigned to various organizations so that the parties are formally notified for timely payment of taxes and other bills.

In addition, the mortgagor will receive notice from the mortgagee if the escrow account is charged a penalty for late payment, and the mortgagor will receive a delinquent notice from the tax collector if the taxes are delinquent.

3. To provide homeowners with safeguards if their property becomes subject to tax sale because the servicing organization fails to pay the property tax.

Thirty days from the date on the tax sale notice, the property owner can pay the delinquent taxes and interest, and notify the company that he/she will not send any more payments to the escrow account, only pay principal and interest on the mortgage loan, and will pay the property taxes, insurance, and other bills that were previously paid from the account. If the property owner does this, he/she must send the company copies of the paid bills, at least once a year. The servicing organization must send the property owner any balance in the escrow account within 10 days of receiving the first copy of a paid tax bill.

Forms authorized under the rule to meet its purposes are:

Initial Tax Authorization Notice (ME-1): The mortgagor uses this form to authorize the municipal tax collector to send tax bills to a servicing organization.

Escrow Account Transaction Notice (ME-2): An organization or party selling escrow account servicing, a mortgage loan, or satisfying a mortgage, and an organization that is purchasing escrow account servicing or a mortgage loan, uses this form to notify the tax collector of the transaction.

Request for Duplicate Tax Bill (ME-3): The municipal tax collector uses this form to provide a duplicate tax bill.

Notice regarding Sale of Municipal Lien (ME-4): The municipal tax collector uses this form to notify a mortgagor that taxes on the property have not been paid and a tax sale has been scheduled. It also contains an interpretive statement of the law to the mortgagor.

Request for Review (ME-5): The tax collector or a property tax processing organization uses this form to appeal to the Director for redress in matters of duplicate tax bills and fees charged for them.

The Department of Community Affairs proposed an initial version of these rules in the New Jersey Register of Monday, June 17, 1991 (see 23 N.J.R. 1903(a)). During the comment period, a range of issues were raised by interested parties. In subsequent meetings with representatives of all interests, changes were implemented and are included in these rules. Issues raised included:

1. Format of forms ME-1 through ME-5 were not compatible with computerized operations in some escrow account servicing organizations nor does it match industry procedures of escrow account servicing.

Change: A substitute format for forms ME-2 and ME-3 are permitted, as long as the necessary information to properly complete the transaction is submitted. Also, the model document was redesigned to more closely match practices of parties involved in escrow account transactions.

2. Assignment of responsibility for issuing and tracking documentation and deadlines in tax payment and other escrow account matters was not clear.

Change: Responsibilities are now more clearly assigned and time limits more reasonably set. Rules now provide more relevant detail on use of the forms.

3. Some collection practices vary from municipality to municipality making it difficult to gain access to information about tax office practices, including issuance of duplicate tax bills.

Change: A separate rule, to be proposed at N.J.A.C. 5:33-1.4 will be promulgated to provide information about tax office practices through annual publication in the New Jersey Register.

4. Procedures for details of escrow account transactions were confused with rules about tax payment in general.

Change: Rules pertaining to tax collection practices in general will be separated from escrow account rules and placed in N.J.A.C. 5:33-1.2 through 1.8. This will be a separate rulemaking.

Social Impact

These rules have little social impact. They affect participants in the mortgage escrow and property tax processing industries and municipal tax collectors. Individual homeowners who make payments into escrow accounts are benefitted by the protection and information requirements.

Adoption of the revised proposed rules should standardize and speed up the administration of escrow accounts as it pertains to municipal tax collection offices, taking into account the wide variety of tax office operations.

The reaction to the rules is expected to be positive, as the industry and tax collectors have been waiting for clarification of the legislation. Though the advent of standardization may require some businesses to adapt their system to the standards, industry participants who assisted in the development of the rules believe their benefits significantly outweigh any added burdens.

Economic Impact

The proposed new rules should have a positive economic impact on institutions regulated by the Department. In particular, administrative improvements in clarifying and speeding up procedures should offset initial outlays for new forms and procedures. This undeterminable cost will be incurred by banks, savings and loan associations, and organizations servicing mortgage escrow accounts. There will be minimal cost to local government, as these changes in documentation and tax office procedures are also improvements.

Regulatory Flexibility Analysis

Most of the institutions affected by these proposed rules are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules take small servicers into account by providing options on how information can be reported. It also permits large companies to take advantage of sophisticated automation capabilities to meet the same goals. Thus the rule meets the requirements for providing differential treatment based on business size by providing less expensive administrative procedures for small businesses.

Full text of the proposed new rules follows:

SUBCHAPTER 4. MORTGAGE ESCROW ACCOUNT TRANSACTIONS

5:33-4.1 Authority

This subchapter is adopted under the authority of P.L. 1990, c.69, section 16, N.J.S.A. 17:16F-15 et seq.

5:33-4.2 Definitions

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

"Director" means the Director of the Division of Local Government Services.

"Duplicate copy" shall have the meaning defined in N.J.S.A. 17:16F-15.

"Mortgagee" means the holder of a mortgage loan.

"Mortgage escrow account or escrow account" means an account maintained under a mortgage loan agreement, whether incorporated into the agreement or as part of a separately executed document, whereby: the mortgagor is obligated to make periodic payment to the mortgagee, or the mortgagee's agent, for taxes, insurance premiums, or other charges with respect to the real property which secures the mortgage loan, and the mortgagee or the mortgagee's agent is obligated to make payments for taxes, insurance premiums,

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or other charges with respect to the real property which secures the mortgage loan.

“Mortgage loan” shall have the meaning defined in N.J.S.A. 17:16F-15.

“Mortgagor” shall have the meaning defined in N.J.S.A. 17:16F-15.

“Property identification information” means the information necessary to identify a specific parcel of land and includes the following elements: name of municipality, county, block number, lot number, qualification code, property address or location, name and mailing address of the property owner.

“Property tax processing organization” shall have the meaning defined in N.J.S.A. 17:16F-15.

“Purchasing servicing organization” shall have the meaning defined in N.J.S.A. 17:16F-15.

“RESPA” means the Real Estate Settlement Procedures Act and the related regulations in the Code of Federal Regulations, Title 12, Chapter 27.

“Selling servicing organization and servicing organization” shall have the meaning defined in N.J.S.A. 17:16F-15.

“Substitute form” means a form required by these rules different in layout and appearance from the ones promulgated herein, but containing the same information.

“Tax delinquency” or “delinquency” shall mean delinquency as defined in N.J.S.A. 54:4-67.

“Tax sale” shall mean a tax sale as defined in N.J.S.A. 54:5-19 et seq.

“Tax collector” means the properly designated tax collector of the taxing district in which the mortgagor’s property is located.

“Tax bill” means the original form issued by the tax collector with the appropriate itemization and payment information for local property taxes as required by law. It shall include the information section itemizing the taxes due, and payment stubs containing property identification information and amount due for each of the quarters.

5:33-4.3 Forms for mortgage escrow account transactions

(a) The following forms shall be used in compliance with this subchapter:

<u>Form Title</u>	<u>Form No.</u>
Initial Tax Authorization Notice	ME-1
Escrow Account Transaction Notice	ME-2
N.J. Request for Duplicate Tax Bill	ME-3
Notice Regarding Sale of Municipal Lien	ME-4
Request for Review	ME-5

(b) Single, reproducible copies of forms ME-1 through ME-5 are available to interested parties at no cost. They may be obtained from the Mortgage Escrow Program, Division of Local Government Services, CN 803, Trenton, N.J. 08625-0803.

(c) Users may reproduce these forms. A company name may be inserted in lieu of the “New Jersey Department of Community Affairs, Division of Local Government Services” block in the upper left hand corner on the Initial Tax Authorization Notice, and Escrow Account Transaction Notice. Users are urged to preprint appropriate information on all forms.

(d) Where specifically authorized herein, substitute forms may be used to comply with the requirements of this rule. Substitute forms must contain all necessary information for transactions to be properly recorded or executed by the tax collector.

5:33-4.4 Use of initial tax authorization notice

(a) An Initial Tax Authorization Notice (ME-1) shall be used by all mortgagees, servicing organizations, or property tax processing organizations establishing or maintaining mortgage escrow accounts as the initial authorization by a mortgagor to the tax collector to send the original tax bill to the mortgagee or the mortgagee’s servicing organization pursuant to N.J.S.A. 54:4-64.

(b) The notice, with original signatures of the mortgagor, shall be mailed or otherwise delivered to the tax collector.

5:33-4.5 Escrow account transactions

(a) A selling servicing organization or mortgagee and a purchasing servicing organization shall both notify the tax collector not more than 45 days after the actual date, or not less than 10 days prior to the date, the next payment of property taxes is due, whichever is earlier, of a sale, assignment, satisfaction, or transfer of a mortgage escrow account by filing an Escrow Account Transaction Notice (ME-2) or substitute. The form shall be used as follows:

1. The original of the notice prepared by the current mortgage holder or the selling servicing organization shall be mailed or otherwise delivered to the tax collector;

2. The original of the notice prepared by the new servicing organization shall be mailed or otherwise delivered to the tax collector. This shall be supplemented with the purchaser’s procedure for responding to questions regarding a mortgage escrow account it manages;

3. In lieu of separate forms filed by both the seller and purchaser, the seller may forward the documentation directly to the new servicing organization for confirmation and approval. The new servicing organization shall then forward the completed form to the tax collector on behalf of both parties;

4. In the case of a property owner making final satisfaction of a mortgage, the section noted “Property Sold or Property Owner Satisfaction of Mortgage” shall be completed, and sent to the municipal tax collector;

5. In the case of a property sale, the section noted “Property Sold or Property Owner Satisfaction of Mortgage” shall be completed, and sent to the municipal tax collector; and

6. In addition, in accordance with N.J.S.A. 17:16F-17(a), copies of all initial sale, transfer, and assignment transactions shall also be sent to the borrower.

(b) A substitute form may be used in lieu of the ME-2 form. A substitute form shall not describe more than one property, and must include the following elements:

1. Property identification information;
2. Date of transaction;
3. Type of transaction;
4. Any internal loan identifying number or code;
5. For the originator or seller of a mortgage, servicing organization or property tax processor change; the name, address, internal identifying number, bank code number, contact person and phone number related to the organization(s) being changed;

6. For the recipient or buyer of a mortgage, servicing organization or property tax processor change, the name, address, internal identifying number, bank code number, contact person and phone number related to the new organization(s);

7. If the transaction is a sale or owner satisfaction of a mortgage, indication of which action and the effective date;

8. If the recipient or buyer is to receive notice of foreclosure pursuant to N.J.S.A. 54:5-104.48, indication of same and signature of mortgagee representative, typed name and title; and

9. Name, signature, and phone number of the individual preparing the notice, date the form was prepared, and the name of the organization submitting the notice; if the form is being sent to the recipient or buyer organization for confirmation pursuant to (a)3 above, this same information for the buying organization.

(c) To ensure that original tax bills are properly forwarded, the following procedures shall be followed:

1. In the case of a mortgage sale, the holder of the tax bill shall forward the original tax bill to the new mortgagee or property tax servicing organization.

2. In the case of a property sale, the holder of the tax bill shall forward the tax bill to the municipal tax collector. Upon receipt of a ME-1 notice, the tax collector shall forward the tax bill to the new servicer of property tax processing organization.

5:33-4.6 Notice regarding the sale of municipal liens

A tax collector shall include the Notice Regarding the Sale of Municipal Liens (ME-4) with tax sale notices when property taxes are paid through a mortgage escrow account.

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5:33-4.7 Request for duplicate tax bills

(a) Requests for a duplicate tax bill, other than those requested through submission of an Initial Tax Authorization Notice (ME-1), shall be sent to the municipal tax collector on the N.J. Request for Duplicate Tax Bill form (ME-3) or a substitute form.

(b) If a request from a mortgagee, servicing organization, or property tax processing organization is accompanied by the correct fee and necessary information, a tax collector shall deliver an original or duplicate bill within 15 days.

(c) The time limit for response to written or other requests made for a duplicate tax bill made within the 10 calendar days prior to the established due dates for payment of taxes, or during a grace period approved by the municipality, shall be suspended until the conclusion of this time period.

(d) A substitute form may be used in lieu of the ME-3 form. A substitute form shall not list more than one property and shall contain the following elements:

1. Property identification information;
2. Date of request;
3. Bank Tax Code number;
4. Any internal loan identifying number or code;
5. Printed or typed name, address and phone number of the individual and organization preparing the notice; and
6. Name, address and phone number of the individual and organization of where the duplicate bill is to be mailed.

5:33-4.8 Duplicate tax bill fees; appeals for reimbursement of fee charged; freezing of duplicate fee charges

(a) The maximum charge for an individual, mortgagee, servicing organization, or property tax processing organization requesting an initial duplicate copy of a tax bill is \$5.00. The fee for each subsequent copy of the tax bill for the same tax year requested by the same person or organization shall not exceed \$25.00. The actual amount shall be set by municipal ordinance.

(b) Duplicate bill fees set by the governing body that are in effect as of March 1 of each year shall remain in effect until June first of the succeeding year. Fees may be changed during the year, but shall not take effect until the following June 1.

(c) If a mortgagee, servicing organization, or property tax processing organization wishes to appeal the charges required for a duplicate copy of a tax bill, it may request the Director to direct the tax collector to make a refund of an amount paid for a duplicate copy of a tax bill in accordance with the following procedure:

1. The requestor shall make the request on the Request for Review form (ME-5).
2. The submission shall include all necessary explanations and documentation, including correspondence and the reasons why the charges are believed to be improper. A copy of the form and documentation shall be sent to the tax collector.
3. The tax collector shall have the right to submit, in writing, any correspondence or other materials disputing the requestors reasons and justifying why the charges should be sustained within 30 days of receipt of the Request for Review.

4. Upon receipt of all documentation, the Director will make a determination or will conduct a formal review prior to deciding this matter. A written decision will be rendered by the Director to the appropriate parties within 45 days of the initial request.

(d) The Director may authorize a refund of charges for a duplicate copy of a tax bill from the municipality for any reason described below:

1. No tax bill was mailed by the tax collector to either the property owner or his authorized agent.
2. The tax collector or staff lost or destroyed bills previously submitted during the payment and did not return the same when the proper self-addressed stamped envelope was provided.
3. The tax collector fails or refuses to provide information regarding the duplicate copy of the tax bill to the Director within 30 days of a request for the same.
4. By error of the tax office personnel, the bank code was removed.
5. The tax collector did not mail the duplicate bill within 15 days of receipt of a written request.

6. Other circumstances under control of the municipality that prevented the tax collector from meeting the statutory or regulatory requirements for delivering tax bills, as determined to be appropriate by the Director.

5:33-4.9 Requests to deliver a mortgagor's tax bill to a property tax processing organization

(a) If a tax collector determines that a request to mail or otherwise deliver a mortgagor's tax bill to a property tax processing organization is inappropriate, the tax collector shall first attempt good faith efforts to resolve the matter with the organization. If the matter is unresolved, the tax collector shall then request the Director to review the appropriateness of the request. If a tax collector fails to request the review, the organization requesting the tax bills may file on its own behalf by following the procedure below as if it were the tax collector.

(b) The procedures for such a review shall be as follows:
1. The tax collector shall make the request on the Request for Review form (ME-5).

2. The submission shall include all necessary explanations and documentation, including correspondence and the reasons why the request is inappropriate. A copy of the form and documentation shall be sent to the property tax processing organization requesting the action.

3. The property tax processing organization shall have the right to submit, in writing, any correspondence or other materials disputing the tax collector's reasons and justifying why the tax bill should be delivered within 30 days of receipt of the Request for Review.

4. Upon receipt of all documentation, the Director will make a determination or conduct a formal review prior to deciding this matter. A written decision will be rendered by the Director to the appropriate parties within 45 days of the initial request.

5:33-4.10 Effect of RESPA

In the event of any conflict between any provisions of this subchapter and the Federal Real Estate Settlement Practices Act (RESPA), the latter shall govern. All individuals and organizations should make themselves familiar with the provisions of RESPA and the associated Federal rules.

(a)

**DIVISION OF LOCAL GOVERNMENT SERVICES
Local Government Financial Regulation
Cooperative Pricing and Joint Purchasing Systems
Proposed Repeal and New Rules: N.J.A.C. 5:34-7**

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

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

Proposal Number: PRN 1992-341.

Submit comments by September 2, 1992 to:

Nelson S. Silver, P.P.
Bureau of Local Management Services
Division of Local Government Services
CN 803
Trenton, NJ 08625-0803

The agency proposal follows:

Summary

Under the authority of the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq., specifically 40A:11-11), these proposed new rules regulate cooperative purchasing systems, whether they are cooperative pricing or joint purchasing systems. Cooperative purchasing means a purchasing system in through which municipal and county governments, boards of education, and local public authorities join together to take advantage of economies of scale in the purchasing of work, materials or supplies.

This proposed rulemaking has four purposes: (1) to make the text of the rules more understandable; (2) to clarify the process for the registration, re-registration, and the addition of new system members to cooperative purchasing systems; (3) to define the conditions under which

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members of a cooperative purchasing system may make use of a pre-existing contract; and (4) to define the role of the Division of Local Government Services when a registered system fails to comply with the rules.

The proposed new rules replace the current N.J.A.C. 5:34-7. The existing rules are wordy, cumbersome and often confusing in their requirements and definition of practices and procedures. The proposed new rules are written in plain language. Overall, the new rules clarify the procedures to be followed by local contracting units in establishing and operating a cooperative purchasing system. In addition, the existing rules have been reorganized and recodified for clarity of statement.

The new requirements and changes are as follows:

N.J.A.C. 5:34-7.2: The section of definitions used to describe cooperative pricing or joint purchasing systems has been expanded.

N.J.A.C. 5:34-7.4: The formal agreement described at subsection (b) is amended to require that the manner of advertising for bids and of awarding contracts be part of the formal agreement.

N.J.A.C. 5:34-7.5 has been modified to delete the requirement that the State assigned alpha-numeric system identification code when it appears on bidding documents, purchase orders, and vouchers be supplemented by a locally assigned consecutive number.

N.J.A.C. 5:34-7.8: The existing rule provides for system re-registration (renewal) to be accomplished no later than 30 days prior to the expiration date of the system. This provides a narrow window of opportunity which may result in the ineligibility of a local contracting unit to participate in the system. This section has been modified to require re-registration to be accomplished within a 120 day period prior to the system's expiration date.

N.J.A.C. 5:34-7.10: The existing rule provided the Director, Division of Local Government Services with 45 days to review a request to register a new cooperative pricing system or add a member to an existing system. The new section stipulates that for the default approval clock to run, the application must be complete and in a form prescribed by the director.

N.J.A.C. 5:34-7.11: The existing rules stipulate that a local contracting unit must be a member of a registered cooperative pricing system and must submit an estimate of its need for the work, material or supplies to be purchased cooperatively prior to the advertisement for bids. The proposed section permits members who have not submitted estimates and local contracting units which were not members of the cooperative pricing system at the time of the advertisement for bids, to purchase under the awarded contract subject to receiving the written approval of the system's lead agency and the contractor.

N.J.A.C. 5:34-7.18: The existing rule is silent as to the procedure for ensuring compliance with the rules. The new section sets forth an orderly process to be followed by the Director in those instances where a registered system has failed to comply with the requirements of the rules.

Social Impact

The revisions to the existing rules will have a negligible social impact as they essentially clarify the existing rules. They clearly define the process and procedures to be followed for the creation of a new cooperative pricing system and the addition of new members to an existing system.

The affected parties are currently registered cooperative purchasing systems and local contracting units (municipalities, counties, and boards of education) seeking to establish a system. The impact of a cooperative purchasing system is more economic than social.

There is expected to be minimum reaction to the new rules. Distribution of a draft copy of the proposed rules to the lead agencies of the more than 30 currently registered cooperative purchasing systems resulted in comments from four local contracting units. Their comments were: (1) supportive of the proposed changes; (2) recommended a minor change in a proposed new section; (3) exhibited a misunderstanding of the existing rules; and (4) recommended minor phrasing changes.

Economic Impact

Since cooperative purchasing permits local contracting units to join together to purchase work, material, and supplies cooperatively, the greater the volume of work, material, and supplies, the lower the per unit cost. Hence, there should be a cost saving to the municipality and the taxpayer. Of course, the amount of the savings varies with the type and character of the work, material, and supplies.

Because there are no fees being established or amended, and because the changes are basically a clarification of the existing rules there will be no negative economic changes as result of the adoption of the proposed new rules.

Regulatory Flexibility Statement

These rules are necessitated by N.J.S.A. 40A:11-11(5) and other statutes. Because the adoption of these rules would apply only to local governmental units, these rules do not apply to, or affect, small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at 5:34-7.

Full text of the proposed new rules follows.

SUBCHAPTER 7. COOPERATIVE PRICING AND JOINT PURCHASING SYSTEMS

5:34-7.1 Applicability and authority

(a) These rules shall apply to contracting units as defined in N.J.A.C. 5:34-7.2.

(b) These rules shall not extend to joint purchasing systems comprised only of boards of education covered under N.J.S.A. 18A:18A-11.

(c) This subchapter is adopted under the authority of P.L. 1979, c.420 (N.J.S.A. 40A:11-11(5)).

(d) Copies of Cooperative Purchasing Form CP-2001, Request For Registration Or Modification of a Cooperative Purchasing System, are available from the Division of Local Government Services at CN 803, Trenton, New Jersey 08625-0803.

5:34-7.2 Definitions

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

"Application" means the forms and all supporting documents for creation of a cooperative purchasing system (N.J.A.C. 5:34-7.3); system registration (N.J.A.C. 5:34-7.5); membership registration (N.J.A.C. 5:34-7.6); system renewal (N.J.A.C. 5:34-7.8); or member renewal (N.J.A.C. 5:34-7.9).

"Contracting unit" means a unit of local government as defined in N.J.S.A. 40A:11-2(1) and boards of education authorized under N.J.A.C. 6:20-8.7 by the Commissioner of Education.

"Cooperative pricing system" means a purchasing system in which the lead agency advertises for bids, awards a master contract to the vendor providing for its own needs and for the prices to be extended to registered members, and notifies them of the bid prices awarded. The registered members then contract directly with the vendor for their own needs, subject to the specifications in the master contract.

"Cooperative purchasing system" means either joint purchasing or cooperative pricing systems.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Form CP-2001" means Request For Registration Or Modification of a Cooperative Purchasing System which contains the following information: action requested; name of cooperative purchasing system; name of contact, address, and phone number of lead agency; name of participating contracting units affected by request; and certification of compliance with N.J.S.A. 40A:11-11.

"Joint purchasing system" means a cooperative purchasing system in which the lead agency has complete purchasing responsibility for the registered members, and the only contractual relationship is between the lead agency and the vendor.

"Lead agency" means the contracting unit which is responsible for the management of the cooperative purchasing system.

"Registered member" means a contracting unit which has been approved by the Director for participation in a cooperative purchasing system.

5:34-7.3 Creation of a cooperative purchasing system

(a) Two or more contracting units may join together to form a cooperative purchasing system for the purchase of work, services, materials or supplies.

(b) The contracting unit designated as the lead agency must authorize the creation of the system by resolution or ordinance as appropriate. The authorizing ordinance or resolution shall identify the system established as either a joint purchasing system or a cooperative pricing system.

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(c) Motions made, carried, and recorded in the written minutes of a business meeting of a board of education may be substituted for a resolution.

5:34-7.4 Formal agreement

(a) A cooperative purchasing system shall be based on a formal agreement entered into between the lead agency and each contracting unit. Each agreement shall be authorized by resolution or ordinance, as appropriate.

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

1. Reference to the authorizing statute;
2. Identification of the type of cooperative purchasing system;
3. Description of the items of work, materials or supplies to be purchased;
4. The manner of advertising for bids and of awarding contracts;
5. Clear and specific assignment of responsibilities, duties and rights of all contracting units;
6. Provision for any sharing of administrative costs and/or payment for items purchased, together with any necessary standards of performance;
7. Length of the agreement not to exceed 5 years pursuant to N.J.A.C. 5:34-7.5(f);
8. The name of lead agency for the system;
 - i. As an option, the responsibility of lead agency may rotate, at the most once a year, among the registered members. Provision for this rotation shall be included in the agreement;
 - ii. Rotation of lead agency responsibilities among registered members shall not invalidate contracts or purchase orders with contractors that are in effect at the time of rotation;
 - iii. The Director shall be notified in writing within 30 days of any change in the lead agency; and
9. A requirement that the identification code shall appear on all documentation related to purchases made through the system, including bidding documents, purchase orders, vouchers and contracts.

5:34-7.5 System registration

(a) All cooperative purchasing systems shall be subject to registration with and approval by the Director.

(b) The lead agency of a proposed system shall apply to the Director on behalf of the system's participating contracting units.

(c) Applications shall be made on Form CP-2001.

(d) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.10.

(e) In reviewing the application, the Director shall utilize the following criteria, as established by N.J.S.A. 40A:11-11(5):

1. Provision for maintaining adequate records and orderly procedures to facilitate audit and efficient administration;
2. Adequacy of public disclosure of such actions as are taken by the participants;
3. Adequacy of procedures to facilitate compliance with all provisions of the Local Public Contracts Law and corresponding rules; and
4. Clarity of provisions to assure that the responsibilities of the respective parties are understood.

(f) Approval shall be for a period not to exceed five years, and shall be limited to the terms, participants and scope presented for approval. Any subsequent changes shall be submitted to the Director on Form CP-2001.

(g) The lead agency shall notify the Director in writing within 30 days of a decision to terminate the registration of the system prior to its approved expiration date.

5:34-7.6 Membership registration

(a) A contracting unit may apply for membership in an approved cooperative purchasing system by passage of an ordinance or resolution, as appropriate, and executing a formal agreement with the lead agency.

(b) The lead agency shall apply to the Director for approval on behalf of the proposed new member on Form CP-2001.

(c) The Director shall act upon the application within the time provided for review pursuant to N.J.A.C. 5:34-7.10.

(d) Participation in the system for all registered members terminates on the system expiration date assigned by the Director.

(e) The lead agency shall notify the Director in writing within 30 days of the withdrawal of any registered member from an approved cooperative purchasing system.

(f) A registered member which has formally terminated its participation in an approved cooperative purchasing system, may renew its membership by following the procedure defined in this section.

5:34-7.7 Identification code

(a) The Director shall assign an alpha-numeric identification code to each cooperative purchasing system at the time of its approval.

(b) The identification code shall be included on all contracts, purchase orders, bidding documents, vouchers and records relating to the operations of the approved cooperative purchasing system.

5:34-7.8 System renewal

(a) Documents requesting the renewal of the registration of a cooperative purchasing system shall be submitted to the Director for review and approval within the 120 day period prior to the date set by the Director for the expiration of the system's registration.

(b) The lead agency shall authorize the renewal of the system by resolution or ordinance, as appropriate.

(c) The lead agency shall apply to the Director on behalf of its membership for system renewal for a period not to exceed five years.

(d) The renewal application package shall, at a minimum, include the following:

1. Form CP-2001.
2. Lead agency resolution or ordinance, as appropriate, reauthorizing the system;
3. Copies of new formal agreements with the registered members including, at a minimum:
 - i. The new expiration date of the system; and
 - ii. The date of execution of the agreement; and
4. Copies of each registered member's resolution or ordinance, pursuant to N.J.A.C. 5:34-7.9.

(e) The time for the review-approval period shall commence only upon the determination by the Director that the application for system renewal is complete.

(f) The lead agency shall notify the Director in writing of a decision not to renew the system's registration within 120 days of the expiration of a system's registration.

5:34-7.9 Registered member renewal

(a) A registered member may apply for renewal of its membership in an approved cooperative purchasing system by passage of an ordinance or resolution, as appropriate, and executing a new formal agreement with the lead agency.

1. If an ordinance adopted by a municipality or county needs to be revised for reasons such as, but not limited to, a specified expiration date for the system, change(s) in the form of government, and change(s) in title of the local official(s) authorized to execute the agreement, then said ordinance shall only be amended by adoption of another ordinance.

2. If a resolution needs to be revised for reasons described in (a)1 above, then said resolution shall only be amended by adoption of another resolution by the registered member.

3. If no provisions in an ordinance or resolution of a registered member seeking to renew membership needs to be revised for reasons described in (a)1 and 2 above, then an agreement between the lead agency and the registered member shall be executed. The agreement shall be affirmed by resolution of the governing body of a municipality or county, or by motions made and carried in minutes of a meeting of a board of education.

(b) A registered member of a cooperative purchasing system who has not renewed its membership prior to the expiration of the system's registration shall not be a registered member and shall not participate in any new contract until such time as its membership has been formally approved pursuant to N.J.A.C. 5:34-7.6.

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5:34-7.10 Time for review

(a) The Director shall approve or reject all applications within 45 days.

(b) The 45 day review period shall commence only upon the determination by the Director that the application is complete.

(c) Failure of the Director to act upon an application within 45 days shall constitute a default approval of the application for a period of five years or in the case of new membership, until the date previously approved by the Director for the termination of system registration pursuant to N.J.A.C. 5:34-7.5(f).

5:34-7.11 Use of pre-existing contracts

(a) A registered member of a cooperative pricing system which has not submitted estimates to the lead agency before the advertisement for bids may participate in the resulting contract for that particular item only with the prior written approval of the lead agency and the contractor.

(b) A contracting unit which is not a registered member of a cooperative pricing system at the time of the awarding of a contract may participate in the contract once it has become a registered member of the system and has received the written approval of the lead agency and the contractor.

(c) This section shall not apply to joint purchasing systems.

5:34-7.12 Administrative responsibilities

(a) Upon approval of system registration and annually thereafter either on the anniversary of the registration of the system or in January of each succeeding year, the lead agency shall publish in its official newspaper a notice similar in content to the following:

Notice of Cooperative Purchasing

(Name of lead agency) acts as lead agency in a cooperative purchasing agreement in cooperation with (list number) registered members. Under this system, the (name of lead agency) solicits competitive bids for certain items purchased by registered members. This is a (specify, joint purchasing system or cooperative pricing system) as defined and regulated by N.J.A.C. 5:34-7. Interested citizens or vendors may obtain information regarding the manner of operation of this system by contacting (name, address and phone number of lead agency). System Number _____ (State ID Code), approved by the New Jersey Division of Local Government Services through (expiration date of the system).

(b) The lead agency shall review the bid specifications with the registered members.

(c) Before seeking bids, the lead agency shall obtain from the registered members:

1. In the case of a joint purchasing system, the exact quantity of items that the lead agency shall purchase for the registered members; or

2. In the case of a cooperative pricing system, the estimated quantities that each registered member proposes to contract for during the life of the master contract.

(d) The lead agency of a joint purchasing system shall disclose in the specifications, the quantities and details of delivery required.

(e) The lead agency of a cooperative pricing system shall include in the specifications lead agency requirements, stated in definite quantities; and registered member requirements, stated as individual estimated needs.

1. The specification shall list the registered members who have submitted estimates, their delivery address, their estimated maximum quantities and other relevant information to permit the bidder to understand what is potentially involved.

(f) The lead agency in a joint purchasing system and the individual registered members in a cooperative pricing system shall be responsible for compliance with the change order requirements of N.J.A.C. 5:34-4.

(g) Pursuant to the provisions of N.J.S.A. 40A:5-16.3, each registered member may, by resolution, provide for and authorize payment in advance for estimated administrative costs to be paid to the lead agency for a joint purchasing or cooperative pricing system. Such administrative costs shall be budgeted by the lead agency as a Special Item of Revenue offset with appropriations.

(h) No purchase or contract shall be made by any registered member for a price which exceeds any other price available to the registered member.

5:34-7.13 Requirements for bids for cooperative pricing systems

(a) Each request for bids shall contain the following:

1. Language requiring uniform bid price(s) for both the lead agency and registered members. A provision with respect to the registered members shall be included substantially as follows:

REQUIREMENTS OF REGISTERED MEMBERS

Check here if willing to provide the item(s) herein bid upon to registered members of the (System Name and ID Code) who have submitted estimates, without substitution or deviation from specifications, size, features, quality, price or availability as herein set forth. It is understood that orders will be placed directly by the registered members identified herein by separate contract, subject to the overall terms of the master contract to be awarded by the (name of the lead agency), and that no additional service or delivery charges will be allowed except as permitted by these specifications.

Check here if not willing to extend prices to registered members of the (System Name and ID Number) who have submitted estimates as described above. It is understood that this will not adversely affect consideration of this bid with respect to the needs of (name of the lead agency).

2. A statement as to the procedure to be followed in the event that the lowest responsible bidder, in the bid document, declines to extend prices to the registered members who submitted estimates. Examples of such procedures include:

i. The contract for the stated needs of the lead agency will be awarded to the lowest responsible bidder, and new bids will be sought and a master contract subsequently awarded with respect to the needs of the registered members who have submitted estimates;

ii. The contract for the needs of the lead agency will be awarded to the lowest responsible bidder, and a master contract for the registered members who have submitted estimates will be awarded to the next lowest bidder whose bid agrees to extend prices; or

iii. The contract for the needs of the lead agency will be awarded, all other bids shall be rejected and no further bids will be sought by the lead agency on behalf of the registered members who have submitted estimates.

(b) The master contract shall state that the bid prices may be extended to registered members who have not submitted estimates prior to the advertisement for bids with the written approval of the lead agency and the contractor.

(c) A statement as to whether or not insurance certificates and/or performance bonds are necessary.

5:34-7.14 Financial and contractual details for joint purchasing systems

(a) In the case of a joint purchasing system, the lead agency shall comply with the certification of funds requirement of N.J.A.C. 5:34-5 with respect to the full amount of the contract and Division of Local Government Services' requirements for Encumbrance Accounting Systems.

(b) The funds of the lead agency applicable to its own share of the contract to be awarded shall be charged to regular appropriations in its budget.

(c) Prior to handling the funds of the other registered members, the lead agency shall request approval of the Director for a Dedication by Rider pursuant to N.J.S.A. 40A:4-39, entitled "Receipts from Other Agencies participating in the (Name of System) Joint Purchasing System, ID Number _____." In order to meet the statutory requirement that expenditures under a Rider may be made only in accordance with the availability of funds, the following steps shall be taken:

1. Prior to the award of contract, the chief financial officer of each registered member (other than the lead agency) shall issue a certificate of available funds, in accordance with N.J.A.C. 5:34-5.

2. The contracting agent of each registered member, with authorization by resolution of the governing body if over the statutory bid limit, shall issue a purchase order to the lead agency together with a copy of its certification of available funds.

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Interested Persons see Inside Front Cover

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3. The lead agency shall, in accordance with N.J.A.C. 5:34-5, issue its own certificate, covering the full amount of the proposed contract including both its own share and those of the registered members. The certificate shall be conditional with respect to the amounts due from the registered members so that the certificate shall read in part as in the following example:

\$5,000 From (Lead Agency) appropriation number 207, Road Department, Other Expenses.

\$2,000 Due from (Name of registered member) pursuant to its purchase order number 70243 and Certification of Available Funds dated _____, (Lead Agency) Dedication by Rider Account Number 7.

\$1,000 Due from (Name of registered member) per its purchase order Number A-402 and Certification of Available Funds dated _____, (Lead Agency) Dedication by Rider Account Number 7.

\$8,000 Total Certified.

4. The lead agency shall then award the total contract to the successful bidder.

5. The lead agency shall not advance funds of its own to cover the purchase on behalf of the registered members but shall make payments only upon receipt of the funds. Payments to the lead agency shall be made promptly in accordance with an agreed-upon schedule, which may include making payment to the lead agency in advance of receipt of goods. The voucher providing for the advance payment shall indicate:

"Transfer of funds to (name of lead agency) as cash advance to enable it to purchase the following on behalf of (name of registered member) as Lead Agency in (name of joint purchasing system), ID Number _____." "(Then list what is to be purchased.)"

6. Funds received by the lead agency as advances from registered members shall be:

i. Placed in a separate bank account established within the Rider and held in trust for the purpose of permitting the lead agency to serve as contracting agent for the awarding of joint purchasing contracts;

ii. Used only for the payment of actual bills to the contractors pursuant to the overall joint purchasing agreement; and

iii. Returned immediately to the registered member upon any determination that the full amount is not needed for payments as initially expected.

5:34-7.15 Financial and contractual details for cooperative pricing systems

(a) The lead agency shall certify the funds available for its own needs.

(b) The master contract executed shall provide for the following:

1. The quantities ordered for the lead agency's own needs; and
2. The estimated aggregate quantities to be ordered by the registered members who submitted estimates, subject to the specifications and prices set forth in the master contract.

(c) The lead agency shall supply the registered members of the cooperative pricing system who have submitted estimates, copies of the specifications, name of the successful bidder, prices awarded and the contract identification number. Each registered member who submitted estimates may then order directly from the vendor. If the cost of the order is under the bid threshold, and if the contracting agent is authorized to do so, then the contracting agent may issue a purchase order, pursuant to N.J.S.A. 40A:11-3. If the cost of the order exceeds the bid threshold, then the contract must be awarded by resolution of the governing body in accordance with N.J.A.C. 5:34-5. The identification code shall be affixed to each purchase order or contract and shown on all forms pertaining thereto.

(d) Registered members who submit estimates shall not issue orders and contractors shall not make deliveries, that deviate from the specifications or price as set forth in the master contract.

5:34-7.16 The State of New Jersey's cooperative purchasing (pricing) program

(a) The standard identification code of 1-NJCP shall represent the State of New Jersey Cooperative Purchasing Program administered by the Division of Purchase and Property within the Depart-

ment of the Treasury. This identification code shall be used by all contracting units purchasing under the Division of Purchase and Property's Cooperative Purchasing (Pricing) Program.

(b) Participation in the State Cooperative Purchasing (Pricing) Program does not require a formal agreement with the Division of Purchase and Property, nor is approval of the Director required.

(c) Contracting units, except for boards of education, shall purchase from the State Cooperative Purchasing Program in accordance with N.J.A.C. 5:34-1.2.

5:34-7.17 Authority of Director

(a) The Director shall take whatever additional action deemed advisable to assure the orderly conduct of cooperative purchasing systems in light of sound financial administration in accordance with statutory responsibilities.

(b) The Director shall prepare such guidelines as determined necessary to assist local contracting units in the creation and administration of cooperative purchasing systems.

5:34-7.18 Enforcement

(a) All cooperative purchasing systems shall comply with the provisions of these rules at all times. The lead agency of any cooperative purchasing system deemed by the Director to be in non-compliance shall be notified by certified mail. The lead agency shall explain in writing within 10 working days the steps being taken to correct the noncompliance. Failure of the lead agency to respond within the time provided shall result in the notification to the lead agency by the Director by certified mail to appear before the Director, or his or her designee. Notice shall be given at least 10 working days prior to the date of appearance and shall detail the nature of the alleged noncompliance. Failure to appear may result in the suspension or termination of the registration of the system.

(b) No later than five days after an appearance required herein, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the lead agency.

(c) A determination of noncompliance shall result in the immediate commencement of a 15 day grace period. During this time, the lead agency shall rectify all items of noncompliance, to the satisfaction of the Director.

(d) Failure of the lead agency to undertake such action as required by the Director to resolve the issue of noncompliance may result in the suspension or termination of the registration of the system.

(a)

**NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
Procedural Rules**

Proposed Repeal and New Rules: N.J.A.C. 5:91

Authorized By: New Jersey Council on Affordable Housing,

Kevin Quince, Acting Chairman.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1992-337.

A public hearing will be held on Monday, September 14, 1992 from 9:30 A.M. to 1:00 P.M. at the following location:

Department of Community Affairs
101 South Broad Street
Room 134
Trenton, New Jersey 08608

Persons interested in commenting at the hearing must contact Douglas Opalski at (609) 292-3000 at least five days before the hearing, and provide a summary of the comments to be made.

Submit written comments by September 14, 1992 to:

Douglas V. Opalski, Executive Director
Council on Affordable Housing
CN 813
Trenton, NJ 08625-0813

The agency proposal follows:

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Summary

The Fair Housing Act, P.L. 1985, c.222, N.J.S.A. 52:27D-301 et seq., provides a statutory method designed to enable every municipality in the State to determine and provide for its fair share of its region's need for low and moderate income housing. At N.J.S.A. 52:27D-308, the New Jersey Council on Affordable Housing (Council) is empowered to create procedural rules that detail the process by which the Council evaluates municipal housing elements and fair share plans. The procedural rules of the Council were initially adopted as R.1986 d.221, effective June 16, 1986. They have been frequently amended and modified. However, the following constitutes the first comprehensive revision of the Council's procedural rules since the initial adoption. This revision is being undertaken in concert with a similar comprehensive reconsideration of the Council's substantive rules that will be published at a later date. Because of the extensive changes being made, it is proposed that the current procedural rules be repealed and be replaced by the proposed rules.

The Council's goal when formulating these new procedural rules was to provide to all parties who participate in the Council's procedures a clear, readily understandable and reasonable expeditious pathway through the Council's process. To further clarify the procedures described in these rules, an Appendix is attached that contains several flow chart diagrams of the procedures described in several of the rules. The major changes to each subchapter of the procedural rules are described below.

In Subchapter 1, General Provisions, the only changes occur in the definitions at N.J.A.C. 5:91-1.2. Three new definitions are included: those of "objector," "participant to mediation" and "submission."

Subchapter 2, Filing a Housing Element/Fair Share Plan, is a reworking of the previous Subchapter 3, but in a much simplified form. N.J.A.C. 5:91-2.1 outlines four methods by which a municipality may fall within the jurisdiction of the Council. N.J.A.C. 5:91-2.2 states that the Council will accept a municipal housing element and fair share plan for filing only if it has been adopted by the municipal planning board and endorsed by the governing body of the municipality. The governing body must also request participation in the Council's administrative process. N.J.A.C. 5:91-2.3 deals with cases transferred to the Council by court order.

Subchapter 3, Petition For Substantive Certification, in part alters and in part reenacts the previous Subchapter 4. N.J.A.C. 5:91-3.1 requires that a petition for substantive certification be accompanied by a resolution of the governing body of the municipality endorsing the petition. N.J.A.C. 5:91-3.2, Action equivalent to a petition for substantive certification, is essentially identical to the current N.J.A.C. 5:91-4.2. N.J.A.C. 5:91-3.3 provides the forms for the required public notices for both a petition and a repetition for substantive certification. N.J.A.C. 5:91-3.4 requires that the housing element and fair share plan of a municipality be available for inspection by the public for a period of 45 days. N.J.A.C. 5:91-3.5 is new and requires municipal notice of a petition for substantive certification to owners of sites designated for low and moderate income housing.

Subchapter 4, Objections to a Proposed Housing Element and Fair Share Plan, is a modification of and expansion upon the prior Subchapter 5. In N.J.A.C. 5:91-4.1, the Council lists six separate criteria which an objector to a municipal housing element and fair share plan must meet in order for the Council to accept the objection. It should be noted that at N.J.A.C. 5:91-4.1(a)5, the Council requires objectors requesting relief in Planning Areas 3, 4 and 5 of the State Development and Redevelopment Plan (SDRP) to include a statement addressing the appropriateness of relief, given the goals of the SDRP. At N.J.A.C. 5:91-4.2, the Council states that it will review all objections to see if they meet the criteria set out in N.J.A.C. 5:91-4.1, resubmit the objections to objectors for the correction of any deficiencies and only accept the objection for consideration if the deficiencies are corrected within 14 days.

Subchapter 5, Consideration of a Municipality's Housing Element and Fair Share Plan When No Objections Are Filed, constitutes a substantial expansion and rewriting of rules found at Subchapter 6. In conjunction with the new Subchapter 6, Consideration of a Municipality's Housing Element and Fair Share Plan When Objections are Filed, Subchapter 5 constitutes a major attempt by the Council to clarify its procedures and make the process following the municipal filing of housing elements and fair share plans more predictable. The procedures described in N.J.A.C. 5:91-5.2 are portrayed in Chart One of the Appendix.

Subchapter 6, Consideration of a Municipal Housing Element and Fair Share Plan When Objections Are Filed, outlines three separate procedures for the three separate categories of municipalities whose

housing elements and fair share plans might have objectors. The procedure for a municipality that petitions within two years of filing a housing element and fair share plan, that is, a municipality that fully complies with all provisions of the Act, is set out at N.J.A.C. 5:91-6.2. Chart Two in the Appendix outlines this procedure. A municipality that does not petition for substantive certification within two years of filing its housing element and fair share plan, but does petition prior to being made a defendant to an exclusionary law suit, is subject to the procedures depicted in N.J.A.C. 5:91-6.3. This procedure is described in Chart Three of the Appendix. Those municipalities that have been transferred by court order to the Council from an exclusionary zoning law suit will be processed in accordance with N.J.A.C. 5:91-6.4. These procedures are set out in Chart Four of the Appendix.

Subchapter 7, Mediation, provides a far more detailed description of the mediation process than the prior rules. The prior requirement of N.J.A.C. 5:91-7.2 that mediation began within 10 days after a matter has been referred to the Council has been deleted and the new language provides that mediation begin "as quickly as practicable." N.J.A.C. 5:91-7.2(e) now allows owners of sites that have been designated for low and moderate income housing to automatically participate in mediation. N.J.A.C. 5:91-7.2(g) limits the participants to mediation to three representatives per objector. The municipality is also allowed three representatives, in addition to a member of the municipal planning board. Also, a municipality must appoint representatives to the mediation by a duly adopted resolution. N.J.A.C. 5:91-7.3 through 7.6 set out the procedure that the Council will follow after the initial mediation report is issued by the mediator. These procedures are depicted in Chart Five of the Appendix.

Subchapter 8, Referral to the Office of Administrative Law, makes one major change from the prior rules. In order to determine whether a case should be referred to the Office of Administrative Law, the Council will, in appropriate circumstances, require all parties to submit affidavits to determine if a matter should be submitted for a hearing to the Office of Administrative Law based upon the submitted affidavit.

Subchapter 9, Council Review of the Initial Decision, has not materially changed from the previous rules.

Subchapter 10, General Powers, contains unchanged the current N.J.A.C. 5:91-10.1 and 10.2 and a new N.J.A.C. 5:91-10.3 which describes the procedure for the issuance of an administrative order. It states that the Council may dismiss a municipal housing element and fair share plan by administrative order as long as such an order sets out in detail the reasons for the dismissal and the action the municipality must take before it may refile its housing element and fair share plan.

Subchapter 11, Regional Contribution Agreements, simplifies the requirements found at Subchapter 12 of the prior procedural rules. The Council has replaced the concept of a memorandum of understanding with a contract between the sending and receiving municipalities. The basic process of reviewing a regional contribution agreement is consistent with the Fair Housing Act and remains essentially unchanged. The Council has modified its monitoring and enforcement rule.

Subchapter 12, Motions, is essentially the same as the prior Subchapter 13, but, in N.J.A.C. 5:91-12.4, the times for serving and answering motions have been changed from the prior rule. The rule change establishes a return date of at least 30 days from the date of service on the opposing party; opposing affidavits and briefs must be filed no later than 20 days after receipt of the motion; and answers and responses to opposing affidavits and briefs are to be served and filed within 10 days. A certification of service will now be required, rather than the prior required proof of service.

Subchapter 13, Amendment of Substantive Certification, changes the current Subchapter 14 by allowing a municipality to seek a minor, technical amendment to its certified housing element and fair share plan by motion rather than by petition, as previously required. A municipality is still required to seek an amendment by petition if a substantial change in the certified housing element and fair share plan is sought. Requests for amendments may also be made by motion by any other party other than the municipality, but if the relief sought is substantial, the municipality can be required to file a petition.

Subchapter 14, Interim Substantive Certification, and Subchapter 15, Retention of Development Fees, are not altered from the current rules.

Social Impact

The Legislature, in enacting the Fair Housing Act, found that, "The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to . . ." the constitutional obliga-

tion created by the Mount Laurel decision, N.J.S.A. 52:27D-302(c). These procedural rules will promote the far ranging social impact of the Fair Housing Act and the Mount Laurel cases by providing a clear and comprehensive procedure whereby a municipality may address its low and moderate income housing obligation before the Council.

Economic Impact

These rules clearly articulate the procedures by which a municipality may receive from the Council substantive certification for its housing element and fair share plan. The rules add a level of predictability to the Council's administrative process. They will enable all parties to participate in the Council's administrative process in a more expeditious and cost-effective manner. The costs to the parties to comply with the required procedures should, in general, be unchanged or reduced from those associated with the previous requirements. For example, the costs to comply with the notice, mediation and transcript provisions should not change, since the cost-generating components have not changed. However, because these new rules have been drafted to provide an expeditious and predictable procedure before the COAH, the cost to the parties should, hopefully, be reduced. Since each substantive certification situation has its own unique characteristics, and since there are a number of factors involved, specific costs of compliance cannot be determined at this time.

Regulatory Flexibility Analysis

The primary purpose of these procedural rules is to regulate and facilitate municipal submissions to the Council. These rules do not regulate small businesses, but small businesses may become involved in Council procedures as objectors to municipal fair share plans and as owners of sites designated for low and moderate income housing, who may as a right, participate in mediation. As objectors, small businesses may, if they choose, employ legal counsel to represent them before the Council, but they by no means need to do so. Since such participation in mediation serve the interests of participating objectors, and to ensure fairness of the process, no lesser requirements or exceptions based on business size are provided.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:91.

Full text of the proposed new rules follows:

**CHAPTER 91
PROCEDURAL RULES**

SUBCHAPTER 1. GENERAL PROVISIONS

5:91-1.1 Short title

The provisions of this chapter shall be known as "the procedural rules of the New Jersey Council on Affordable Housing."

5:91-1.2 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 Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

"Agency" means the New Jersey Housing and Finance Mortgage Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

"Council" means the New Jersey Council on Affordable Housing established under the Act, and which has primary jurisdiction for the administration of housing obligation in accordance with sound regional planning considerations in this State.

"Days" means calendar days.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet the low and moderate income housing need of its region, and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, and as further described and defined in N.J.A.C. 5:92.

"Filed" means accepted for filing by the Council.

"Housing element" means that portion of a municipality's master plan, consisting of reports, statements, proposals, maps, diagrams and text, designed to meet the municipality's fair share of its region's

present and prospective housing needs, particularly with regard to low and moderate income housing, as further described by N.J.A.C. 5:92.

"Housing region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to July 2, 1985.

"Objector" means a person who files objections to a municipal housing element and fair share plan in accordance with N.J.A.C. 5:91-4.1 or is the owner of record of a site designated for low and moderate income housing in a municipal housing element and fair share plan in accordance with N.J.A.C. 5:91-7.2(e).

"Participant to mediation" means any party the mediator deems necessary to conduct mediation and resolve any objections to a municipality's petition for substantive certification. The Council, or its designee conducting mediation, shall determine the extent of participation of each participant to mediation. A participant to mediation is not to be considered an objector to the municipality's petition for substantive certification.

"Petition for Substantive Certification" means that petition which a municipality files, or is deemed to have filed, which engages the Council's mediation and review process.

"Receiving municipality" means, for the purposes of a regional contribution agreement (RCA), a municipality which agrees to assume a portion of another municipality's fair share obligation.

"Sending municipality" means, for the purposes of a regional contribution agreement (RCA), a municipality which seeks to transfer a portion of its fair share obligation to another willing municipality.

"Submission" means the housing element and fair share plan.

5:91-1.3 Waiver

Any party desiring a waiver or release from the express provisions of the rules in this chapter may submit a written request to the Council to the attention of the Executive Director. Waivers may be granted only by the Council where such would not contravene the provisions of the Act.

SUBCHAPTER 2. FILING A HOUSE ELEMENT/FAIR SHARE PLAN

5:91-2.1 Jurisdiction

(a) A municipality shall fall within the jurisdiction of the Council if:

1. The municipality has filed a housing element and fair share plan and petitioned for substantive certification within two years of such filing;
2. The municipality has filed a housing element and fair share plan and is the defendant to an exclusionary zoning suit within two years of such filing;
3. The municipality has filed a housing element and fair share plan and petitions for certification over two years after such filing, but prior to being sued for exclusionary zoning; or
4. A court transfers jurisdiction of the case to the Council.

5:91-2.2 Filing requirements

(a) The Council shall accept a municipal housing element and fair share plan for filing only under the following conditions:

1. The municipal planning board has adopted the housing element as part of the municipality's master plan pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.); and
2. The governing body of the municipality has passed a resolution of participation which:
 - i. Endorses the housing element and fair share plan; and
 - ii. Requests participation in the Council's administrative process.

5:91-2.3 Transferred cases

When a case is transferred to the Council by court order, pursuant to section 16 of the Act (N.J.S.A. 52:27D-316), the municipality shall file a housing element and fair share plan with the Council within

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120 days from the date of transfer. The municipal plan shall conform to the filing requirements of N.J.A.C. 5:91-2.2.

5:91-2.4 Amendment

A municipality that has filed a housing element and fair share plan with the Council may amend its housing element prior to petitioning for substantive certification and prior to the initiation of an exclusionary zoning suit. However, such amendment shall not extend the period in which a municipality may petition for certification and receive the considerations outlined in N.J.A.C. 5:91-3.6.

SUBCHAPTER 3. PETITIONS FOR SUBSTANTIVE CERTIFICATION

5:91-3.1 Petition

A petition for substantive certification shall be in such form and shall contain such information as the Council may require from time to time from a municipality. A petition shall be accompanied by a resolution adopted by the governing body of the municipality endorsing the petition for substantive certification.

5:91-3.2 Action equivalent to a petition for substantive certification

A municipality in an exclusionary zoning lawsuit transferred to the Council by the courts, pursuant to Section 16 of the Act, shall be deemed to have filed a petition for substantive certification when the Council accepts for filing the municipality's housing element and fair share plan as required pursuant to N.J.A.C. 5:91-2.2 and 2.3.

5:91-3.3 Notice

(a) When a municipality files a petition for substantive certification, or is deemed to have filed a petition by N.J.A.C. 5:91-3.2, it shall publish notice of this petition in a newspaper of general circulation within the municipality and county in order to provide the general public with an opportunity to review the municipal housing element and fair share plan and to object to or comment upon them. If the Council determines that notice was not published in a newspaper of general circulation, it shall require the municipality to re-publish in another newspaper.

(b) In providing notice of a petition for substantive certification, the municipality shall follow this format:

NOTICE OF PETITION FOR SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that the (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan, pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-3.1 et seq. Copies of said adopted Housing Element and supporting documentation are available for public inspection at the (TOWNSHIP/BOROUGH) Municipal Building, (address) New Jersey, during regular business hours. Comments or objections to said petition for Substantive Certification must be filed with the New Jersey Council on Affordable Housing, 101 South Broad Street, CN 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by _____, which is 45 days of publication of this notice.

Municipal Clerk

(c) A municipality required to amend, refile or repetition for substantive certification, shall provide notice following this format:

NOTICE OF REPETITION FOR SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that the (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a Housing Element and Fair Share Plan as an amendment to the (year) Master Plan on (date). The adopted plan is a revision of a previously adopted housing element and fair share plan, for which the (Township/Borough/Town/City) had petitioned the Council on Affordable Housing for substantive certification on (date).

A copy of the amended and adopted housing element and fair share plan is available for public inspection at the office of (Municipal Clerk, etc.) Municipal Building, located at (street address), during the hours of _____. Any interested party may

file comments or objections to the plan with the Council on Affordable Housing, 101 South Broad Street, CN 813, Trenton, New Jersey 08625-0813 and with the (Township/Borough/Town/City) by _____, which is 45 days of publication of this notice.

(d) The Council shall publish monthly, in newspapers of general circulation within the State, an updated list of all petitions for substantive certification it has received.

5:91-3.4 Inspection

A municipality which has filed a petition for substantive certification and proposed housing element and fair share plan with the Council, shall make available for public inspection within the municipality, during business hours, copies of the petition and proposed housing element and fair share plan, with supporting documentation. The housing element and fair share plan shall be available for inspection for a period of 45 days beginning on the date of publication of notice of petition for substantive certification, pursuant to N.J.A.C. 5:91-3.3.

5:91-3.5 Owners of sites designated for low and moderate income housing

At the time it files its petition for substantive certification, a municipality shall provide the Council with the names and addresses of the owners of record of the sites designated in its housing element and fair share plan for low and moderate income housing. The owners of sites designated in the municipal submission shall be given individual written notice by the Council of the filing of the petition, may participate in mediation and shall have the rights granted to objectors of the municipal submission.

5:91-3.6 Municipal/developer incentives

(a) When a municipality files a housing element and fair share plan and either petitions for substantive certification or is sued for exclusionary zoning within two years of filing its housing element, the municipality shall not be subject to a builder's remedy and the Council shall not award relief to a developer except in extraordinary situations. Extraordinary situations include, but are not limited to, the lack of suitable alternative sites in the municipality to produce the required low and moderate income housing. If contested issues are transferred to the Office of Administrative Law pursuant to N.J.A.C. 5:91-8, the burden of proof shall be on the objectors to the municipal housing element, unless the Council determines that such an extraordinary situation exists and that the burden of proof is with the municipality.

(b) The Council shall consider awarding relief to a developer who objects to a municipal plan when:

1. The municipality has filed a housing element and petitions for substantive certification prior to an exclusionary zoning lawsuit but more than two years after filing its housing element and fair share plan;

2. The Council determines the municipal plan does not adequately address the municipal fair share; and

3. The objector offers a site that is available, approvable, developable and suitable, pursuant to N.J.A.C. 5:92.

(c) If an exclusionary zoning lawsuit is filed against a municipality prior to a municipal petition for substantive certification and the case is transferred to the Council by the court, the Council shall presumptively require the municipality to include the contested site as a component of its plan if:

1. The site is available, approvable, developable and suitable pursuant to N.J.A.C. 5:92; and

2. The municipality has not filed a housing element; or has filed a housing element but has not petitioned for substantive certification within two years of filing.

SUBCHAPTER 4. OBJECTIONS TO A PROPOSED HOUSING ELEMENT AND FAIR SHARE PLAN

5:91-4.1 Objection

(a) Within 45 days of publication of the notice of a municipality's petition or repetition for substantive certification, any person may file objections with the Council and the municipality. An objection

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shall be in a form as may be determined by the Council and shall include at the very least:

1. A clear and complete statement as to each aspect of the municipality's housing element and fair share plan contested by the objector;

2. An explanation of the basis for each objection, including where appropriate citations to expert reports, studies, or other data relied upon by the objector;

3. Copies of all such expert reports, studies and data relied upon by the objector;

4. Proposed modifications, changes, or other measures which the objector contends would resolve the objector's dispute with the municipality and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;

5. If the objector is seeking relief on a specific site in Planning Areas 3, 4 or 5 as designated in the State Development and Re-development Plan (SDRP) and the objector's site is not in a designated center, a statement addressing the appropriateness of identifying the area surrounding the objector's site for center designation using the criteria within the SDPR; and

6. A statement outlining the objector's prior efforts at premediation, participation in conferences, or public hearings and a summary of the results of any such efforts.

5:91-4.2 Review of objections

(a) The Council shall review objections subject to the requirements of N.J.A.C. 5:91-4.1. An objector who has filed a complete objection shall be able to participate in the Council's administrative process as described in these rules. Objections that are determined to be incomplete will be returned to the objectors with notice of their deficiencies.

(b) Once such deficiencies are corrected, the objections shall be resubmitted to the Council within 14 days of receipt of the notice of deficiency. If the resubmitted objections then conform to N.J.A.C. 5:91-4.1, the objector will then be able to participate in the Council's administrative process.

SUBCHAPTER 5. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN NO OBJECTIONS ARE FILED

5:91-5.1 Overview

This subchapter outlines the procedures for the review of a housing element to which no objections have been filed. The procedures are summarized in this subchapter and in Chart 1 of the Appendix, incorporated herein by reference.

5:91-5.2 Council review

(a) After a municipality files a petition for substantive certification, the Council will prepare a compliance report. The compliance report will indicate any amendments to the housing element and fair share plan necessary to achieve substantive certification. The compliance report will be submitted to the municipality for a 14-day comment period.

(b) After receipt and review of the comments of the municipality, the Council will either direct the municipality to amend its housing element and fair share plan within 120 days or issue substantive certification.

(c) If the amendments required of the municipal housing element and fair share plan are substantial and require the designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach, the municipality shall be directed to refile its housing element and fair share plan and to repitition for substantive certification within 120 days. The municipality shall provide notice of repititioning as required in N.J.A.C. 5:91-3.3. Repititioning shall require an objector period as defined in N.J.A.C. 5:91-4.1.

(d) If objections are filed upon repititioning to the refiled housing element and fair share plan, the municipal submission shall follow the procedures outlined in N.J.A.C. 5:91-6, beginning with N.J.A.C. 5:91-6.2(e).

(e) If there are no objections following the municipal amendment and refile of its housing element and fair share plan and any applicable objector period, the Council staff shall prepare another compliance report, which shall indicate any further necessary amendments to the municipal submission to achieve certification. The compliance report shall again be circulated to the municipality for a 14-day comment period.

(f) If the amended or refiled housing element and fair share plan is consistent with the standards for substantive certification as set forth in this chapter, the compliance report shall recommend conditions for substantive certification.

(g) If, after reviewing the compliance report and the municipal response, the Council finds that the refiled housing element and fair share plan continues to require substantial changes, such as the designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach, the Council may dismiss the petition for substantive certification by issuing an administrative order pursuant to N.J.A.C. 5:91-10.3 or may deny the petition.

5:91-5.3 Grant of substantive certification

(a) The Council will issue substantive certification of a municipality's housing element and fair share plan if:

1. The municipality's proposed housing element and fair share plan complies with this chapter and N.J.A.C. 5:92;

2. The housing element and fair share plan is not inconsistent with the achievement of the low and moderate income housing needs of the region as adjusted pursuant to this chapter and N.J.A.C. 5:92; and

3. The combination of the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations, and the affirmative measures in the final proposed housing element and fair share plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.

(b) Any grant of substantive certification may contain such conditions and terms as the Council considers necessary and which makes the achievement of a municipality's fair share obligation realistically possible.

(c) The Council may condition a grant of substantive certification upon specific changes in the housing element or fair share plan. Any conditions for approval shall be in writing and shall set forth the reasons for the conditions. If, within 60 days of the Council's conditional approval, the municipality refiles its petition with changes satisfactory to the Council, the Council shall issue substantive certification.

(d) Within 45 days of the grant of substantive certification, the municipality shall adopt its fair share housing ordinance as approved by the Council. The Council's grant of substantive certification will be void and of no force and effect in the event that the municipality fails to timely adopt its fair share ordinance.

5:91-5.4 Dismissal

If the Council dismisses a petition for substantive certification by an administrative order issued pursuant to N.J.A.C. 5:91-10.3, the municipality shall no longer receive the benefits outlined in N.J.A.C. 5:91-3.6. Such a municipality may revise its housing element and fair share plan, refile it with the Council and repitition. For purposes of calculating the time period between filing and repititioning for substantive certification, the Council shall consider the initial filing as the date of filing and the date of repititioning as the date the petition was filed.

5:91-5.5 Denial

The Council's denial of substantive certification shall be in writing and shall set forth the reasons for the denial. If, within 60 days of the Council's denial, the municipality refiles its petition with changes satisfactory to the Council, the Council shall issue substantive certification.

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This subchapter outlines the procedures for the review of a housing element when one or more objections have been filed. The rules within the subchapter recognize that the Fair Housing Act at N.J.S.A. 52:27D-313 allows a municipality to petition for substantive certification within two years of filing a housing element. A municipality that petitions within two years of filing a housing element and fair share plan shall be processed pursuant to N.J.A.C. 5:91-6.2. A municipality that does not petition within two years of filing a housing element and fair share plan, but does petition prior to being made a defendant to an exclusionary lawsuit, shall be processed pursuant to N.J.A.C. 5:91-6.3. All other municipalities shall be processed in accordance with N.J.A.C. 5:91-6.4.

5:91-6.2 Municipalities that have petitioned for substantive certification within two years of filing their housing element and fair share plan

(a) Municipalities that have petitioned for substantive certification within two years of filing their housing element and fair share plan have complied with the Fair Housing Act. A municipality in this classification shall receive the benefits outlined in N.J.A.C. 5:91-3.6, unless and until the Council dismisses its petition for substantive certification by administrative order or denies it pursuant to N.J.S.A. 52:27D-314. The procedures for review are summarized in this rule and in Chart 2 of the Appendix, incorporated herein by reference.

(b) Following a petition for substantive certification, the Council staff shall prepare a compliance report. The report shall be circulated to the municipality and to the objectors to the municipal submission for comments during a 14-day period.

(c) After reviewing the comments of the parties, the Council shall determine if there are problems associated with the municipal submission that require designation of additional sites, a change in inclusionary sites or a fundamental change in approach. If such problems do not exist, the Council shall direct the parties to mediation. If the Council determines that such problems exist, the Council shall direct the municipality to amend its submission, refile its submission and repetition for substantive certification within 120 days.

(d) Refiling and repetition shall require another objector period, as defined in N.J.A.C. 5:91-4.1.

(e) Following a repetition for substantive certification, the Council staff shall prepare another compliance report. The report shall be circulated to the municipality and to the objectors to the municipal submission for comments during a 14-day period.

(f) After reviewing the comments of the parties, the Council shall determine if there are problems associated with the municipal housing element and fair share plan that require designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach. If the Council determines that such problems exist, the Council may dismiss the municipal submission by administrative order or deny it pursuant to N.J.S.A. 52:27D-314. If the Council determines that such problems do not exist, the Council shall direct the parties to mediation.

(g) If the Council dismisses a petition for substantive certification, the municipality shall no longer receive the benefits outlined in N.J.A.C. 5:91-3.6. Such a municipality may revise its housing element and fair share plan, refile it with the Council and repetition. For purposes of calculating the time period between filing and repetition for substantive certification, the Council shall consider the initial filing as the date of filing and the date of repetition as the date the petition was filed.

5:91-6.3 Municipalities that petition for substantive certification more than two years after filing a housing element and fair share plan

(a) Municipalities that petition for substantive certification more than two years after filing a housing element and fair share plan did not petition for certification within two years of filing its housing element and fair share plan, in accordance with N.J.S.A. 52:27D-313. However, the Council shall accept the petition for substantive

certification. If the Council, upon review of the plan, determines that the submission requires the designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach, the Council shall presumptively require the inclusion of one or more objector's sites in the municipal housing element and fair share plan. Otherwise, the municipality shall not be presumptively required to utilize an objector's site. The procedures for review are summarized in this rule and in Chart 3 of the Appendix, incorporated herein by reference.

(b) Following a petition for substantive certification, the Council staff shall prepare a compliance report and circulate it to the parties for a 14-day comment period. After reviewing the comments of the parties, the Council shall determine if there are problems associated with the municipal submission that require designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach. If the Council determines that no such problems exist, the Council shall schedule mediation. If the Council determines that there are such problems with the municipal submission, the Council shall direct the municipality to amend its submission, refile its submission and repetition for substantive certification within 120 days.

(c) If the Council directs the municipality to amend its submission, refile and repetition, the Council shall advise the municipality that it will presumptively require one or more of the objectors' sites to be included in the housing element and fair share plan.

(d) Municipalities that repetition shall provide notice of repetition as required in N.J.A.C. 5:91-3.3. Refiling and repetition shall require another objector period as defined in N.J.A.C. 5:91-4.

(e) Following a repetition for substantive certification, Council staff shall prepare another compliance report, which will be circulated to the parties for a 14-day comment period. After reviewing the comments of the parties, the Council shall determine if there are problems with the municipal submission that require designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach. If there are no such problems, the Council shall schedule mediation. If the Council determines that there are such problems with the municipal submission, the Council shall dismiss the municipal petition for substantive certification by administrative order or deny it pursuant to N.J.S.A. 52:27D-314.

(f) After mediation, a municipality may contest the suitability of any objector's site and request a hearing on the site's suitability before the Office of Administrative Law. Subsequent to an evidentiary hearing at the Office of Administrative Law, the Council may determine that an objector's site is suitable and that it is appropriate to be included in the municipal housing element and fair share plan. If so, the Council will direct its inclusion as a condition of substantive certification.

5:91-6.4 Other municipalities

(a) The class of other municipalities includes those that were sued for exclusionary zoning either prior to filing a housing element or after filing a housing element where a petition for substantive certification was not filed within two years. It is anticipated that these municipalities will be vulnerable to a builder's remedy in court. Should the court, however, transfer the case to the Council, this rule outlines the review of these transferred cases. The procedures for review are summarized in the following and in Chart 4 of the Appendix, incorporated herein by reference.

(b) Following a court transfer and the filing of a petition for substantive certification, the Council staff shall prepare a compliance report and circulate it to the parties for a 14-day comment period. The report shall indicate that an objector/litigant is presumptively entitled to site-specific relief. After reviewing the comments of the parties, the Council shall determine if there are problems associated with the housing element and fair share plan that require designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach. If there are no such problems, the Council shall schedule mediation. If the Council determines that there are such problems with the municipal submission, the Council shall direct the municipality to amend its submission, refile its submission and repetition for substantive certification within 120 days.

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(c) A municipality that is required to repetition shall provide notice as required in N.J.A.C. 5:91-3.3. Refiling and repetition shall require another objector period as defined in N.J.A.C. 5:91-4.

(d) Following a repetition for substantive certification, the Council staff shall prepare another compliance report and circulate it to the parties for a 14-day comment period. After reviewing the parties' comments, the Council shall determine if there are problems with the municipal submission that require designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach. If no such problems exist, the Council shall schedule mediation. If the Council determines that such problems exist, the Council shall transfer jurisdiction of the case to the appropriate court along with any record of the case created during the Council's administrative process.

(e) After mediation, a municipality may contest the suitability of an objector's site and request a hearing on the suitability of the site before the Office of Administrative Law. Because the municipality did not meet the requirements of N.J.S.A. 52:27D-301 et seq., there shall be a presumption that the site is suitable and the municipality will have the burden to show that the site is not suitable.

5:91-6.5 Substantive certification action

(a) Upon review of the housing element and fair share plan, the mediation report pursuant to N.J.A.C. 5:91-7 and, where required, the Initial Decision from the Office of Administrative Law pursuant to N.J.A.C. 5:91-9, the Council shall issue substantive certification if:

1. The municipality's proposed housing element and fair share plan complies with this chapter and N.J.A.C. 5:92;
2. The housing element and fair share plan is not inconsistent with the achievement of the low and moderate income housing need of its region as adjusted pursuant to this chapter and N.J.A.C. 5:92; and
3. The combination of the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations and affirmative measures in the housing element and fair share plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.

(b) Upon conducting the review set forth in (a) above, the Council may deny the petition for substantive certification, or condition a grant of substantive certification upon specific changes in the housing element or fair share plan. Any denial or conditional approval shall be in writing and shall set forth the reasons for the denial or the conditions for the approval. If, within the 60 days of the Council's denial or conditional approval, the municipality refiles its petition with changes satisfactory to the Council, the Council shall issue substantive certification.

(c) In conducting its review set forth in this section, the Council may meet with the municipality and any objector thereto.

(d) Within 45 days of the grant of substantive certification, the municipality shall adopt its fair share housing ordinance as approved by the Council. The Council's grant of certification will be void and of no force and effect in the event that any municipality fails to timely adopt its fair share ordinance.

SUBCHAPTER 7. MEDIATION

5:91-7.1 General

(a) The Council shall engage in mediation where a timely objection to a municipality's petition for substantive certification is filed. The mediation procedure is summarized in this subchapter and in Chart 5 of the Appendix, incorporated herein by reference. The Council may appoint a designee to conduct mediation, and the Council or its designee shall meet with the representatives of the municipality and the objectors and attempt to mediate a resolution of the dispute.

(b) Payment of a mediator's compensation shall be shared equally by the municipality and the objectors.

5:91-7.2 Scope of mediation

(a) The Council or its designee shall meet with the municipality and the objectors as quickly as practicable after a matter is referred to the Council for mediation, and as often thereafter as the Council or its designee shall determine necessary, and may impose such deadlines for the submission of information, reports, studies or other documentation as the Council or its designee shall find necessary.

(b) The Council or its designee may, upon notice to the parties, during the course of mediation, rely upon or use any interim adjudications previously entered by a trial court in the matter, or any stipulations previously entered into by the parties in any such litigation.

(c) The Council may during mediation, choose to hear and decide an issue itself if, in the Council's determination, such a hearing would facilitate a satisfactory conclusion to the mediation process.

(d) Mediation before the Council or its designated mediator may be conducted for a period of no more than 60 days after the time for the receipt of objections to a petition for substantive certification has expired. If the Council is, for any reason, dissatisfied with the progress of the mediation proceedings, or determines that mediation cannot resolve a dispute, the Council may declare an end to mediation and in its discretion (see N.J.A.C. 5:91-8) refer the matter to the Office of Administrative Law for adjudication as a contested case. The period for mediation established in this section may be extended by the Council for good cause shown.

(e) Owners of record of sites that have been designated for low and moderate income housing in a municipality's housing element and fair share plan shall be deemed objectors and shall be permitted to participate in mediation to the same extent as a party that objected to the municipal housing element and fair share plan pursuant to N.J.A.C. 5:91-4.

(f) The Council or its designee may, in its discretion, permit any person to participate in mediation when the Council or its designee determines that such participation may facilitate mediation and/or help resolve an objection to a municipality's petition for substantive certification. A person invited to participate pursuant to this subsection shall be deemed a participant to mediation and shall be permitted to participate in mediation to the extent the Council or its designee determines appropriate.

(g) Objectors and participants to mediation shall have no more than three representatives, unless otherwise allowed by the Council. A municipality shall be permitted three representatives in addition to a member of the municipal planning board. Prior to the commencement of mediation, a municipality shall submit to the Council a duly adopted resolution that designates its representatives, authorizes the representatives to negotiate on behalf of the municipality and also authorizes one or more of the municipal representatives to execute any written agreement reached during mediation on behalf of the municipality.

(h) The Council or its designee shall have the widest possible discretion as to the manner by which mediation is conducted.

5:91-7.3 Mediation report

(a) At the end of mediation, the mediator shall present a report to the Council advising the Council of the results of mediation. The report shall list all issues that remain in dispute between the municipality and the objectors and shall present the stipulations or other agreements reached by the municipality and the objectors.

(b) The Council shall serve the municipality, objectors and other participants to the mediation with a copy of the written mediation report.

(c) The municipality, objectors and participants to the mediation may file comments regarding the mediation report within 14 days. The 14 day comment period shall begin with the receipt of the report, unless the municipality must first publish notice of an amended housing element and fair share plan pursuant to N.J.A.C. 5:91-7.4. If the municipality must publish this notice, the 14 day comment period shall commence with the publication date of notice.

(d) The parties shall be bound by any agreements entered into during mediation when formally reduced to a writing and signed by the parties.

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5:91-7.4 Publication of notice of housing element and fair share plan altered as a result of mediation

(a) If the Council determines as a result of mediation, that there will be substantial amendments to the adopted housing element as originally filed, the municipality shall publish notice of the amendment, within seven days after receiving the mediation report, in a newspaper of general circulation within the municipality and the county or, in the case of a municipality that intends to publish in a weekly newspaper, in the next possible edition of the weekly paper following receipt of the mediation report. The notice shall state that the housing element and fair share plan will be amended as a result of mediation.

(b) A municipality shall make available for public inspection within the municipality, during business hours, copies of the mediation report, and shall include in its notice pursuant to (a) above the times when and places within the municipality where the mediation report will be made available for public inspection. The notice also shall specify that any objection or comment to the mediated housing element and fair share plan must be filed with the Council within 14 days of the date of the publication of the notice and give the Council's address where the objection or comment shall be filed.

5:91-7.5 Request for hearing following mediation

(a) Following mediation, the municipality or any objector may request a hearing on issues that remain unresolved. The request for a hearing shall set forth:

1. A detailed description of all unresolved issues and all information and documentation the party relies upon with regard to the objections for which a hearing is requested; and

2. Any other arguments or information the party feels is necessary for the Council to make a determination.

(b) Unless the municipality must publish notice pursuant to N.J.A.C. 5:91-7.4, a request for a hearing shall be served upon all parties that participated in the mediation no later than 14 days after receipt of the mediation report. If the municipality must publish notice pursuant to N.J.A.C. 5:91-7.4, any request for a hearing shall be served upon all parties that participated in mediation within 14 days of the publication date of notice. Any response to a request for a hearing by any party to mediation shall be served and filed no later than 10 days after receipt of the request for a hearing. A reply to the responses shall be served and filed no later than five days after receipt of the response. If any request for a hearing, response or reply is supported by an affidavit or brief, that affidavit or brief shall be filed with the request for a hearing, response or reply. All papers filed shall be accompanied by proof of service.

(c) After consideration of all papers and the mediation report, the Council shall determine whether to refer any unresolved issues to the Office of Administrative Law for adjudication as a contested case pursuant to the Administrative Procedure Act, N.J.A.C. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

5:91-7.6 Reopened mediation

(a) If during the 14 day comment period provided for in N.J.A.C. 5:91-7.4, an objection is filed to the proposed mediated housing element and fair share plan, the Council may, in its discretion, reopen mediation for a period not to exceed 30 days. This period may be extended by the Council for good cause.

(b) The Council shall consider only those objections to the portions of the housing element and fair share plan that have been amended as a result of mediation.

(c) If mediation is reopened, the municipality and objectors to both the initial housing element and fair share plan, and to the amended housing element and fair share plan shall be given the opportunity to participate in the reopened mediation.

(d) At the end of the reopened mediation, all procedures set forth in N.J.A.C. 5:91-7.5 shall be followed.

SUBCHAPTER 8. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW

5:91-8.1 General

(a) In the event mediation efforts are unsuccessful, the Council upon the motion of any party or in its own discretion shall determine whether to refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case. Prior to determining whether a case is contested, the Council may in appropriate instances require all parties to submit affidavits of experts with regard to issues that require expert testimony and/or affidavits of individuals with personal knowledge of the facts at issue. Such affidavits should set forth, with specificity, facts sufficient to demonstrate there is a genuine issue that requires a hearing. From these submitted papers, the Council may determine if there is an issue of material fact that necessitates a hearing as a contested case before the Office of Administrative Law.

(b) Upon determining that the matter shall be referred to the Office of Administrative Law for adjudication as a contested case, the Council shall transmit the matter to the OAL together with the mediation report, the municipality's petition for substantive certification and any objections thereto, and any other papers pertinent to the adjudication.

(c) The cost of the transcript of all oral testimony transmitted to the Council from OAL shall be shared equally by the municipality and the objectors.

SUBCHAPTER 9. COUNCIL'S REVIEW OF THE INITIAL DECISION

5:91-9.1 Review

Within 45 days after the issuance of an initial decision from the Office of Administrative Law, the Council shall review the initial decision of the Administrative Law Judge, the record upon which it is based and all exceptions to the initial decision. The Council shall then accept, reject or modify the decision and issue its final decision on the matter. Unless the Council accepts, modifies or rejects the initial decision within this period of time, the decision of the Administrative Law Judge shall be deemed adopted and shall become the final decision of the Council. For good cause shown, the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

SUBCHAPTER 10. GENERAL POWERS

5:91-10.1 Restraining orders

At any time, upon its own determination or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may issue such orders as may be necessary to require that a participating municipality take appropriate measures to preserve scarce resources that may be essential to the satisfaction of the municipality's obligation to provide for its fair share of its region's present and prospective need for low and moderate income housing.

5:91-10.2 Accelerated denial of substantive certification

At any time, upon its own determination, or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may deny substantive certification without proceeding further with the mediation and review process.

5:91-10.3 Administrative orders

At any time, upon its own determination, or upon the application of an interested party, the Council may issue an administrative order for a municipality to provide information or take an action that expedites the Council's administrative process and/or the production of low and moderate income housing. The Council may dismiss a municipal housing element and fair share plan by administrative order when the order sets forth in detail the reasons for the dismissal and the actions the municipality must take before it may refile its housing element and fair share plan.

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SUBCHAPTER 11. REGIONAL CONTRIBUTION AGREEMENTS

5:91-11.1 Terms of agreement

(a) A municipality may propose to transfer up to 50 percent of its fair share to another municipality within its housing region by means of a contractual regional contribution agreement pursuant to N.J.S.A. 52:27D-312 between the two municipalities. The contractual agreement shall be submitted to the Council by the sending municipality and shall specify, at a minimum, the number of units to be transferred and the amount of compensation to be paid to the receiving municipality in return for such a transfer. The Council may require amendments to the contract upon its review of the regional contribution agreement and prior to the Council's approval.

(b) A regional contribution agreement which has been approved by the Council by the granting of a petition for substantive certification to the sending municipality, may be executed once the Council awards substantive certification.

5:91-11.2 Statements of intent

(a) Municipalities which intend to enter into a regional contribution agreement as a receiving municipality shall notify the Council of their interest and of any proposed conditions or requirements for their participation.

(b) Statements of intent submitted under this section shall be in the form of a resolution adopted by the municipality.

(c) Statements of intent filed with the Council pursuant to this section shall not preclude any receiving municipality from negotiating with any potential sending municipality.

(d) Statements of intent are not binding upon the municipality.

(e) No receiving municipality shall be required to accept a greater number of low and moderate income units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimal number of units, as determined by the Council, not to exceed 100.

5:91-11.3 Project plan review by the New Jersey Housing and Mortgage Finance Agency

(a) The receiving municipality shall submit a proposed project plan to the New Jersey Housing and Mortgage Finance Agency that delineates the manner in which the receiving municipality shall create or rehabilitate low and moderate income housing in response to the regional contribution agreement. The project plan shall be in such a form and contain such information as the Agency may require. The Council or the Agency may impose time limitations for the submission of a project plan, or any updates or conditions thereto.

(b) The Agency may undertake such review as is necessary, including scheduling meetings or hearings and requiring further information, studies or reports, in order to render a timely report on the feasibility of the proposed plan for the Council. Failure of the receiving municipality to promptly or properly comply with the requirements of the Agency may result in the Agency's refusal to certify the feasibility of the proposed project.

5:91-11.4 Review by county planning board or agencies

(a) Regional contribution agreements shall be reviewed by the county planning board or agency of the county in which the receiving municipality is located. The county planning board or agency shall consider whether or not the contribution agreement is in accordance with sound comprehensive regional planning, in accordance with the terms of the master plan and zoning ordinance of both the sending and receiving municipalities, its own county master plan, and the State Development and Redevelopment Plan (SDRP).

(b) All determinations of a county planning board or agency shall be in writing and shall be made within such time as the Council may prescribe, beyond which the Council shall make those determinations. No fee shall be paid to the county planning board or agency for its review pursuant to this subsection.

(c) In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the Council shall determine whether or not the agreement is in accordance with sound comprehensive regional planning.

5:91-11.5 Review by the Council

(a) The Council shall approve a regional contribution agreement upon finding that:

1. The agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities;

2. The agreement is consistent with sound comprehensive regional planning; and

3. The receiving municipality's project plan is a feasible means of achieving the purposes of the agreement, as determined by the Agency.

(b) Upon recommendation of the Agency, the Council may approve as part of the regional contribution agreement, a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the proposed project be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.

(c) The Council shall approve all regional contribution agreements by resolution; the Council shall set forth in its resolution a schedule for the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Division of Local Government Services of the Department of Community Affairs and the Director of the Division shall, pursuant to N.J.S.A. 52:27D-312(d), thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution.

5:91-11.6 Monitoring and enforcement

(a) All regional contribution agreements shall require receiving municipalities to file annual reports with the Agency setting forth the progress in implementing the project plan to be produced with the funds from the regional contribution agreement. This report shall be in such form as the Council and the Agency may from time to time require.

(b) The Council shall take such actions as may be necessary to enforce a regional contribution agreement with respect to the timely implementation of a project plan by the receiving municipality. Such actions may include:

1. The initiation of a lawsuit to enforce a regional contribution agreement;

2. The prevention of a delinquent receiving municipality from entering into further regional contribution agreements for a specified period of time;

3. The recommendation that the Agency and the Department of Community Affairs withhold from the receiving municipality further assistance available under the Act; and

4. Such other actions as the Council may determine necessary including ordering a sending municipality for good cause to temporarily or permanently cease payments to a receiving municipality.

SUBCHAPTER 12. MOTIONS

5:91-12.1 Form of motion

An application to the Council for an order shall be by motion. A motion shall be by notice of motion in writing, unless the Council permits it to be made orally. Every motion shall state the time and place when it is to be presented to the Council, the grounds upon which it is made and the nature of the relief sought. When a matter becomes a contested case, motions shall generally be made to the Office of Administrative Law pursuant to N.J.A.C. 1:1-12.

5:91-12.2 Oral argument

A movant's request for oral argument shall be made either in his moving papers or reply. A respondent's request for oral argument shall be made in his answering papers. All requests for oral argument shall state the reasons therefor.

5:91-12.3 Affidavits, briefs and supporting statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits, briefs and supporting documents. A party shall submit an original and 16 copies of all motions and answering papers, as well as all accompanying papers. All motions and answering papers shall be supported by affidavits for facts relied

COMMUNITY AFFAIRS

PROPOSALS

upon which are not of record or which are not subject to official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers referred to in such affidavits may be annexed thereto.

5:91-12.4 Time for serving and filing motions and affidavits or briefs

(a) A notice of motion shall establish a return date at least 30 days from the date of service upon the opposing party. All motions, except for those which seek emergent relief, shall be made returnable on a regularly scheduled meeting day of the Council. A party seeking emergent relief shall contact the Executive Director to arrange for an emergency hearing by the Council. If a motion is supported by an affidavit or brief, the affidavit or brief shall be served and filed with the motion. Any opposing affidavits or briefs, or any cross-motions, shall be served and filed not later than 20 days after receipt of the moving papers. Answers or responses to any opposing affidavits or briefs, or to any cross-motions, shall be served and filed not later than 10 days after receipt of the opposing papers.

(b) All papers shall be accompanied by a certification of service.

5:91-12.5 Orders

The Council shall render a decision on the motion and may instruct the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion, the order shall so indicate.

SUBCHAPTER 13. AMENDMENT OF SUBSTANTIVE CERTIFICATION

5:91-13.1 General

(a) Amendments to the terms of substantive certification may be approved by the Council at any time following the granting of substantive certification. Amendments may be required by the Council as a result of facts that were not apparent at the time of substantive certification. Approval of any such amendment shall be solely at the discretion of the Council. Amendments may be requested by a municipality or any other party.

(b) A municipality seeking an amendment to substantive certification that requires a change in site, increase in density on a specific site or a fundamental change in approach to its low and moderate income housing obligation must file a petition for such an amendment.

(c) A municipality seeking a minor, technical amendment to its certified housing element and fair share plan that does not materially alter the terms of certification may request such an amendment by motion pursuant to N.J.A.C. 5:91-12.

(d) Requests for amendments of the terms of substantive certification may be made by any party other than a municipality by motion. If the motion requests a change in site, an increase in density on a specific site or a fundamental change in approach to the municipal low and moderate income housing obligation, and if the municipality does not object to the motion, the Council may direct the municipality to seek a plan amendment by filing a petition.

(e) All parties to the substantive certification, including the municipality and all objectors, shall be able to comment on any proposed amendment.

(f) In general, a municipality shall not be able to amend zoning on sites included in the certified housing element and fair share plan without the agreement of the affected property owner.

5:91-13.2 Municipal petition

(a) A municipal petition to amend the terms of its certification shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for, the proposed amendment;
2. Evidence that the amendment was previously presented to, and endorsed by, the municipal planning board;
3. A duly adopted resolution of the municipal governing body requesting Council approval of the petition to amend;

4. Proof of service of the petition on all objectors and owners of sites contained in both the certified and proposed fair share plans; and

5. Proof of public notice in conformity with the requirements of N.J.A.C. 5:91-13.4.

(b) All of the information required by (a)1 through 4 above shall be filed with the Council by the municipality at the time of filing of its petition for amendment. The information required by (a)5 above shall be filed with the Council within seven days of the date of the municipality's filing of its petition.

5:91-13.3 Amendment by motion

(a) A motion to amend the terms of a certification by a municipality or other party shall follow the requirements of N.J.A.C. 5:91-12, and shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for, the proposed amendment; and
2. Proof of service of the motion on all objectors, interested parties, and owners of sites contained in both the certified and proposed fair share plans.

5:91-13.4 Notice of amendment petition

(a) A municipality which has petitioned to amend its substantive certification shall publish a notice of said petition in a newspaper of general circulation within the municipality and the county, using the format for an amended housing element and fair share plan outlined in N.J.A.C. 5:91-3.3(c). The municipality shall make available for public inspection copies of the petition and supporting documentation within the municipality during business hours.

(b) Where a party other than the municipality moves to amend the terms of certification, the Council may direct the municipality to publish notice of this motion and the municipality may require the moving party to pay the cost of publishing the required notice. The municipality shall file with the Council proof of publication within seven days of its receipt of notification from the Council of the necessity of publishing notice.

(c) The Council shall publish a monthly list of all petitions for amendments to certification it has received in newspapers of general circulation within the State.

5:91-13.5 Objections to amendment petitions

(a) Within 30 days of the publication of a notice of a petition to amend the terms of certification, any person may file objections to the terms of the proposed amendment with the Council. These objections shall be in a form acceptable to the Council and shall include, at a minimum, the following:

1. A clear and complete statement as to each aspect of the municipality's proposed amendment to its housing element and fair share plan to which an objection is made;
2. An explanation of the basis for each objection, including, where appropriate, citations to expert reports, studies, or other data relied upon;
3. Copies of all expert reports, studies and data relied upon;
4. Proposed modifications, changes, or other measures which will resolve the objection consistent with the Council's criteria and guidelines; and
5. A statement documenting all efforts at premediation, participation in conferences, or public hearings and a summary of the results of any such efforts.

5:91-13.6 Review of objections

(a) The Council shall review objections subject to the criteria in N.J.A.C. 5:91-13.5. An objector that has met these criteria shall participate in the Council's administrative process beginning with mediation as set out at N.J.A.C. 5:91-7.

(b) Objections that are determined to be incomplete shall be returned to the objectors and they will be given 14 days to amend their objections and resubmit them in a manner conforming to 5:91-13.5.

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SUBCHAPTER 14. INTERIM SUBSTANTIVE CERTIFICATION

5:91-14.1 Interim substantive certification

(a) Any municipality that has received a substantive certification that expires prior to July 1, 1993 may file a motion, in accordance with N.J.A.C. 5:91-12, with the Council for interim substantive certification to be effective through July 1, 1993. In addition to the requirements set forth in N.J.A.C. 5:91-12, any such motion shall include the municipality's housing element and fair share plan and a discussion of how the municipality has complied with the terms of its substantive certification, as well as any other additional information the Council may require. In filing the motion, the municipality shall provide notice to any objector or litigant that participated in the substantive certification process or court settlement.

(b) Upon motion from any such municipality, the Council will issue an interim substantive certification if the Council finds that the municipality has complied with the terms of its original substantive certification. In issuing interim substantive certification, the Council may impose any conditions it deems appropriate or necessary in order to insure continued compliance with the substantive certification and satisfaction of the fair share obligation, including, but not limited to, requiring the municipality to leave all ordinances implementing its original substantive certification in effect for the interim substantive certification period.

(c) Any objector that participated in the initial Council administrative process resulting in the original grant of substantive certification, or any party to exclusionary zoning litigation resulting in a judgment of repose in those cases where (d) or (e) below apply, may oppose the municipality's motion for interim substantive certification if that party contends that the municipality has not complied with the terms of its substantive certification.

(d) If a municipality received a judgment of repose that expires prior to July 1, 1993, the municipality should apply to the Court that issued the judgment for relief prior to the expiration of its judgment of repose. The Council will consider a motion for interim certification if the Court transfers the request to the Council. In such cases, the procedures and criteria set forth in (a), (b) and (c) above, shall apply.

(e) If a municipality's judgment of repose has expired prior to the effective date of this rule or thereafter expires before the Council issues new fair share obligations, a municipality may file a motion for interim substantive certification with the Council provided that no exclusionary zoning lawsuit has been filed against the municipality. The procedures and criteria set forth in (a), (b) and (c) above, shall apply to applications made under this section.

SUBCHAPTER 15. RETENTION OF DEVELOPMENT FEES

5:91-15.1 Procedures for retaining development fees

(a) Municipalities that collected development fees prior to December 13, 1990, as outlined in N.J.A.C. 5:92-18.4 and 18.5, may retain at least some portion of such fees by conforming to the requirements of N.J.A.C. 5:92-18.8(a) (Development fee ordinances review).

(b) In addition, municipalities that collected development fees prior to December 13, 1990 shall provide notice to each developer that paid a development fee of its request for Council review of the development fee ordinance. The municipality shall provide each developer with a copy of all information required in N.J.A.C. 5:92-18.8(a)9 within seven days of the governing body's resolution to request review of its development fee ordinance.

(c) Municipalities that fail to provide all information to the Council, or fail to provide information to developers that paid development fees prior to December 13, 1990 within the time limits imposed by the Council, may be required by the Council to return the development fees to the developers that paid them.

(d) Developers shall have 14 days from the receipt of the information provided in (b) above to submit comments to the Council regarding the submissions made by the municipality. The developer shall simultaneously serve the municipality with a copy of the comments.

(e) Following the submissions from municipalities and developers, the Council shall review and approve or disapprove the ordinance. The Council may also determine the revenues that the municipality must return to the developers that paid the fees. Municipalities shall be able to retain fees that conform to the standards in this subchapter and N.J.A.C. 5:92-18.

**APPENDIX
CHART I
VOLUNTARY TOWNS
NO OBJECTORS
N.J.A.C. 5:91-5.2**

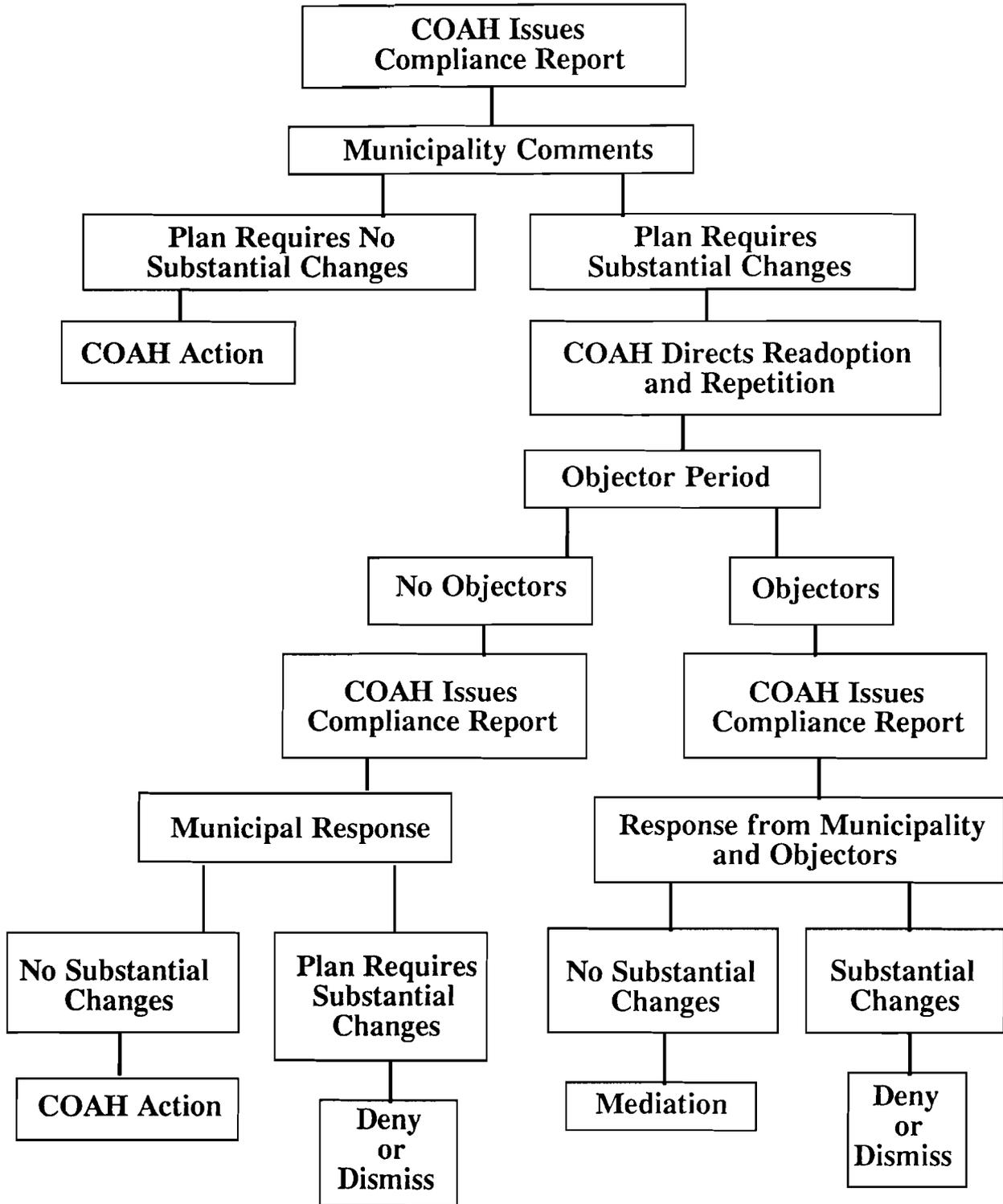


CHART 2
PETITION WITHIN TWO YEARS/OBJECTIONS
N.J.A.C. 5:91-6.2

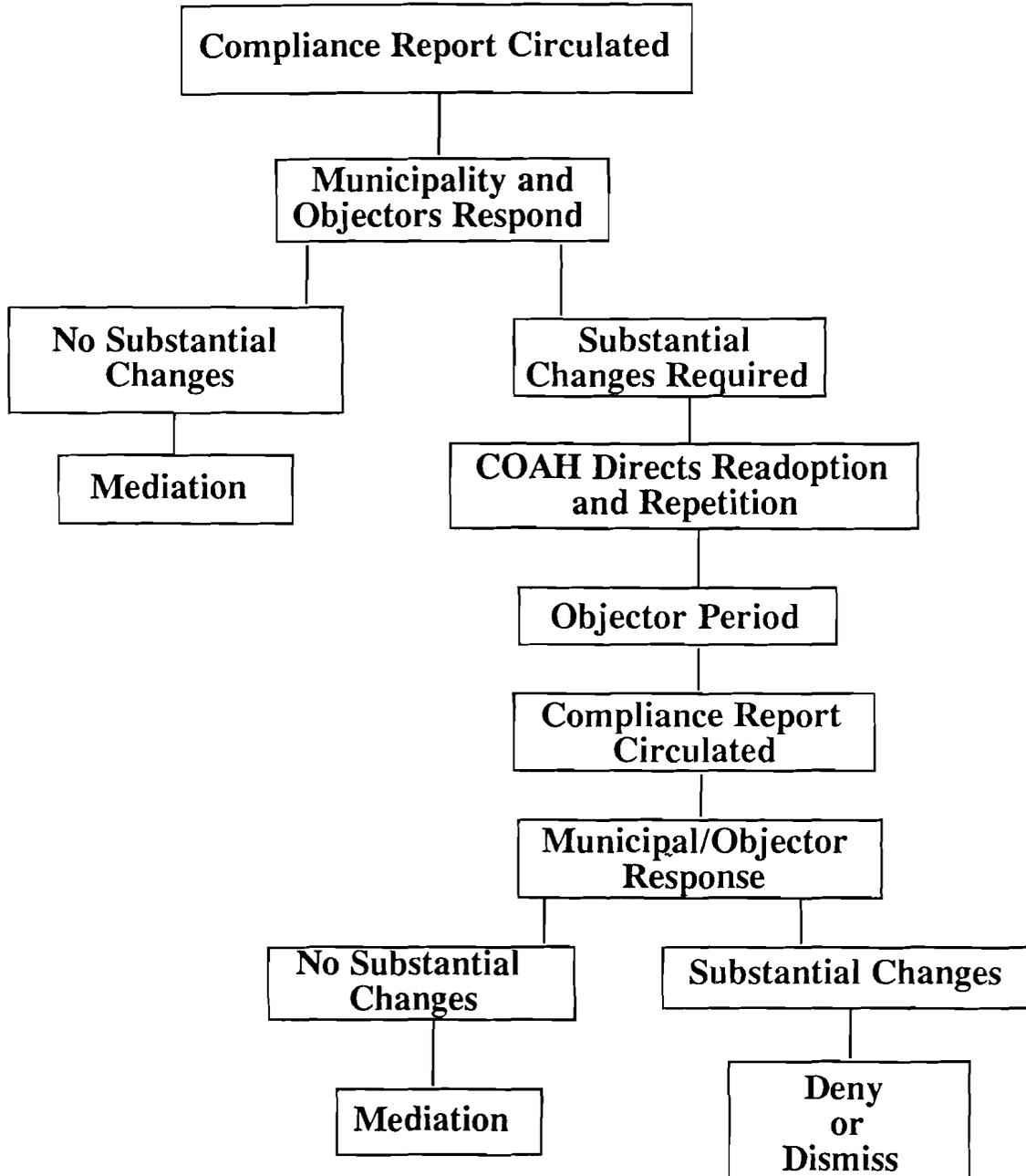


CHART 3
PETITION AFTER TWO YEARS, BUT BEFORE LAWSUIT
N.J.A.C. 5:91-6.3

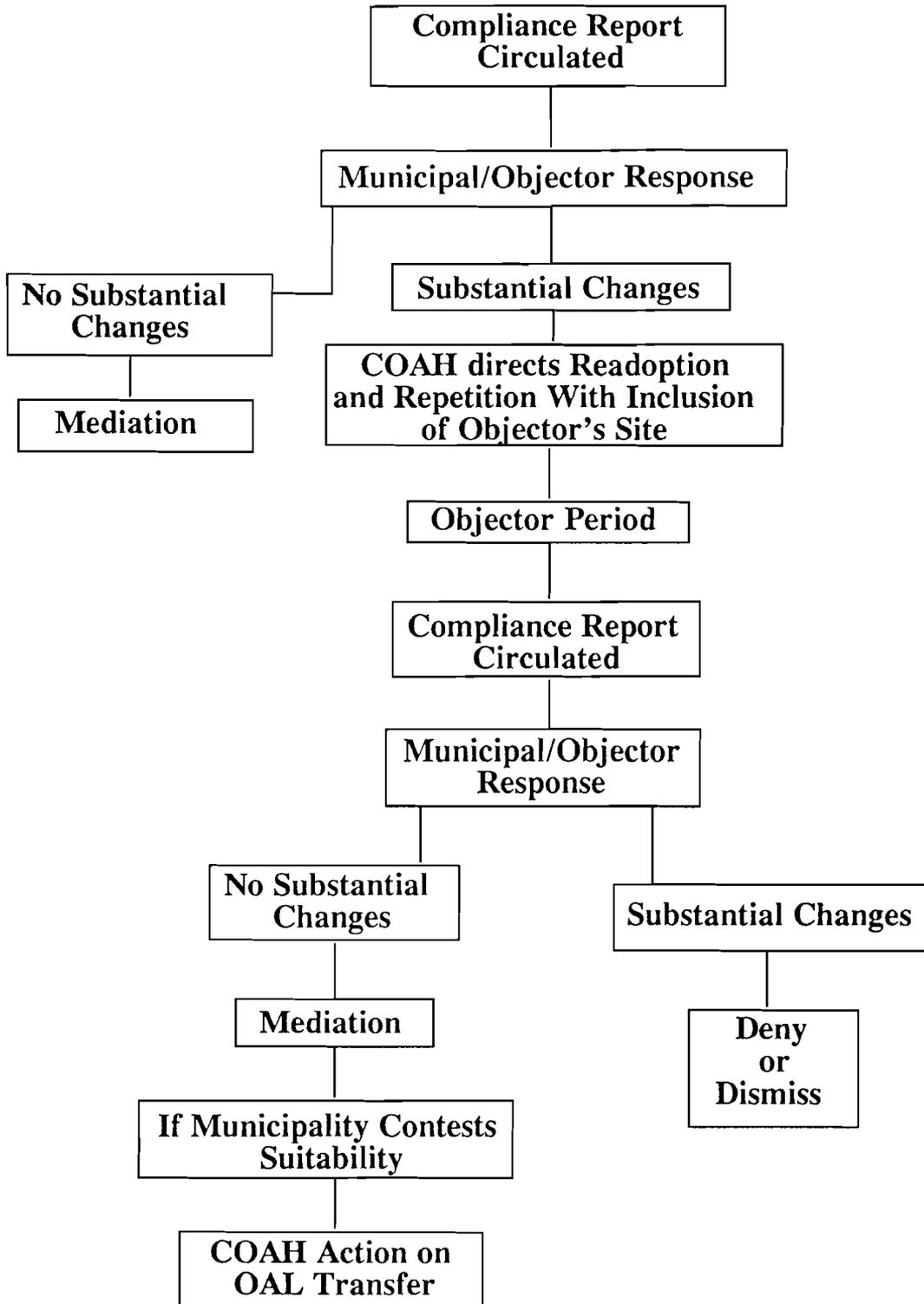
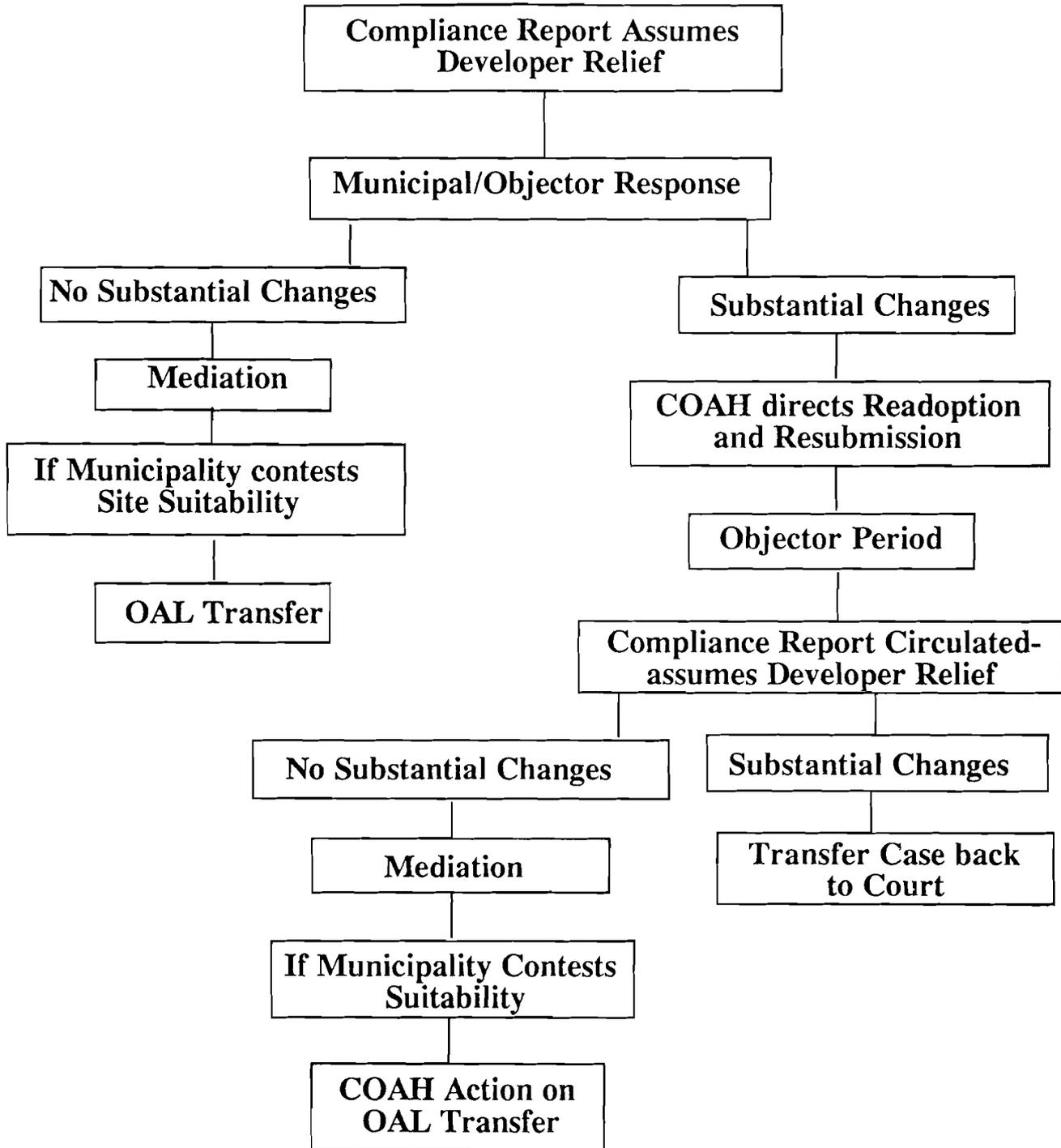
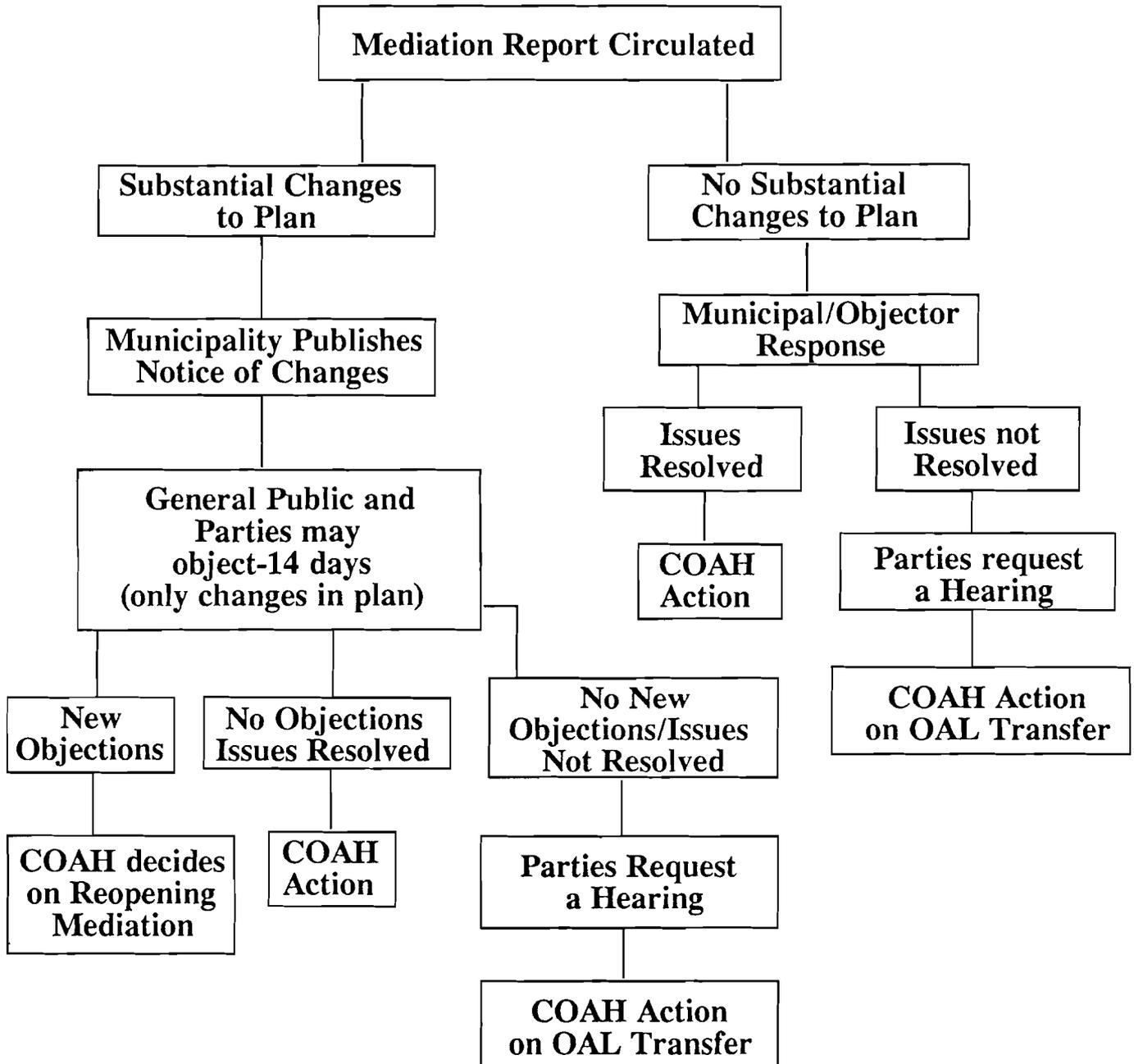


CHART 4
COURT TRANSFER OF BUILDERS REMEDEY CASES
N.J.A.C. 5:91-6.4



**CHART 5
MEDIATION
N.J.A.C. 5:91-7.3, 7.4, 7.5 AND 7.6**



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HUMAN SERVICES

**ENVIRONMENTAL PROTECTION
AND ENERGY**

(a)

**DIVISION OF SOLID WASTE MANAGEMENT
Notice of Extension of Public Comment Period
Compliance Monitoring Fees for Thermal Destruction
Facilities**

Proposed Amendment: N.J.A.C. 7:26-4.3

Take notice that the Department of Environmental Protection and Energy (the "Department") is extending until August 11, 1992 the comment period for the proposed rule amendments published at 24 N.J.R. 1999(a) on June 1, 1992 (DEPE Docket Number: 016-92-04). The comment period originally closed on July 1, 1992.

Submit written comments until August 11, 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

HIGHER EDUCATION

(b)

**NEW JERSEY HIGHER EDUCATION ASSISTANCE
AUTHORITY (NJHEAA)**

**Policy Governing New Jersey College Loans to
Assist State Students (NJCLASS) Program**

Proposed Amendment: N.J.A.C. 9:9-7.6

Authorized By: New Jersey Higher Education Assistance

Authority, Philip Koebig, Chairman

Authority: N.J.S.A. 18A:72-10

Proposal Number: PRN 1992-326

Submit comments by September 2, 1992 to:

Brett Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Higher Education Assistance Authority (NJHEAA) is statutorily responsible for the creation and administration of student loan programs in New Jersey. Last year the NJHEAA adopted rules governing a new State loan program, New Jersey College Loans to Assist State Students (NJCLASS) (see 23 N.J.R. 1257(a) and 2338(b)). The NJCLASS program is intended to assist New Jersey students who cannot obtain Federally guaranteed loans because they either are not available or the students do not meet program eligibility requirements as defined by the Federal government or the students have additional financial need unmet by the Federally subsidized student loans. The NJCLASS program is funded through the issuance and sale of tax-exempt Authority bonds. In September 1991 the NJHEAA issued \$25 million in bonds to support the program and additional bond issues will be scheduled, as required by public demand for NJCLASS loans, to assure continued capitalization of the program.

The proposed amendment deletes the existing language at N.J.A.C. 9:9-7.6 which requires the Authority to set the NJCLASS interest rate annually in June and replaces it with language which permits the NJCLASS interest rate to be established after each bond issue in support of the program. This change is necessary because the program interest rate is a function of bond market conditions at the time of each issue, associated costs of sale, and other costs or reserves which may be

required for the issue and, consequently, the program interest rate for borrowers will change with each new bond issue.

Social Impact

The proposed amendment assures that the NJCLASS program will be available to assist New Jersey families in the financing of their higher education costs at whatever time of the year they require assistance.

Economic Impact

The economic impact of the proposed amendment will be the adjustments made to the NJCLASS loan interest rate at the conclusion of each bond issue in support of the program. Increases or decreases in the interest rate will be determined by various factors which include, but are not limited to, bond market conditions at the time of issuance, associated costs of sale, and other costs or reserves which may be required in order to effectuate the bond issue. Consequently, the loan program interest rate cannot be ascertained until the time of each bond issue.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:13B-16 et seq. The proposed amendment establishes that the NJCLASS loan interest rate is determined by all of the costs associated with the issuance, sale and repayment of Authority bonds marketed to capitalize the program.

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

9:9-7.6 Interest

(a) The NJCLASS loan shall have a daily fixed simple annual interest rate. [This rate shall be set by the Authority by August of the first year of the program and in June of each year thereafter and notice provided in the New Jersey Register]. **The NJCLASS interest rate will be a pass through rate of the bond interest rate, associated costs of sale, and such other costs or reserves which may be required, determined as the bonds are issued. The interest rate will be published in the New Jersey Register after each bond issue.**

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

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(c)

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH
SERVICES**

Home Care Services Manual

**Personal Care Assistant Services; Eligibility for
HCEP**

**Proposed Amendment: N.J.A.C. 10:60-2.3, 3.15 and
4.2**

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

Authority: N.J.S.A. 30:4D-6b(2)(12)(17); N.J.S.A. 30:4E-8, 10; 42 CFR 440.170(f).

Agency Control Number: 91-P-29.

Proposal Number: PRN 1992-325.

Submit comments by September 2, 1992 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, N.J. 08625

The agency proposal follows:

Summary

This proposal contains amendments to the Home Care Services Manual. The primary purpose of the proposed amendments is to allow up to 40 hours a week for personal care assistant (PCA) services. The

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current rule at N.J.A.C. 10:60-2.3(e)2 limits PCA services to 25 hours per week. Under the proposed amendments, if the recipient medically requires up to an additional 15 hours of PCA services, the additional coverage will be allowed under certain criteria specified in the rule text. It should be noted that PCA services are part of the Medicaid (Title XIX) Program. The applicable Federal regulations for PCA services are cited above.

Pursuant to N.J.A.C. 10:60-2.3, the criteria for requesting the additional 15 hours per week primarily addresses the recipient's condition and/or living situation. For example, a recipient whose condition suddenly deteriorates, or who is severely functionally limited, or lives alone and has no caregiver, may receive up to a total of 40 hours of care per week when there is medical necessity.

There is one criteria which allows for additional hours if the caregiver is ill, frail, temporarily absent from the home due to family illness, or employed.

There is also a clarification with regard to establishing eligibility for the Home Care Expansion Program (HCEP), which is a completely State funded program. This proposal amends N.J.A.C. 10:60-4.2 to indicate that "gross" income is being used in determining eligibility. This proposed amendment will clarify situations where a recipient might allege that a net figure should be applied. There is no change in the legislated annual income levels, which are \$18,000 for single persons and \$21,000 for married couples.

Social Impact

The proposed amendments impact upon those Medicaid recipients who receive PCA services. The majority of recipients receive up to 25 hours of service. However, there are some recipients who may require up to 40 hours a week. This additional 15 hours of coverage will be allowed under certain criteria. These additional hours will enable some recipients to avoid institutionalization and remain at home.

The proposed amendments impact upon home care agencies that provide PCA services. The service agency must notify the MDO when it provides additional hours of service that exceed the minimum 25 hours. The provider can notify the MDO either by telephone or in writing. There is no special form used for notification.

The proposed amendment to N.J.A.C. 10:60-4.2 also impacts on persons applying for the State-funded HCEP program. The applicants must meet the eligibility requirements as required by New Jersey law cited above. The insertion of the word "gross" clarifies the existing Division policy of determining eligibility on gross, not net income.

Economic Impact

There is no economic impact upon Medicaid recipients, since they are not required to contribute to the cost of PCA services. With respect to the inclusion of the word "gross" regarding income eligibility for HCEP, this represents a clarification of existing eligibility requirements.

With respect to providers of PCA services, there is no change in reimbursement. However, providers who provide up to 40 hours of service will be reimbursed if they provide only medically necessary services within certain criteria and follow the correct billing procedures. A provider who fails to notify the MDO may be denied payment of those additional hours which exceed 25, up to the maximum of 15 additional hours per week.

The maximum economic impact for the revised PCA service limit is estimated to be \$260,000 or less, because the projected number of recipients is about five percent of the clients receiving PCA services. However, the expenditures for the additional services may allow the recipient to receive less costly home care services and remain in the community and avoid the higher cost of institutionalization.

With respect to HCEP, there is no economic impact because there is no change in eligibility criteria. The number of eligibles is not expected to change with these proposed amendments.

Regulatory Flexibility Analysis

There are two components to this proposal, only one of which requires a regulatory flexibility analysis. The increase in the number of hours for PCA services will affect all home care agencies which provide PCA services, some of which are small businesses as defined in N.J.S.A. 52:14B-16 et seq.

Each agency may provide services which are medically necessary and meet specific criteria delineated by the Division. The Division believes the extension, when appropriate, is necessary to insure the health, safety and welfare of Medicaid recipients who are receiving PCA services. The change to a maximum of 40 hours is the only new program element for providers in this proposal.

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Home care providers continue to be subject to the statutory requirement that they maintain sufficient records to indicate the name of the patient being treated, dates of service, nature of service and any other information as the Division may require (reference is made to N.J.S.A. 30:4D-12).

There are no capital costs associated with HCEP proposal. With respect to the proposed amendment to N.J.A.C. 10:60-4.2, the addition of the word "gross" does not impact upon the business community. Financial eligibility for HCEP is determined by the Bureau of Pharmaceutical Assistance to the Aged and Disabled within the Division of Medical Assistance and Health Services. Therefore, the government determines whether an individual recipient qualifies for HCEP. Neither the government nor recipient(s) is considered a small business as defined under the Act.

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

10:60-2.3 Additional requirements for provision of covered services (a)-(d) (No change.)

(e) Service limitations are as follows:

1. (No change.)

2. Personal care assistant services are limited to a maximum of 25 hours per week. **However, if there is a medical need for additional hours of service, this limit may be exceeded by the provider up to an additional 15 hours per week, under certain criteria as follows:**

i. If the caregiver is employed, ill, frail, or temporarily absent from the home for sickness or family emergency and therefore unable to participate adequately in providing medically necessary care to ensure the safety and well-being of the recipient;

ii. If the recipient lives alone or has no caregiver, and is in need of medically necessary care to ensure his or her safety and well-being;

iii. If the recipient is severely functionally limited and requires care to meet activities in daily living (ADL) needs, both in the morning and afternoon/evening; or

iv. If the recipient's physical status/medical condition suddenly deteriorates, resulting in an increased need for personal care on a short-term basis until the stabilization of the health status.

3. Additional hours must be medically indicated as specified in N.J.A.C. 10:60-2.2 and must not be a companion service.

4. The agency providing these increased services must notify the Medicaid District Office (MDO) either in writing or by telephone, about the recipients receiving more than 25 hours of PCA services. Failure to notify the MDO may result in non-payment of the hours in excess of the 25 hours. Services provided to these recipients will be included by the MDO in the post-payment quality assurance reviews.

10:60-3.15 ACCAP services

(a) All Medicaid services, except for nursery facility services, are available under ACCAP in accord with an individualized plan of care. Additionally, the following services are available to the eligible recipient:

1.-3. (No change.)

4. Personal care assistant service: These are health-related tasks performed in the recipient's home by a certified individual who is under supervision of a registered professional nurse. These services shall be prescribed by a physician and shall be provided in accord with a written plan of care. Personal care assistant service under ACCAP may exceed the regular program limitation [of 25 hours per recipient, per week]. Only Medicaid-approved personal care assistant providers shall provide personal care assistant service under ACCAP.

(5)-(6) (No change.)

10:60-4.2 Eligibility requirements for HCEP

(a) Financial eligibility shall be determined by the Division's Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) initially and on an annual basis using existing PAAD processes and policies where applicable.

(b) To qualify for services, an applicant shall meet the following criteria:

1. Be a resident of New Jersey for at least 30 days;

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- 2. Have [an] a gross annual income of less than \$18,000 if single, or if married, less than \$21,000 in combination with that of a spouse.
- 3.-6. (No change.)
- (c)-(g) (No change.)

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Prevailing Wages for Public Works

Proposed Amendments: N.J.A.C. 12:60-3.2 and 4.2

Authorized By: Raymond L. Bramucci, Commissioner,
Department of Labor.

Authority: N.J.S.A. 34:11-56.25 et seq., specifically 34:11-56.43

Proposal Number: PRN 1992-342.

Submit written comments by September 2, 1992 to:

Linda Flores
Special Assistant for External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

On September 12, 1991, the Department of Labor (the Department) received a joint petition from the American Telephone & Telegraph Company (AT&T) and the New Jersey Bell Telephone Company (NJ Bell) for rulemaking concerning the New Jersey Prevailing Wage Act (hereinafter also cited as the "Act"). Specifically, petitioners requested that the Department amend N.J.A.C. 12:60-3.2 to include "telephone workers" within those crafts, trades or classes of workers who shall be paid prevailing wages on public works contracts governed by the State's Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. In accordance with the applicable rules, a notice of receipt of petition for rulemaking was filed with the Office of Administrative Law (OAL) for publication in the New Jersey Register. Public notice of the petition appeared in the October 21, 1991 issue of the New Jersey Register at 23 N.J.R. 3181(b). After thorough review of the petition and in accordance with N.J.A.C. 1:30-3.6, the Commissioner delegated this matter to staff for further study and consideration of the petitioners' request.

After a full review and consideration of the petition, it has been determined that the best interests of the public and the State, as well as the effective and efficient enforcement of the Prevailing Wage Act, will be furthered by amending the rules found at N.J.A.C. 12:60 to include the craft or trade of telecommunications workers as one of those crafts, trades or classes of workers which shall be paid prevailing wages on public works construction contracts governed by the New Jersey Prevailing Wage Act. The reasons for this decision follow.

The present Prevailing Wage Act was enacted in 1963 to protect the efficiency and well-being of persons engaged in public works and to protect employers and employees from the effects of unfair competition resulting from wage levels detrimental to efficiency and well-being. N.J.S.A. 34:11-56.25. However, it was not until 1988, some 25 years later, that the Department formally adopted regulations setting forth the crafts, trades and classifications presently in effect in each county in the State and establishing the general criteria for making craft, trade or classification decisions in the future. Adopted New Rules Pertaining to Prevailing Wages for Public Works, 20 N.J.R. 664(a) (March 21, 1988).

These regulations were triggered by the controversy which began, for Prevailing Wage Act purposes, in 1985 when this Department determined that the installation of premises wiring in public works was subject to the Act and that the appropriate craft under the Act for such installation was that of electrician. Based on that position, Petitioner AT&T, the low-bidder on a telecommunications wiring contract for a new State building, was not awarded the contract because it intended to pay its telecommunications technicians the wage rate in its collective bargaining agreement and not the rate for electricians.

In light of this controversy, the matter was thereafter referred to the Office of Administrative Law for an uncontested investigatory hearing. The purpose of the hearing was to determine the particular criteria to

be used by the Department in ascertaining whether a "craft or trade" existed within the meaning of N.J.S.A. 34:11-56.26(9) for purposes of making a prevailing wage determination as to telecommunications technicians and to apply these criteria to the question of whether the work to be performed by telecommunications technicians properly fell within the craft of electrician with reference to the proposed projects. After a full hearing, the Administrative Law Judge (ALJ) issued a report in August, 1986 in which it was concluded that the work of telecommunications technicians involves training, skills and functions substantially different from the training, skills and functions of construction electricians; that this difference has its roots in work history and industry practice; and that it has been formalized by collective bargaining organization and by governmental regulation and recognition. As a result, the work of telecommunications technicians was found to constitute a separate trade or craft for purposes of the New Jersey Prevailing Wage Act. The ALJ also found that the work of installation, testing and documentation of telecommunications wiring on the projects in question is within the craft of telecommunications technicians. *I/M/O The Determination of Craft Classifications of Telecommunications Workers Under the Prevailing Wage Act—Report and Recommendations*, OAL Dkt. No. LID 2916-86 (August 22, 1986, hereinafter also referred to as "The Report").

The Department agreed in substantial part with the ALJ's recommendations. The Department proposed and adopted the criteria recommended by the ALJ; however, it included within the criteria the restriction that only craft union collective bargaining agreements be used to establish a craft, trade or class of workers for Prevailing Wage Act purposes. Moreover, the Department determined that since only an incidental part of the work performed by telecommunications technicians was appropriately classified as construction, such work fell within the scope of the craft of electricians. Accordingly, the craft of telecommunications technician was not recognized for Prevailing Wage Act purposes.

The proposal put forth in 1987 supporting the promulgation of the Prevailing Wage Act regulations further indicated that the Commissioner had consistently interpreted the Act to apply only to collective bargaining agreements negotiated by construction craft unions and not industrial unions. As defined by the Department, craft unions represent individual craftsmen who obtain work with independent contractors for particular construction projects through the use of union hiring halls. In this view, craft contracts are limited to those multi-employer agreements under which various contractors secure the craftsmen they may require at any particular time to perform the construction work which they have agreed to perform. Proposed New Rules Pertaining to Prevailing Wages for Public Works, 19 N.J.R. 345(b) (February 17, 1987, hereinafter cited as "Proposed New Rules").

Industrial unions, on the other hand, represent employees of a particular employer, generally regardless of craft. The Department considered this distinction significant because it interpreted the Act to require the Commissioner to protect the crafts from unfair competition; the Department reasoned that employees generally need not depend upon the employer being used for a particular project in order to maintain their jobs. Therefore, since the craft of telecommunications technician was not contained in the craft collective bargaining agreements, telecommunications technician work was not recognized as a separate craft or trade of workers under the Act. In promulgating these regulations, the Department attempted only to confirm by formal rules that which had traditionally been done in daily practice by the Department in its administration of the Prevailing Wage Act. *Id.*

A review of the record, however, reveals that prior to 1985, the State in fact did not recognize telecommunications wiring as public work under the Act, the Department having never issued a wage determination for the work in issue before then. Up until 1985, the State policy paralleled the Federal approach that the prevailing wage law does not apply to the installation of internal communications wiring. Under this view, the work in issue is not subject to the Act because it is not construction but a service, and as such is excluded from the coverage of the Act. *American Telephone and Telegraph Company v. New Jersey Department of Labor, Brief of Respondent*, Dkt. No. 3731-87T1 (App. Div. 1988, hereinafter cited as "DOL Brief"). Indeed, the contracts for the installation of telecommunications systems were and are often still bid separately from the construction of the buildings themselves. But in 1985, based on its understanding of the AT&T divestiture, the Department for the first time took the position that the installation of telecommunications wiring in public works projects now constituted construction, not a service activity, and was thus subject to the Act. It is this change in policy which serves as the initial point of focus in this review.

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Based upon its interpretation of the Act, the Department administers the Act by checking the contracts of the construction crafts for any claim to work covered by the Act, counting the number of employees working under contracts covering any competing groups, and accepting the wage rate paid the majority of workers of a particular craft as the prevailing wage. DOL Brief, *supra*. In practice, therefore, prevailing wages have been established on the basis of occupations specified in construction union contracts, and not upon a principled analysis of skills, training or work functions. Under this approach, the craft of telecommunications technician is, by definition, automatically excluded from recognition under the Act because the communications industry is not part of the traditional construction industry where multi-employer hiring hall arrangements typical of the construction craft system have been utilized.

It may well be that the practices and procedures employed by the Department in administering the Act are uniquely tailored to the hiring hall environment and that it would be more complex to determine prevailing wage levels where separate and unique employer contracts dominate. However, these difficulties arise from the fact that the prevailing wage requirement is being extended to work traditionally performed in an environment other than that in which the construction crafts have historically operated. It is inherently contradictory to expand the prevailing wage requirements to work predominantly performed in a single employer environment, and then to deem single employer contracts irrelevant because of the difficulty of administering the Act in other than a multi-employer context. That the communications industry has not evolved or operated in an environment which is typical of the construction industry is not a justification for concluding that the work of telecommunications workers does not involve a distinct craft. It is the nature of the industry, not the uniqueness of the craft involved, which has dictated the employment arrangements in the communications industry.

Nor does it appear that recognition of a craft or trade is legally limited to those appearing in craft collective bargaining agreements. While there is insufficient official legislative history to serve as a clear expression of the legislative intent, the case law indicates that the reference in the Prevailing Wage Act to unfair competition refers not to competition between two competing unions but rather to the unfair competition between one employer who pays his workers wages which do not result from negotiation against another who does. *Cipparulo v. Friedland Painting Company, Inc.*, 139 N.J. Super. 142 (App. Div. 1976). A contrary interpretation would amount to a determination that collectively bargained for wages may nevertheless constitute substandard wages. This assumption defies labor organizing history and experience, and dismisses the significant accomplishments achieved by the labor movement.

In considering this matter, it is important to recognize that the fundamental purpose of the Act is to assure that workers on government projects are paid a reasonable wage based on rates negotiated between employers and represented craftsmen who have organized to assure reasonable terms and conditions of employment. The establishment of prevailing wage rates, then, requires a factual determination of the wages paid to the majority of adequately represented local craftsmen who perform work comparable to that required for a given public works project.

Decisions which assign wage rates to work functions which are materially different from the rates at which a preponderance of the work is actually performed in the private sector would be largely inconsistent with the principles underlying the Act. On the other hand, where fairly negotiated wages paid to represented workers dominate the market, it is a distortion of the statutory objectives and purposes to establish a different wage for purposes of the Act.

The Department's interpretation of the Act as requiring reference only to craft collective bargaining agreements appears to have confused two necessary determinations for the proper enforcement of the Act. The counting of heads is obviously mandated by the Act as the process for determining the prevailing wage within a designated and defined craft; however, it is not mandated as the process for defining the existence and scope of a craft or trade.

Nor is it dispositive that the craft collective bargaining agreement for construction electricians includes within its scope of jurisdiction the performance of communications work. There is no statutory basis for drawing jurisdictional lines on the basis of the largest union claiming jurisdiction over the work to be performed. The scope of a craft and the number of workers should be determined by objective realities, not claims to work which a union may set forth in the context of its private negotiation with an employer. The statement of work in any union

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contract is simply that which two parties agree to include and is not necessarily synonymous with work actually performed or work performed efficiently and effectively.

The experience of the Department since 1985 when it expanded the scope of the act reflects the discrepancy. The Department's records indicate that during this time period the telecommunications systems in public works projects were invariably installed by communications companies from across the country. The record does not disclose that these companies employed electricians to do this work nor that the companies subcontracted this work out to independent construction electricians obtained through the union hiring hall. The fact is that in the State of New Jersey premises wiring is work which has historically been performed by telecommunications workers. The Report, *supra*, at 19.

The definition of a craft and the determination of the prevailing wage involve different issues which must be independently determined; they are not inextricably intertwined. Whether a particular trade exists is a question of whether or not there exists a body of work requiring distinct skills, training and experience. That such a trade exists in the case of telecommunications technicians has already been recognized. *Id.* A craft or trade exists whether some, all or none of the work involves "construction" subject to prevailing wage requirements. The bundle of functions performed by a craft should not be artificially truncated for the purpose of fitting the administrative apparatus established for the enforcement of the Prevailing Wage Act before it was extended beyond its traditional reach.

The issue is not whether wire installation involves a separate craft, but rather whether premises wiring is within the scope of the craft of electricians or that of the telecommunications workers. Premises wiring is a small part of the work performed by both electricians and telecommunications workers. Consequently, it is as correct to state that this work falls within the scope of work of telecommunications technicians as it is to state the reverse. Unless it is determined that the skills and work of communications technicians as a whole do not involve a craft distinct from that of electricians, it follows that claims to this particular work are simply a jurisdictional dispute between two separately-represented crafts. Whether or not any of the work involves construction of a public work subject to prevailing wage requirements or whether assignment of some part of the work is claimed by construction electricians is immaterial to the definition of a craft or trade.

The installation of premises communication wiring has been the subject of dispute between the electricians and communication workers on many occasions over a substantial period of time. These disputes, however, when resolved through administrative or judicial action, have resulted in assignment of the premises wiring work to communications workers. *Local 3, IBEW and General Dynamics Communications Co.*, 264 NLRB 364 (1982); *Local 3, IBEW and CWA*, 193 NLRB 765 (1971); *Local 3, IBEW and New York Tel. and CWA*, 197 NLRB 866 (1972); *IBEW, Local 98 and Inter-Communication Service, Inc. and CWA*, 207 NLRB 689 (1973); *Local 11, IBEW and ITT Communications Equip. and Systems Div., and CWA*, 217 NLRB 397 (1975).

It has been the Department's intent to refrain from making judgments as to whether a particular craft exists or should exist. Proposed New Rules, *supra*. However, in holding steadfastly to its traditional mode of administration, even in the face of extending the Act to areas not traditionally included within its reach, the Department has inadvertently placed itself in the midst of this longstanding jurisdictional dispute between the electricians and telecommunications workers. As the Administrative Law Judge found, the jurisdictional issues involved here were a major concern affecting the decision of telephone workers to affiliate with the IBEW and affiliation was only achieved after a commitment by the IBEW to assign then-existing communications work to them. The Report, *supra*, at 17-19. In light of the distinction between communications work and electrical work recognized by the unions involved, and their agreement to the assignment of substantially all then existing communications work to separately represented communications technicians, it is both rational and consistent with the stated practice of the Department to recognize this distinction in establishing any prevailing wage requirements ultimately found applicable to the work at issue. This recognition is also consistent with the NLRB's actions in this area.

It is apparent, therefore, that neither the Act nor court decisions require that only crafts which appear in craft collective bargaining agreements be recognized under the Act. Accordingly, since the prevailing wage requirements are being extended to areas previously considered outside the traditional parameters of the construction industry, the criterion requiring that recognition of crafts be reflected within craft

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collective bargaining agreements is modified. Where, as here, the prevailing wage requirements are being extended beyond the traditional scope of the construction industry, it is not necessary that the craft or trade involved be recognized in the type of collective bargaining agreement prevalent in the construction industry. To promote efficiency as required under the Act as well as internal consistency in its administration, any craft or trade recognized under the Act need only be identified or referenced by the type of collective bargaining agreement that is characteristic of the industry in question.

In applying the Department's own criteria, as modified herein, telecommunications work meets the requirement for establishment as a craft, trade or class of workers under the Prevailing Wage Act. As has already been determined, the work of telecommunications technicians involves training, skills and functions substantially different from the training, skills and functions of construction electricians. This substantial difference has its roots in work history and industry practice and it has been formalized by collective bargaining organization and by governmental regulation and recognition. *Id.* at 23-24. Moreover, failure to recognize telecommunications work as a separate craft would contradict the other criteria identified for the establishment of a craft or trade under the Act. Thus, the work of telecommunications technicians constitutes a separate trade or craft for purposes of the New Jersey Prevailing Wage Act.

The decision to recognize the craft or trade of telecommunications technicians under the Prevailing Wage Act furthers and is compelled by recent expressions of State policy. Early this year, the Legislature of the State of New Jersey enacted legislation permitting the Board of Regulatory Commissioners to approve alternative forms of regulation in order, among other things, "... to address changes in technology and the structure of the telecommunications industry..." P.L. 1991, c.428. As a consequence of this legislative action, New Jersey Bell publicly announced its intention to rewire some 56 million miles of wiring with fiber optic cabling by the year 2010. The Star Ledger, Friday, January 17 and Saturday, January 18, 1992.

A premises communications system is a complex and constantly changing system which requires frequent work to effect changes necessitated by developing communications requirements as well as substantial preventative maintenance and repair. Premises cabling is an integral and often inseparable but comparatively small part of the communications technicians work; the installation of premises wiring constitutes approximately twenty percent of the total work hours of the technician's work. Proposed New Rule, *supra*, at 346. However, the communications system is no longer an electro-mechanical system relying only on the transmission of electrical impulses over copper conductors to transmit information. It is now primarily an electronic system employing computer technology in its operation and designed to handle traditional voice, data and video communications and transmission interchangeably. The transmission medium itself is no longer exclusively wire or coaxial cable but relies to an increasing extent upon fiber optic and microwave technology to meet the new demands for transmission of data which are not imposed upon the system.

When it adopted the prevailing wage regulations, the Department concluded that wiring is wiring. Yet, premises systems must operate as a unit; problems in any component are often not readily diagnostically isolated to the malfunctioning component. Installation and maintenance of the system therefore require experience with, and the ability to work upon, all segments of the system, including the interconnecting cabling. Specialized training fundamentally different from that historically provided to construction electricians is required to work on communications systems. The Report, *supra*, at 16-22. This need is underscored as the industry moves into a period of advanced technology in the telecommunications field.

Economy and efficiency are important goals of the Act and the value and often the necessity of performing all functions involved in the installation and maintenance of premises communications systems as part of a single work activity are obvious. The appropriateness of considering efficiency in defining crafts is clearly recognized by the NLRB as a factor in determining jurisdictional disputes and such considerations are also reflected in New Jersey's Prevailing Wage Act. N.J.S.A. 34:11-56.25.

It is assumed that the State wants telecommunications systems installed in accordance with industry standards. The State's policy in favor of facilitating the technological development of the telecommunications industry as reflected in this recent legislation requires that the craft that will actually be performing the work in question be recognized under the State's Prevailing Wage Law.

Moreover, it must also be here observed that the New Jersey Board of Examiners of Electrical Contractors recently proposed a limited exemption of telecommunications wiring work from its licensing requirements based principally on the difference in the type of work performed by telecommunications workers versus the traditional work performed by electricians. Proposed Telecommunications Wiring Exemption, 24 N.J.R. 339(a) (February 3, 1992). The proposal expressly recognizes the independent and different type of craft involved in the telecommunications industry. Indeed, the 1986 Report identified these very same differences. The Report, *supra*, at 19-20. The fact is that the telecommunications circuit is a generic and completely distinct circuit with its own integrity, separate and apart from the general electric wiring of an office building.

In this respect it is also significant that the comments submitted by the Department of Community Affairs (DCA) pertaining to the Board's proposed regulatory exemption clearly support recognition of the craft of telecommunications worker. The Department of Community Affairs advised that the State Uniform Construction Code does not require permits for the performance of telecommunications wiring. Moreover, DCA expressed its view that the Board of Electrical Examiners lacked jurisdiction over the work of telecommunications workers. This comment is made all the more persuasive in light of the DCA's oversight responsibility for the State's Uniform Construction Code. Comments of the Department of Community Affairs to the Proposed Telecommunications Wiring Exemption, February 18, 1992.

Before 1985, telecommunications technicians were the principal craft to install premises wiring. The Report, *supra*. Based upon the Department's experience over the last several years, the telecommunications system providers have generally been the suppliers of this service. These same providers set national and international telecommunication standards which is testimony to the training, skill and knowledge and overall ability to meet the standards set forth by the statute. For the above reasons, it is clear that to further the State's policy in support of the development of the telecommunications industry and to further the application of a unified and consistent State policy among the State's agencies, the craft of telecommunication worker must be recognized in the administration and enforcement of the Prevailing Wage Act. Accordingly, the prevailing wage rules are amended to reflect the recognition of the craft of telecommunications worker, with appropriate sub-categories and the rules are modified to permit the utilization of industrial collective bargaining agreements to set the prevailing wage for those crafts that do not fall within the traditional scope of the construction industry. This modification provides internal consistency with the extension of the Act to areas not traditionally encompassed within the construction industry.

Social Impact

Implementation of the proposed amendments will provide clarity regarding the Department's interpretation of the Prevailing Wage Act in light of its application beyond the traditional construction crafts. The administration of the Prevailing Wage Act, which is familiar to those involved in public contracting work, is modified only slightly to require reference to the collective bargaining agreements characteristic of the craft and industry involved in the public works project. In doing so, the Department will further current State policy vis a vis the development of the telecommunications industry and maintain consistency with other Departments involved in the regulation of the industry. In all other respects, the administration of the Act remains the same.

Economic Impact

The proposed amendments establish a new craft in the administration of the Prevailing Wage Act and identify the type of collective bargaining agreements to be utilized in setting the prevailing wage to be used for public works contracts. The only effect the establishment of a new craft will have on existing crafts relates to the wage rates established as the prevailing wage for public works contracts by reference to applicable collective bargaining agreements. The wage rates including benefits fluctuate based upon the various economic factors in the industries involved; however, the Prevailing Wage Act is administered so as to neutralize labor costs in the awarding of public works contracts.

Regulatory Flexibility Statement

The proposed amendments will impose no additional reporting, recordkeeping or other compliance requirements beyond those currently required under the Prevailing Wage Act. Accordingly, a regulatory flexibility analysis is not required. The proposed amendments do not affect small businesses as defined by the Regulatory Flexibility Act, N.J.S.A.

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52:14B-16 et seq. The proposed amendments primarily affect the governmental units responsible for enforcement of the rules.

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

12:60-3.2 List of crafts, trades or classes of workmen

(a) Listed below are those crafts, trades or classes of workmen established by the Commissioner in all counties, except as otherwise noted, which shall be paid prevailing wages on public works construction contracts governed by the New Jersey Prevailing Wage Act.

- 1.-24. (No change.)
- 25. Roofer: journeyman, foreman, helper, or apprentice.
- 26.-28. (No change.)

29. Telecommunications worker: technician, journeyman, or apprentice.

Recodify existing 29.-37. as **30.-38.** (No change in text.)

12:60-4.2 Criteria for establishment

(a) The criteria used to establish a craft, trade or class of workmen shall include:

- 1. Work history and industry practice;
 - 2. Training and skills;
 - 3. Nature of the specific work in issue;
 - 4. Craft or, if appropriate, industrial collective bargaining agreements and craft recognition; and
 - 5. Governmental regulation and recognition.
- (b) (No change.)

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(a)

NEW JERSEY TURNPIKE AUTHORITY

Definitions

Proposed Amendment: N.J.A.C. 19:9-1.1

Authorized By: New Jersey Turnpike Authority, Herbert I. Olarsch, Director of Law.
Authority: N.J.S.A. 27:23-1 et seq., specifically N.J.S.A. 27:23-29, and 52:24B-4(f).
Proposal Number: PRN 1992-327.

Submit comments by September 2, 1992 to:
Donald L. Watson, Executive Director
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, New Jersey 08903

The agency proposal follows:

Summary

The proposed amendment modifies the definition of "New Jersey Turnpike" to include the portion of Interstate 95 between U.S. Rte. 46 at approximately milepost 117.9 and the entrance to the George Washington Bridge. This modification is in accordance with New Jersey Senate Bill No. 3549, P.L. 1991, c.183. Technical changes are also made to provide correct initial upper case letters to certain terms in the definition.

Social Impact

The proposed amendment will have no social impact beyond expanding the definition of the "New Jersey Turnpike" so that the New Jersey Turnpike Authority may address safety concerns and traffic control issues related to the acquisition of the aforementioned portion of Interstate 95. The New Jersey Turnpike Authority has determined that its patrons will benefit by the inclusion of this portion Interstate 95 in its definition of "New Jersey Turnpike" as safety, traffic control and maintenance will be consistent with that of the balance of the New Jersey Turnpike.

Economic Impact

The proposed amendment will reflect the New Jersey Legislature's intent to transfer financial responsibility for maintenance and security of the newly acquired portion of Interstate 95 from the New Jersey Department of Transportation to the New Jersey Turnpike Authority. While new interchanges will be constructed in the future, no new toll facilities will be constructed for this portion of the Turnpike. Addition-

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ally, the acquisition of this portion of roadway may make the New Jersey Turnpike Authority eligible for Federal highway funds.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment revises the definition of "New Jersey Turnpike" to account for the addition of a portion of Interstate 95 to the Turnpike pursuant to P.L. 1991, c.183.

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

19:9-1.1 Definitions

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

... "New Jersey Turnpike" means any express highway, superhighway or motorway at such locations and between such termini as may hereafter be established by law, and [constructed] **owned and/or operated** under the provisions of N.J.S.A. 27:23-1 et seq. by the [authority] **Authority**, and shall include, but not be limited to, all bridges, tunnels, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service stations, service facilities, communication facilities, and administration, storage and other buildings which the [authority] **Authority** may deem necessary for the operation of such project, together with all property, rights, easements and interests which may be acquired by the [authority] **Authority** for the construction or the operation of such project and all other property within the [turnpike] **Turnpike** right-of-way.

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Definitions; Accounting Records; Complimentary Services or Items; Procedures for Complimentary Cash and Noncash Gifts; Alternative Reporting Procedures; Accessible Complimentaries Database; Procedure for Control of Coupon Redemption and Other Complimentary Service Distribution Programs

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.2, 1.9 and 1.46

Proposed New Rules: N.J.A.C. 19:45-1.9B and 1.9C

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j), 70(l), 99, and 102.
Proposal Number: PRN 1992-332.

Submit comments by September 2, 1992 to:

Robert H. Barney
Assistant Counsel
Casino Control Commission
Tennessee at the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

N.J.S.A. 5:12-102(m) provides that casino licensees may offer and provide complimentary cash and noncash gifts in addition to previously authorized complimentaries of room, food, beverage, or entertainment expenses; documented transportation expenses; and coins, tokens, cash or other complimentary items provided through a bus coupon program, or other complimentary distribution programs involving members of the general public. N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 require each licensee to submit procedures for complimentary cash and noncash gift programs to the Commission for approval, and N.J.S.A. 5:12-102m

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specifies that, among other things, a licensee must maintain additional documentation on the reasons for any complimentary cash and noncash gifts in excess of \$2,000 granted in any one patron trip or five-day period; and that the Commission must establish by regulation the annual limit on cash and noncash gifts which can be given to a patron.

The proposal would amend N.J.A.C. 19:45-1.1 by adding a reference to a new definition of "complimentary distribution program." The definition is required to provide clarification of the limited purposes of complimentary distribution programs. The definition itself is proposed as an amendment to N.J.A.C. 19:45-1.46. The language of the definition is taken from N.J.S.A. 5:12-102m, and serves to distinguish a complimentary distribution program from other types of complementaries.

The proposed amendment to N.J.A.C. 19:45-1.2 removes the description of minimum records to be maintained for complementaries and recodifies it to N.J.A.C. 19:45-1.9, which deals solely with complementaries.

The proposed amendment to N.J.A.C. 19:45-1.9 adds the complementaries recording requirement recodified from N.J.A.C. 19:45-1.2. The section is further amended to include a description of internal controls to be required pursuant to N.J.S.A. 5:12-99a(2) and N.J.A.C. 19:45-1.3 of each casino licensee for the new cash and noncash complimentary gifts program. The proposed amendment also provides language distinguishing complimentary distribution programs which are subject to the provisions of N.J.A.C. 19:45-1.46; and transportation expense reimbursement pursuant to N.J.A.C. 19:45-1.9A from the provisions relating to the newly permitted cash and noncash complementaries programs. The proposed amendments also include language reserving to each casino licensee the right to make internal decisions concerning the operation of cash complementaries program within the broad control parameters proposed. The section also contains amended language requiring specific records to be maintained concerning complementaries, and further provides for the reporting of this data to the Division of Gaming Enforcement in a manner consistent with previous complementaries reporting. Excepted from reporting are those complementaries with a retail value of \$50.00 or less, and those which are part of a complementaries distribution program approved for operation pursuant to N.J.A.C. 19:45-1.46.

A new rule is proposed at N.J.A.C. 19:45-1.9B to encompass certain minimum procedures required for complimentary cash and noncash gifts. The procedures continue prior complementaries practices, derive directly from N.J.S.A. 5:12-102m, and represent minimum operational controls to assure that complementaries are distributed pursuant to the Act. The proposed new rule would also provide useful, non-limiting examples of special purposes complementaries which respond in part to patron relationship problems which casino licensees have previously sought means to resolve. It is also proposed to include in the new rule the fundamental portions of the cash and noncash complementaries records as required by N.J.S.A. 5:12-102m, and to which each licensee may add data as appropriate to its operations.

A new rule is proposed at N.J.A.C. 19:45-1.9C to provide an optional alternative method of reporting complementaries data to the Commission and Division. The proposed new rule would replace paper reporting found to be burdensome on the casino industry with direct computer links to each casino licensee's complementaries database. The Commission and Division would be able to transfer only that data necessary to particular studies and routine observation. The casino industry will benefit through reduced routine and special reporting.

Social Impact

The proposed amendments and new rules have no direct effect on persons or businesses external to the casino regulation process. The proposed amendments are in conformance with amended portions of the Act, and will maintain public confidence in casino regulation through maintenance of effective controls over the transfer of large, cumulative sums of money.

Economic Impact

The proposed amendments and new rules have no economic effect on persons or businesses external to the casino regulation process. The proposed amendments and new rules grant an extensive new marketing and public relations tool to casino licensees. It is anticipated that proper management of the controlled complementaries programs will result in increased business, and increases in taxable revenue. Reduction in paper reporting will create both manpower and material savings to the casino industry.

Regulatory Flexibility Statement

Casino licensees are not "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis pursuant to small business concerns is not required.

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

19:45-1.1 Definitions

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

...
"Complimentary distribution program" is defined in N.J.A.C. 19:45-1.46.
 ...

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

1.-2. (No change.)

3. Records supporting the accumulation of the costs and number of persons, by category of service, for regulated complimentary services. [Such records shall include, on a daily basis, the name of each person provided with complimentary services, the category of services provided, the retail value of the aggregate of each category of service provided to such person, and the person authorizing the receipt of such service. A copy of this record shall be submitted to the Division of Gaming Enforcement's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving complimentary tickets for theater or other entertainment events with a face value of less than \$25.00, parking, beverages served in bars and the casino or complimentary services or items, including cash or slot tokens, issued pursuant to a complimentary distribution program regulated by N.J.A.C. 19:45-1.46.]

4.-9. (No change.)

19:45-1.9 Complimentary services or items

(a) (No change.)

(b) No casino licensee may offer or provide any complimentary services, gifts, cash or other items of value to any person except as authorized by N.J.S.A. 5:12-102(m). **Each casino licensee shall, pursuant to the provisions of N.J.S.A. 5:12-99a(2) and N.J.A.C. 19:45-1.3, prepare and maintain internal controls for the authorization and issuance of complimentary services and items, including cash and noncash gifts issued pursuant to N.J.S.A. 5:12-102(m) and N.J.A.C. 19:45-1.9B. Such internal controls shall include, without limitation, the identification of all position titles authorized to approve the issuance of complimentary services and items and the conditions or limits, if any, which may apply to such authority, including limits based on relationships between the authorizer and recipient, and shall further include effective provisions for audit purposes. Notwithstanding the provisions of N.J.A.C. 19:45-1.3, a casino licensee shall submit the internal controls, or any changes thereto, required by this section to the Commission and Division at least 15 days prior to their implementation. Such internal controls shall be deemed approved by the Commission 15 days after submission unless the casino licensee is notified in writing to the contrary. Notwithstanding the foregoing:**

1. Internal controls for complimentary distribution programs shall be subject to the requirements of N.J.A.C. 19:45-1.46; and

2. Internal controls for transportation expense reimbursement programs shall be subject to the requirements of N.J.A.C. 19:45-1.9A.

3. Nothing herein shall be deemed to require a casino licensee to identify in its submission the reasons why a complimentary service or item may be granted or, except as otherwise provided in N.J.A.C. 19:45-1.9B, to obtain Commission approval of any limits or conditions which may be placed on the authority of its employees to approve or issue complimentary services or items.

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(c) (No change.)

(d) The licensee shall accumulate both the dollar amount of and number of persons provided with each category of complimentary services or items.

1. A quarterly report shall be filed with the Commission regarding the complimentary services or items provided.

2. The complimentary services or items shall, at a minimum, be separated into categories for rooms, food, beverage, travel, cash gift, noncash gift, and other services or items.

(e) Each casino licensee shall record, on a daily basis, the name of each person provided with complimentary services or items, the category of service or item provided, the value (as calculated in accordance with (c) above) of the services or items provided to such person, and the person authorizing the receipt of such services or items. A copy of this record shall be submitted to the Division's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving complimentary services or other items which:

1. Have a value (as calculated in accordance with (c) above) of \$50.00 or less; and

2. Are issued pursuant to a complimentary distribution program regulated by N.J.A.C. 19:45-1.46.

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m (1) through (3). Complimentary cash gifts shall include, without limitation:

1. Public relations payments made for the purpose of resolving complaints by or disputes with casino patrons;

2. Travel or walk money payments made for the purpose of enabling a patron to return home; and

3. Slot tokens issued to any person except those provided pursuant to a complimentary distribution program regulated by N.J.A.C. 19:45-1.46.

(b) All complimentary cash and noncash gifts provided by a casino licensee shall be recorded in accordance with the provisions of N.J.A.C. 19:45-1.9(e). If a complimentary cash or noncash gift has a value of \$500.00 or more, the casino licensee shall also:

1. Record the address of the recipient;

2. Verify the identity of the recipient by an examination of identification credentials which contain a photograph or physical description of the recipient or by a personal attestation by the authorizer of the gift; and

3. Record the method of verification.

(c) All complimentary cash gifts shall be disbursed directly to the patron by a general cashier at the cashiers' cage after receipt of appropriate documentation, or as otherwise specified in a casino licensee's approved internal controls.

(d) Notwithstanding the provisions of N.J.A.C. 19:45-1.9(b), no casino licensee shall permit any employee to authorize the issuance of a complimentary cash and noncash gift with a value of:

1. \$1,000 or more unless the employee is licensed and functioning as a casino key employee; or

2. \$10,000 or more unless the employee is licensed and functioning as a casino key employee and the authorization is co-signed by a second employee licensed and functioning as a casino key employee.

(e) If a casino licensee provides complimentary cash and noncash gifts worth \$2,000 or more to a person or his or her guests during any five day period, the casino licensee shall record the reason why such gifts were provided and maintain such records available for inspection by the Commission or Division upon request. Such reasons may include, without limitation, information concerning the person's player rating, which rating shall be based upon the actual amount and frequency of play by the person as recorded in the casino licensee's player rating system.

(f) Each casino licensee shall submit to the Division a report listing each person who has received \$2,000 or more in complimentary cash and noncash gifts during any five day period ending during the preceding month. Such report shall be filed by the fifth business day following the end of the month and shall include the total amount of complimentary cash or noncash gifts provided to each such person.

(g) Notwithstanding any other provision of this section, no casino licensee shall provide to any patron, during any 12-month period, complimentary cash gifts which exceed the licensee's theoretical win from that patron during that same 12-month period, as reasonably determined from the patron's player rating form. Each licensee shall include in its procedures developed in accordance with N.J.A.C. 19:45-1.9(b), the mathematical formula by which it calculates its theoretical win from the information contained in its player rating system.

19:45-1.9C Alternative reporting procedures; accessible complimentaries database

(a) A casino licensee which records all information concerning complimentary services or items which is required by N.J.A.C. 19:45-1.9 or 1.9B in a computer database which is accessible by the Division from remote locations and conforms to standards established and approved by the Commission pursuant to this section shall be exempt from filing all reports required pursuant to N.J.A.C. 19:45-1.9(e), 1.9B(e), and 1.9B(f).

(b) The structure and accessibility of the complimentaries database shall conform to the terms of a specific agreement between each casino licensee and the Commission and Division, which agreement shall be subject to review and approval by the Commission and shall include:

1. A complete description of the computer hardware, file formats and software products to be used;

2. The hours of the day and days of the week the database will be accessible;

3. Provision for read and copy privileges by the Division; and

4. Security procedures for database access and secondary data dissemination.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a) For the purposes of this chapter, a complimentary distribution program is a contest or promotion pursuant to which complimentary services or items are provided directly or indirectly by a casino licensee to the public without regard to the identity or gaming activity of the individual recipients. The procedures contained in (c) through (n) below shall apply to casino licensees offering coupon redemption complimentary distribution programs which entitle patrons to redeem coupons for complimentary cash or slot tokens including, but not limited to, complimentary cash or slot tokens issued in connection with bus programs. No complimentary cash or slot tokens may be distributed by a casino licensee under any coupon redemption complimentary distribution program that does not comply with the requirements of this section.

(b) Detailed procedures controlling all complimentary distribution programs entitling patrons to complimentary cash or slot tokens not regulated by (a) above shall be submitted by the casino licensee to the Commission and Division at least 15 days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all complimentary distribution programs entitling patrons to complimentary items or services other than cash or slot tokens shall be prepared prior to implementation of the programs and shall be maintained as an accounting record by the casino licensee. Complimentary items or services, including cash or slot tokens, distributed through programs regulated by this subsection shall be reported in accordance with the procedures contained in (l) and (n) below.

(c)-(m) (No change.)

(n) In addition to the monthly report required to be filed in (l) above, the casino licensee shall accumulate both the dollar amount of and the number of persons redeeming coupons pursuant to (a)

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above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above, and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. Complimentary items or services, including cash and slot tokens, distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-[1.2]1.9.

(a)

CASINO CONTROL COMMISSION

**Accounting and Internal Controls
Removal of Slot Drop Buckets and Slot Cash Storage
Boxes; Meter Readings**

Proposed Amendment: N.J.A.C. 19:45-1.42

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63, 69, 70(l), 99(a)10 and 11.

Proposal Number: PRN 1992-330.

Submit comments by September 2, 1992 to:
Catherine A. Walker
Senior Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Under the current provisions of N.J.A.C. 19:45-1.42, casino licensees must have at least two members of their accounting department participating in the slot drop bucket or slot cash storage box pickup procedures, N.J.A.C. 19:45-1.42(b). After reviewing the slot drop and slot cash storage box procedures and the impact of 24-hour gaming, the Commission is of the opinion that casino licensees should have the discretion to utilize one or more accounting department employees during the slot drop or slot cash storage box pickup process. The proposed amendment would reduce the number of accounting department members that must participate in the slot drop bucket or slot cash storage box collection process from at least two to at least one.

Social Impact

The proposed amendment is not expected to have any significant social impact since it merely reduces the minimum number of accounting department employees that must participate in the slot drop pickup or slot cash storage box collection process from two to one.

Economic Impact

It is possible that this change will reduce the number of accounting department members participating in the slot drop bucket or slot cash storage box pickup process and thus provide a cost savings to casino licensees. The proposed rule amendment is not expected to have any significant impact on the cost of the regulatory agencies.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since this proposal will only affect the operation of New Jersey casino licensees, none of which qualifies as a small business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; meter readings

(a) (No change.)

(b) Procedures and requirements for removing a slot drop bucket or slot cash storage box from its compartment shall be the following:

1. If the slot drop bucket or slot cash storage box meets the requirements of N.J.A.C. 19:45-1.36(b), (c), (d) and (e):

i. When the casino is not open to the public, the removal of a slot drop bucket or slot cash storage box shall be performed by at least [three] **two** employees, one of whom shall be a casino security department member and [two] **one** of whom shall be an accounting

department [members] **member**. Such removal shall be in the presence of a Commission inspector.

ii. When the casino is open to the public, the removal of a slot drop bucket or slot cash storage box shall be performed by at least [four] **three** employees, two of whom shall be casino security department members and [two] **one** of whom shall be an accounting department [members] **member**. Such removal shall be in the presence of a Commission inspector.

2. (No change.)

(c)-(f) (No change.)

(b)

CASINO CONTROL COMMISSION

Junkets; Applications; Casino Service Industries

Junket Representatives

Junket Enterprises

Fees

Agreements With Casino Licensees; Vendor

Registration

Applications For Casino Service Industry Licensure

Proposed Readoption With Amendments: N.J.A.C.

19:49

Proposed Amendments: N.J.A.C. 19:41-9.9A, 9.11A, 11.1, 11.2, 11.3, and 11.4; 19:43-1.1, 1.2, 1.3, 1.4, 1.5, 1.8, 1.12, 1.13 and 1.14; and 19:49-2.1, 2.2, 3.1, 3.2 and 3.5

Proposed Repeals: N.J.A.C. 19:41-1.2 and 3.2 and 19:49-2.3

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63, 69, 70, 92, 102 and 104.

Proposal Number: PRN 1992-331.

Submit comments by September 2, 1992 to:
David C. Missimer, Senior Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission proposes to re-adopt, with amendments, N.J.A.C. 19:49 concerning the regulation of junkets to licensed casinos. These rules were originally adopted on an emergency basis in January 1983 and were readopted in accordance with the normal public notice and comment rulemaking procedures in March 1983. The rules were readopted once again in March 1988 pursuant to the provisions of Executive Order 66 and were amended by a proposal adopted on April 3, 1989.

These rules are devoted to the licensure and regulation of junkets and implement the provisions of section 102 of the Casino Control Act ("Act"), N.J.S.A. 5:12-102. The rules are currently being proposed for readoption with amendments as a result of various amendments to the Act concerning junkets which were enacted in May 1992 (see P.L. 1992, c.9, approved May 19, 1992). The statutory amendments primarily affect the licensure requirements which were previously imposed on junket representatives and junket enterprises and the rule amendments included in this proposal address those changes. The remaining requirements of N.J.A.C. 19:49 are unaffected by these statutory changes and, in the opinion of the Commission, remain an effective, efficient and necessary component of the Commission's regulatory structure. The Commission will continue to monitor the viability of the regulatory system in operation, particularly in view of the recent statutory changes, and determine whether additional changes may be required in the future.

Specifically, subchapter 1 of chapter 49 defines a junket and establishes various rules concerning the scope of activities included within this definition. Since the basic concept of a junket has not been changed, this subchapter is proposed for readoption without amendment.

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Conversely, the recent statutory amendments made significant revisions to the manner in which junket representatives and junket enterprises are approved by the Commission for participation in junkets to licensed casinos. Whereas section 102 of the Act and, consequently, N.J.A.C. 19:49-2.1 previously required all junket representatives to be individually licensed, section 102 of the Act, as amended, only requires junket representatives who are employed by a casino licensee to be individually licensed. Accordingly, the proposed amendments to N.J.A.C. 19:49-2.1 redefine those persons who may act as a junket representative in connection with a junket to a licensed casino. The rule retains the existing requirement that a junket representative may only be employed by one casino licensee or junket enterprise at a time and a proposed amendment attempts to clarify the manner in which employment status will be judged.

The statutory amendments also modified the licensing requirements which apply to junket enterprises. Junket enterprises were previously licensed to the standards of a casino key employee and were issued licenses pursuant to the provisions of section 102. The Act now directs that junket enterprises be licensed in accordance with the requirements of subsection 92c of the Act, which govern enterprises engaging in nongaming related business with casino licensees. If or when a junket enterprise is required to be licensed, however, each qualifier of a junket enterprise, unlike other subsection 92c enterprises, is required to qualify to the standards of a casino key employee. These requirements, as well as the vendor registration requirements which now apply to junket enterprises prior to their being licensed, are incorporated by reference in the proposed amendments to N.J.A.C. 19:49-2.2 by citing to the provisions of N.J.A.C. 19:41-11 and 19:43. Substantial amendments to N.J.A.C. 19:41-11 and 19:43, the rules that generally address the conduct of business with casino licensees, have also been necessitated by the statutory amendments concerning junkets and these amendments are summarized below.

Also, at N.J.A.C. 19:49-2.2, being considered "involved" in a junket is defined as receiving any compensation whatsoever from any person as a result of the conduct of the junket.

Since junket representative licensure is no longer required for junket representatives who are not employed by a casino licensee, the sole owner/operator junket enterprise provisions of N.J.A.C. 19:49-2.3 are no longer required and that section is proposed for repeal. A junket representative who wishes to do junket business with a casino licensee or junket enterprise as an independent agent must now be registered or licensed as a junket enterprise in order to conduct such business.

Subchapter 3 of N.J.A.C. 19:49 sets forth the junket reporting requirements which are imposed on casino licensees. Minor amendments are proposed to three of these sections to reflect the licensing changes established by the statutory amendments. The remaining regulatory requirements in this subchapter provide information to the Division of Gaming Enforcement which is useful in evaluating the junket operations of casino licensees and the persons who participate in these operations.

The Commission's junket rules are designed to enable the Commission and Division to monitor the sensitive area of casino junket operations. The rules have proven to be an effective tool in maintaining the integrity of this aspect of casino gaming in New Jersey and this statutory objective would be jeopardized should these rules not be readopted.

As noted above, the statutory amendments which shifted the regulation of junkets to the vendor and casino service industry rules contained in chapters 41 and 43 of the Commission's regulations also created the need to amend several of these rules. In addition, during the review process, the Commission noted various other changes to these rules which are appropriate either to clarify their meaning or to bring them into line with previous statutory amendments.

Two sections contained in N.J.A.C. 19:41 are being proposed for repeal because they duplicate provisions which are found in N.J.A.C. 19:43 or contain regulatory requirements which have been superseded by subsequent statutory changes. Specifically, the casino service industry licensing requirements presently contained in N.J.A.C. 19:41-1.2 are essentially identical to the provisions of N.J.A.C. 19:43-1.2 and the licensing standards established in N.J.A.C. 19:41-3.2 are more clearly stated in N.J.A.C. 19:43-1.3 and 1.14.

The rules which establish the license application fees for persons required to be licensed to engage in junket operations, N.J.A.C. 19:41-9.9A and 9.11A, are being amended consistent with the licensing changes summarized above. Essentially, the fees remain the same; the changes simply reflect the fact that the licensing structure and the persons required to be licensed have been modified.

Numerous changes to the rules contained in N.J.A.C. 19:41-11 are being proposed to reflect the addition of junket enterprises to the vendor registration process. Under the Commission's interpretation of the recent statutory amendments, junket enterprises would be permitted to engage in junket business with a casino licensee by registering as a junket enterprise with the Commission. The junket enterprise would be required to complete a junket enterprise vendor registration form which would then be filed with the Commission by the casino licensee with whom a junket arrangement was anticipated. No casino licensee would be permitted to participate in a junket on its premises unless every junket enterprise associated therewith was either licensed as a subsection 92(c) junket enterprise or had a junket enterprise vendor registration form on file with the Commission. Other amendments to this subchapter are intended to simplify or clarify the regulatory language which establishes the vendor registration process.

The proposed amendments to N.J.A.C. 19:43 generally reflect the addition of junket enterprises to the list of companies which are licensed pursuant to the provisions of that chapter and N.J.S.A. 5:12-92(c). Junket enterprises would be subject to the same presumptive licensing thresholds established in N.J.A.C. 19:43-1.2 for all other enterprises engaged in business not directly related to gaming activity. Junket business would not be segregated from other business conducted by a particular enterprise, but would be accumulated therewith in determining whether a casino service industry junket enterprise license was required.

Consistent with the statutory amendments, the proposed amendments to N.J.A.C. 19:43-1.3 would require all qualifiers of a junket enterprise, including junket representatives who deal directly with a casino licensee, to qualify to casino key employee standards. The enterprise would also be required to identify all other junket representatives that the enterprise employs in junkets to Atlantic City casinos, but who do not deal directly with casino licensees. These junket representatives would be deemed secondary qualifiers. The Division would be authorized to request, at the time of application by the junket enterprise or at any time thereafter, that a secondary qualifier establish his or her qualification, in which event the secondary qualifier would be required to qualify to the standards of a casino key employee (see N.J.A.C. 19:43-1.14).

Social Impact

The provisions of N.J.A.C. 19:49 have had a positive social impact on the citizens of this State. One of the underlying goals of the Act is the redevelopment and revitalization of Atlantic City and its tourist, resort and convention industries. Junket activity promotes the accomplishment of that goal by enabling the casino industry in New Jersey to compete effectively with other jurisdictions for gaming patrons. The readoption of these rules facilitates the effective use of junkets as a marketing tool while preserving the integrity and law enforcement interests essential to the State's supervision of this area of casino operations. The failure to readopt these rules would enhance the danger that unscrupulous operators may swindle unsuspecting patrons and, thus, damage the reputation of the New Jersey casino industry.

The proposed amendments should generally make it easier for junket operators who wish to do business with New Jersey casino licensees to enter the market. If this should occur, the amendments should assist the State in achieving the positive economic and social goals discussed above. To the extent that increase junket activity increases casino revenues, additional tax revenues may be generated which will inure to the benefit of the senior and disabled citizens of New Jersey.

Economic Impact

As indicated above, the economic impact of chapter 49 of the Commission's rules on the casino industry, Atlantic City and the citizenry of this State is significant. If these rules were not readopted, junkets to Atlantic City casinos might have to be severely restricted or eliminated. Thus, the amount of gross revenue generated by the casino industry in New Jersey would be diminished as would the taxes received by the State which are based on these revenues.

The proposed amendments included in this proposal are anticipated to have a positive economic impact by increasing the amount of junket business which is conducted by licensed casinos. Additional junket business should result in increased casino revenues. This, in turn, should increase the amount of gaming tax revenues which are available to support the programs for senior and disabled residents which are funded by these tax revenues.

The proposed amendments should also have a positive economic effect on junket representatives and junket enterprises. Junket representatives who are not employed by a casino licensee will no longer be required

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to apply and pay for a junket representative license. Junket enterprises will now be permitted to start doing business with casino licensees by simply registering with the Commission and may be able to earn substantial revenues prior to being requested to apply and pay for a junket enterprise license.

The proposed readoption with amendments of N.J.A.C. 19:49 and other proposed amendments is not anticipated to have any significant economic effect on the Commission or the Division of Gaming Enforcement.

Regulatory Flexibility Statement

In general, the reporting, recordkeeping and compliance requirements imposed by N.J.A.C. 19:49 and the proposed amendments apply directly to casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Moreover, the vast majority of junket enterprises and individuals working as junket representatives are located outside of New Jersey and thus are also beyond the scope of the statute.

To the extent that certain junket enterprises or junket representatives may be located within New Jersey, no exemption or modification of compliance requirements for small businesses has been provided. The proposed amendments are in fact intended to lessen the burden of conducting junket business in this State and this relief is appropriate for all junket enterprises. The requirements imposed and costs to junket enterprises are discussed in the Summary and Economic Impact, respectively, above. The Commission has balanced the need for thorough regulation of this sensitive activity against the economic impact of the rules and determined that the strict regulation mandated by the Act precludes further modification of these regulatory requirements for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:49.

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

19:41-1.2 [Casino service industry licenses] (**Reserved**)

[(a) No enterprise shall, on a regular or continuing basis, provide any goods or services to or conduct any business whatsoever with a casino, a casino licensee, its employees or agents, whether or not said goods, services or business directly relates to casino or gaming activity, unless a casino service industry license authorizing the particular casino service business shall have first been issued to the enterprise.

(b) In addition to subsection (a) above:

1. No school, whether or not a governmental agency, teaching gaming or playing or dealing techniques shall enroll any student or offer any course to the public or this State or do any other business whatsoever in this State, whether for compensation or not, relating to the teaching of gaming or playing or dealing techniques unless a casino service industry license authorizing the particular gaming school shall have first been issued to the school; and

2. No student of any school, whether or not a governmental agency, teaching gaming or playing or dealing techniques shall alone establish the sufficiency of his business ability and casino experience for licensure under the Act by evidence of enrollment at, attendance at or instruction from the school unless a casino service industry license authorizing the particular gaming school shall have been issued to the school prior to the enrollment, attendance and instruction of the student;

3. No enterprise shall in this State manufacture, supply, distribute, service or repair any gaming equipment for use in the conduct of gaming in any jurisdiction whatsoever unless a casino service industry license shall have first been issued to the enterprise; provided, however, that the Commission may exempt any such enterprise in any instance in which it is satisfied that such an exemption would not be inimical to the policy of the Act or the regulations of the Commission; and

4. No gaming equipment shall be used in this State to conduct gaming in any casino or by any casino licensee, its employees or agents unless a casino service industry license shall have first been issued to every enterprise in any jurisdiction whatsoever manufacturing, supplying, distributing, servicing or repairing the equipment; provided, however, that the Commission may exempt any such gam-

ing equipment or any such enterprise in any instance in which it is satisfied that such an exemption would not be inimical to the policy of the Act or the regulations of the Commission.

(c) No casino licensee shall conduct any school teaching gaming or playing or dealing techniques unless a separate casino service industry license authorizing the particular gaming school shall have first been issued to the casino licensee.

(d) The following casino service industry enterprises shall be required to be licensed as casino service industries in accordance with sections 92a and b of the Act:

1. All enterprises providing goods or services or doing any business whatsoever which directly relates to casino or gaming activity;
2. All schools teaching gaming, playing or dealing techniques;
3. All gaming equipment manufacturers, suppliers, distributors, servicers and repairers; and
4. All casino hotel security service enterprises.

(e) The following casino service industry enterprises shall be required to be licensed as casino service industries in accordance with sections 92c and d of the Act:

1. All enterprises providing goods or services or doing any business whatsoever which does not directly relate to casino or gaming activity;
2. All suppliers of alcoholic beverages, food and nonalcoholic beverages;
3. All garbage handlers;
4. All vending machine providers;
5. All linen suppliers;
6. All maintenance companies;
7. All shopkeepers located within any approved hotel; and
8. All limousine service enterprises.

(f) The Commission may exempt any person or field of commerce from the casino service industry licensing requirements of sections 92c and d of the Act if it finds:

1. That such person or field of commerce is regulated by a public agency; and
2. That licensure is not necessary to protect the public interest; and
3. That licensure is not necessary to accomplish the policies established by the Act.]

19:41-3.2 [Casino service industry licenses] (**Reserved**)

[(a) No casino service industry license shall issue unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and of the regulations of the Commission:

1. In the case of casino service industry licenses issued in accordance with sections 92a and b of the Act;

i. Each such casino service industry enterprise, its owners, its management personnel, its supervisory personnel and its principal employees in accordance with the casino key employee standards as set forth in sections 92b, 86 and 89 of the Act; and

ii. Each employee of such casino service industry school teaching gaming or playing or dealing techniques in accordance with the casino employee standards as set forth in sections 92b, 86 and 90 of the Act; and

2. In the case of casino service industry licenses issued in accordance with sections 92c and d of the Act, each such applicant in accordance with the standards of sections 92d and 86 of the Act.]

19:41-9.9A Junket enterprise license fees

(a) In accordance with [Section] subsection 102(c) of the Act, all **qualifiers of junket enterprises** shall meet the standards established for casino key employees in order for the **junket enterprise** to be licensed. Under [Section] subsection 94(d) of the Act, [such] a **junket enterprise** license shall be issued for a three year period and shall be renewable for additional three year periods.

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

19:41-9.11A Junket representative license fees

(a) In accordance with [Section] subsection 102(b) of the Act, all junket representatives **employed by a casino licensee** shall meet the standards established for casino key employees, except for residency,

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in order to be licensed. Under [Section] subsection 94(d) of the Act, such a license shall be issued for a three year period and shall be renewable for additional three year periods.

(b) (No change.)

SUBCHAPTER 11. [APPLICATIONS FOR] AGREEMENTS TO DO BUSINESS WITH CASINO LICENSEES [FOR APPROVAL OF AGREEMENTS]

19:41-11.1 Presentation of the agreement

(a) Each casino licensee shall be required, upon directive of the Commission, to present to and file with the Commission a fully signed copy of every written agreement and a precise written description of every other agreement, including the terms [of] thereof and the persons involved [in] therein and associated [with] therewith, [every other agreement] regarding either:

1. [the] The realty of its casino hotel facility; or

2. [any] Any business or person doing business with or on the premises of its casino hotel facility.

(b) Each applicant for a casino license, upon directive of the Commission, shall be required [so] to present to and file with the Commission every [such] agreement described in (a)1 and 2 above not likely to [not] have been fully and completely performed in all respects by all parties prior to the issuance to the applicant of a casino license.

(c) Except as otherwise provided in (d) below, [Each such] each casino licensee or applicant for a casino license shall file with the Commission no later than 20 calendar days following the formal offer and acceptance of an agreement a completed vendor registration form in a form as specified by the Commission for any enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant for a casino license. Notwithstanding the foregoing, an incomplete vendor registration form shall be considered timely filed by the licensee or applicant in accordance with this [Section] subsection if:

1.-2. (No change.)

(d) Each casino licensee or applicant for a casino license shall, prior to its participation in any junket which involves one or more junket enterprises, file with the Commission a junket enterprise vendor registration form for each junket enterprise involved in such junket which has not already had a junket enterprise vendor registration form filed with the Commission on its behalf by any casino licensee or applicant for a casino license. This requirement shall apply regardless of whether such junket enterprise has had a vendor registration form filed with the Commission on its behalf pursuant to (c) above for an agreement unrelated to junkets. A junket enterprise vendor registration form shall be completed and certified by the junket enterprise in a form specified by the Commission and submitted to the casino licensees or applicant participating in the junket. The casino licensee or applicant shall be required to certify, to the best of its knowledge, as to the accuracy of the information provided by the junket enterprise. Notwithstanding the foregoing, an incomplete junket enterprise vendor registration form shall be considered timely filed by the casino licensee or applicant in accordance with this subsection if:

1. The incomplete junket enterprise vendor registration form is substantially complete except for minor errors or omissions and is filed prior to the arrival of the junket at the casino hotel; and

2. A revised junket enterprise vendor registration form, completed in accordance with a deficiency notice provided by the Commission, is filed within 10 days of service of notice or prior to the arrival of the junket, whichever is later.

[(d)](e) Any failure of a casino licensee or applicant for a casino license to seasonably file any information required by [Section] subsection 104b of the Act or the regulations of the Commission shall be the basis for the Commission to pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission.

[(e)](f) Each [such] agreement with a casino licensee or applicant for a casino license governed by subsection 104(b) of the Act and this section, whether or not expressly included therein by the parties thereto, shall be deemed to include a provision for its termination

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without liability on the part of the casino licensee or applicant for a casino license, or on the part of any qualified party to the agreement or any related agreement the performance of which is dependent upon such agreement, if the Commission shall disapprove thereof in accordance with [Section] subsection 104b of the Act and the regulations of the Commission.

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

[(g)](h) Except as otherwise provided in this section, no [No] agreement with a casino licensee shall be either performed or in force or effect unless a written vendor registration form or junket enterprise vendor registration form describing the enterprise performing pursuant to such agreement [shall have first been] is properly and [reasonably] seasonably filed with [and be pending before] the Commission in accordance with [Section] subsection 104b of the Act and the regulations of the Commission.

19:41-11.2 Suitability of the agreement

(a) The Commission [shall] may review each [casino licensee] agreement governed by N.J.A.C. 19:41-11.1 on the basis of the reasonableness of the terms of the agreement, including the terms of compensation, and on the further basis of the qualifications of the persons involved in and associated with the agreement in accordance with the standards enumerated in [Section] section 86 of the Act. The Commission [and shall] may thereafter make a finding as to the suitability of the [said business or] persons to be involved or associated with the [said] casino [enterprise] licensee or applicant.

(b) Whenever, pursuant to [Section] subsection 92c of the Act and the regulations of the Commission, the Commission has exempted any person involved in or associated with [a casino licensee] an agreement governed by N.J.A.C. 19:41-11.1 from the casino service industry license requirement otherwise imposed by subsection 92(c) [upon a finding that such person is regulated by a public agency or will provide goods or services in insubstantial or insignificant amounts or quantities and that such licensure is not necessary to protect the public interest or to accomplish the policies established by the Act], the Commission may in its discretion base its findings as to the suitability of the [said business or] person to be involved or associated with the [said] casino [enterprise] licensee or applicant upon the fact of such exemption.

(c) If the Commission shall disapprove of [a casino licensee] an agreement governed by N.J.A.C. 19:41-11.1 or any person associated therewith, the Commission may by directive require the termination of such agreement or association or pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission. If such disapproved agreement or association is not thereafter promptly terminated as required by Commission directive, the Commission may pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission.

19:41-11.3 Casino service industry license applications

(a) The Commission shall further review each [casino licensee] agreement governed by N.J.A.C. 19:41-11.1 to determine whether any enterprise involved therein or associated therewith is [thereby] a casino service industry enterprise required to be licensed by the Act [or] and the regulations of the Commission.

(b) The Commission shall direct that a casino service industry license application be promptly filed by any enterprise involved in or associated with [such] an agreement[:

1. Which] if the enterprise is [thereby, on a regular and continuing basis, either] providing or is likely to provide goods or services to, or is conducting or is likely to conduct business with [a casino], a casino licensee, its employees or agents [or likely to so provide such goods or services or to so conduct such business; and,] which [goods, services or business] directly relates to casino or gaming activity[; or],

[2. Which is] including, without limitation, a gaming school enterprise, a gaming equipment enterprise or a casino [hotel] security service enterprise.

(c) The Commission shall determine [upon] each [such] casino service industry license application filed pursuant to [N.J.A.C. 19:41-11.3](b) above in accordance with the standards contained in [Sections] subsections 92a and b of the Act and [N.J.A.C.

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19:41-3.2(a) and N.J.A.C. 19:43-1.4(b) and N.J.A.C. 19:43-1.5 of the regulations of the Commission] **N.J.A.C. 19:43.**

(d) The Commission shall direct that a casino service industry license application be promptly filed by any [enterprises] **enterprise** involved in or associated with [such] **an agreement**]:

1. Which] **if the enterprise is** [thereby, on a regular or continuing basis, either] **providing or is likely to provide** goods or services to, or **is conducting or is likely to conduct** business, **including junket business**, with [a casino], a casino licensee, its employees or agents [or likely to so provide such goods or services or to so conduct such business; and, which goods, services or business does] **on a regular or continuing basis which:**

1. Is not directly [relate] **related** to casino or gaming activity; and,]

2. [Which the Commission has] **Has not been** exempted from the casino service industry license requirement in accordance with [section] **subsection 92c** of the Act and [N.J.A.C. 19:41-1.2(f) and 19:43-1.13 of] the regulations of the Commission.

(e) The Commission shall determine [upon] each [such] casino service industry license application filed pursuant to [N.J.A.C. 19:41-11.3](d) **above** in accordance with the standards contained in [Sections] **subsections 92c and d** of the Act and [N.J.A.C. 19:41-3.1(b) and N.J.A.C. 19:43-1.3(c) and N.J.A.C. 19:43-1.5 of the regulations of the Commission] **N.J.A.C. 19:43; provided, however, that junket enterprises shall also be subject to the standards contained in section 102 of the Act and N.J.A.C. 19:49.**

(f) The Commission, upon directing that a casino service industry license application be filed by any enterprise pursuant to [N.J.A.C. 19:41-11.3](b) or (d) **above**, may also then indicate to the enterprise the amount of license fee in accordance with the provisions of the Act and the regulations of the Commission.

(g) The Commission may, in its discretion, permit [an unlicensed] a casino service industry enterprise **which has been directed to file a license application pursuant to (d) above to continue**, [to provide] for a reasonable time, **to provide** goods or services to or **to conduct** business with [a casino,] a casino licensee, its employees or agents. No casino licensee, [its] **or any** [employees] **employee** or [agents] **agent thereof, may purchase any goods or services from or engage** in any business with an enterprise not holding a valid casino service industry license unless:

1. (No change.)

2. A vendor registration form **or junket enterprise vendor registration form** has been filed with the Commission by a casino licensee on behalf of the enterprise doing such business **in accordance with the provisions of N.J.A.C. 19:41-11.1; and**

3. Any required casino service industry **or junket enterprise** license application has been properly filed by [said] **the enterprise** with, and is pending before, the Commission; provided, however, that any enterprise directed to [so] file [such] **an application** may, in the discretion of the Commission, be permitted a reasonable time to prepare and file [same] **the application.**

(h) In exercising the discretion [referred to in] **established by (g)** above, the Commission shall consider any relevant evidence or comments provided to it by the Division.

(i) The Commission may expressly prohibit any [such] unlicensed enterprise from [so] providing goods or services **to or [so] conducting business with a casino licensee, its employees or agents** on the basis that, after having been directed to file a casino service industry **or junket enterprise** license application, such enterprise failed to properly file such application within a reasonable time. Any [such] unlicensed enterprise prohibited from [so] providing goods or services or [so] conducting business on the basis of its failure to properly file [such] **an application** may resume [so] providing goods [and] or services [and] or conducting business:

1. Thirty days following the proper filing of its casino service industry **or junket enterprise** license application and after the payment of an additional late filing license fee of \$250.00; or

2. Immediately following a determination that [such] **the enterprise** is not required to be licensed as a casino service industry **or junket enterprise.**

(j) No waiver of all or any portion of the 30-day period mandated by (i) above shall be granted by the Commission on the ground of economic hardship or loss to the unlicensed casino service industry **or junket enterprise** in question.

(k) The application process for the approval of casino licensee agreements set forth in this subchapter shall not in any way limit the duty and obligation of any enterprise to, on its own initiative, apply for a casino service industry **or junket enterprise** license.

19:41-11.4 Competition within casino service industries

The Commission [shall] **may** further review each [application for approval of a casino licensee] agreement **governed by N.J.A.C. 19:41-11.1** to determine whether any action is desirable or necessary to regulate, control or prevent economic concentration in any casino service industry or to encourage or preserve competition in any [Casino] **casino service industry** in accordance with [Section 1b(12) of the Act] **N.J.S.A. 5:12-1b(12)** and N.J.A.C. 19:43-1.6 [of the regulations of the Commission].

Editor's note: In addition to the text above, a sample application of a casino licensee for the approval of an agreement was adopted as a part of these rules but is not reproduced herein. Information on this form may be obtained from the Casino Control Commission, [3131 Princeton Pike, Building 5, CN208, Trenton, New Jersey 08625] **Arcade Building, Tennessee Avenue and Boardwalk, Atlantic City, NJ 08401.**

19:43-1.1 Definitions

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

...
"Junket enterprise" is defined in N.J.S.A. 5:12-29.1 and N.J.A.C. 19:49-2.2.
 ...

19:43-1.2 License requirements

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

(c) **No enterprise shall, on a regular or continuing basis, conduct business as a junket enterprise with a casino applicant or licensee, its employees or agents unless such enterprise is licensed in accordance with subsections 92c and d and section 102 of the Act or is authorized to do so pursuant to N.J.A.C. 19:41-11.3.**

[(c)](d) In determining if a person or enterprise does or will, on a regular or continuing basis, **conduct business as a junket enterprise** or provide goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino applicants or licensees, their employees or agents, the following factors shall be considered:

1.-7. (No change.)

[(d)](e) Notwithstanding the provisions of [(c)](d) above, persons and enterprises which **conduct business as a junket enterprise** or provide, or imminently will provide, goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino applicants or licensees, their employees or agents shall, unless otherwise determined by the Commission, be deemed to be transacting such business on a regular or continuing basis if:

1.-2. (No change.)

[(e)](f) (No change in text.)

(g) **In determining whether a person or enterprise has exceeded or will exceed the dollar thresholds established in (e) above, all types of business, including junket business, transacted by that person or enterprise with casino applicants or licensees, their employees or agents shall be accumulated.**

19:43-1.3 Standards for qualification

(a) The [general rules relating to casino service industry] standards for qualification for a **casino service industry or junket enterprise license** are set forth below and in N.J.A.C. [19:41-3.2 et seq] **19:43-1.5.** Additional rules [relating to] **establishing** standards for qualification [regarding] **for gaming schools** are set forth in N.J.A.C. 19:44-3[.1 et seq] **and 19:44-4.**

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(b) Each applicant required to be licensed as a casino service industry in accordance with subsections 92a and b of the Act, except as otherwise required for gaming schools (see N.J.A.C. 19:44[-3]), shall, prior to the issuance of any casino service industry license, produce such information, documentation and assurances to establish by clear and convincing evidence:

1.-2. (No change.)

3. That the applicant, either [himself] directly or through [his] its employees, has sufficient business ability and experience to establish, operate and maintain [his] the enterprise with reasonable prospects for successful operation;

4.-6. (No change.)

(c) Each applicant required to be licensed as a casino service industry in accordance with subsections 92c and d of the Act or as a junket enterprise in accordance with section 102 of the Act shall, prior to the issuance of any casino service industry or junket enterprise license, produce such information, [and] documentation, including, without limitation as to the generality of the foregoing, its financial books and records, and assurances to establish by clear and convincing evidence its good character, honesty and integrity.

1. Each applicant for a casino service industry license issued pursuant to subsections 92c and d of the Act shall also be required to establish the good character, honesty and integrity of each of the persons required to be qualified pursuant to the provisions of N.J.A.C. 19:43-1.14.

2. Each applicant for a junket enterprise license shall also be required to establish that such of its owners, management and supervisory personnel, junket representatives and other principal employees as the Commission may consider appropriate for qualification pursuant to N.J.A.C. 19:43-1.14 shall qualify under the standards, except for residency, established for the qualification of a casino key employee under N.J.S.A. 5:12-89.

(d) Any enterprise directed to file an application for a casino service industry license pursuant to subsections 92c and d of the Act, other than a junket enterprise, may request permission from the Commission to submit a modified form of such application. The Commission, in its discretion, may permit such modification if the enterprise can demonstrate to the Commission's satisfaction that securities issued by it are listed, or are approved for listing upon notice of issuance, on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers' Automated Quotation [system] System (NASDAQ) National Market [system] System.

(e) (No change.)

19:43-1.4 Persons required to be qualified

The general rules relating to the persons required to be qualified prior to the issuance of a casino service industry or junket enterprise license are set forth in N.J.A.C. [19:41-3.2] 19:43-1.14. Additional rules relating to the persons required to be qualified prior to the issuance of a casino service industry license to a gaming school are set forth in N.J.A.C. 19:44-4[.1 et seq].

19:43-1.5 Disqualification criteria

A casino service industry or junket enterprise license may be denied to any applicant who has failed to prove by clear and convincing evidence that [he] the applicant or any of the persons required to be qualified, are in fact qualified in accordance with the [act] Act and with the provisions of these rules and regulations, or who has violated any of the provisions of the [Casino Control] Act or these rules and regulations or who is disqualified under any of the criteria set forth in section 86 of the [Casino Control] Act.

19:43-1.8 Duration of licenses

(a) Licensure pursuant to N.J.S.A. 5:12-92a is granted for a term of one year for the initial license term and the first two successive renewals, and for a term of two years for all subsequent renewals; provided, however, that the Commission shall reconsider the granting of such a license at any time at the request of the Division. Licensure pursuant to N.J.S.A. 5:12-92c and 5:12-102 is granted for three years. An application for renewal of a license shall be filed no later than 120 days prior to the expiration of that license. The

application for renewal of a license need contain only that information which represents or reflects changes, deletions, additions or modifications to the information previously filed with the Commission.

(b) (No change.)

19:43-1.12 Fees

The general rules relating to the fees for the issuance and renewal of casino service industry and junket enterprise licenses are set forth in N.J.A.C. [19:41-1.1 et seq]19:41-9. Additional rules relating to fees for the issuance of a casino service industry license to a gaming school are set forth in N.J.A.C. 19:44[-1.1 et seq].

19:43-1.13 Exemption

(a) The general rules relating to exemption of persons or fields of commerce from licensure as casino service industries are set forth in [N.J.A.C. 19:41-1.2(f)] N.J.S.A. 5:12-92(c).

(b) The Commission may, upon the written request of any person, or upon its own initiative, exempt any person or field of commerce, other than a junket enterprise, from the casino service industry licensure requirements of sections 92c and d of the Act, pursuant to [N.J.A.C. 19:41-1.2(f)] the standards contained in N.J.S.A. 5:12-92(c).

19:43-1.14 Casino service industry licenses

(a) No casino service industry license shall issue unless the individual qualifications of each of the following persons shall have been established in accordance with all provisions including those cited, of the Act and of the rules of the Commission.

1. (No change.)

2. In the case of casino service industry or junket enterprise licenses issued in accordance with subsections 92c and d or section 102 of the Act:

i.-vii. (No change.)

viii. The management employee supervising the regional or local office which employs the sales representative or junket representative soliciting business or dealing directly with a casino licensee;

ix. Each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees and each junket representative who will deal directly with casino licensees or their employees;

x. (No change.)

(b) In addition to the persons required to qualify pursuant to (a) above, each applicant for a junket enterprise license may be required, upon directive from the Commission, to establish the qualifications of any junket representative employed by that junket enterprise, regardless of whether such junket representative deals directly with a casino licensee.

1. The Division may request the Commission to require a junket representative employed by a junket enterprise licensee or applicant to establish his or her qualifications at any time.

2. Any junket enterprise required to establish the qualifications of a junket representative pursuant to this subsection may be required, subject to the provisions of N.J.A.C. 19:41-8.6, to pursue a determination as to the qualifications of the junket representative regardless of whether the employment relationship with the junket representative has been terminated.

3. Any person required to establish his or her qualifications as a junket representative pursuant to this subsection may be required to pursue a determination as to his or her qualifications as a junket representative regardless of whether the employment relationship with the junket enterprise has been terminated.

19:49-2.1 Junket representatives [licensure]

(a) (No change.)

(b) The fact that a person licensed as a casino key employee may, pursuant to N.J.S.A. 5:12-102 and (c)3 below, act as a junket representative while employed by a casino licensee without further endorsement of his or her license does not excuse the casino licensee or any other person from meeting any other licensing, registration or reporting obligation which may exist as a result of the conduct of the junket activity.

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(c) Except as otherwise provided by N.J.S.A. 5:12-102o, no person shall act as a junket representative in connection with a junket to a licensed casino unless **he or she**:

1. [He or she has] **Has been plenary or temporarily licensed as a junket representative in accordance with the provisions of section 102 of the Act and is employed by [either:**

- i. A] a licensed casino; or
- ii. A licensed junket enterprise; or]

2. [He or she has] **Has been licensed as a [sole owner/operator] junket enterprise in accordance with the provisions of section 102 and subsection 92(c) of the Act, N.J.A.C. 19:43 and this chapter, or has been registered as a junket enterprise vendor in accordance with the provisions of N.J.A.C. 19:41-11 and this chapter; or**

3. [He or she is] **Is the holder of a current and valid casino key employee license, [and] is currently employed by the casino licensee for whom such junket representative services are being rendered[,] and is reported to the Division in accordance with the requirements of N.J.A.C. 19:49-3.6; or**

4. **Is employed as a junket representative by a junket enterprise which is licensed in accordance with the provisions of section 102 and subsection 92(c) of the Act, N.J.A.C. 19:43 and this chapter, or by a junket enterprise which is registered as a junket enterprise vendor in accordance with the provisions of N.J.A.C. 19:41-11 and this chapter.**

(d) A junket representative may only be employed by one casino licensee or junket enterprise at a time. For the purposes of this section, **to qualify as an employee of [a junket representative shall only be considered "employed" by] a casino licensee, a junket enterprise licensee or a junket enterprise vendor, a junket representative must [if]:**

1. [All] **Receive all compensation [which that junket representative receives] for his or her services as a junket representative [are reflected on, and received] through[,] the payroll account of the employer; and**

2. [All] **Exhibit all other appropriate indicia of genuine employment, including Federal and State taxation withholdings[, are present].**

(e) No casino licensee or junket enterprise shall employ or otherwise engage the services of a junket representative except in accordance with the provisions of this section. **A junket representative may begin employment with:**

1. **A casino licensee as soon as he or she is licensed by the Commission in accordance with (c) above; or**

2. **A junket enterprise as soon as the enterprise or the junket representative has completed and filed with the Commission all information required by the Act and the regulations of the Commission.**

19:49-2.2 Junket enterprises [licensure]

(a) A junket enterprise, as defined in the Act, is any person, **other than the holder of or an applicant for a casino license, who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed casino, regardless of whether or not such activities occur within the State of New Jersey.**

(b) A junket enterprise shall be [licensed] **registered as a junket enterprise vendor in accordance with the provisions of [Section 102 of the Act] N.J.A.C. 19:41-11 and this chapter or licensed as a junket enterprise in accordance with the provisions of N.J.S.A. 5:12-92(c), 5:12-102 and N.J.A.C. 19:43 prior to [conducting any business whatsoever with] a casino licensee [, its employees or agents] permitting a junket involving that junket enterprise to arrive at its casino. A junket enterprise shall be considered "involved" in a junket to a licensed casino if it received any compensation whatsoever from any person as a result of the conduct of the junket. No casino licensee or junket enterprise may engage the services of [a] any junket enterprise [who] which has not been so registered or licensed[, except as otherwise provided in N.J.A.C. 19:49-2.3].**

19:49-2.3 [Sole owner/operator junket enterprise] (Reserved)

[(a) Any licensed junket representative who is the sole owner and operator of a junket enterprise shall not be required to obtain a junket enterprise license in order to engage in the activities of a junket enterprise if his junket representative license has been endorsed as a sole owner/operator junket enterprise.

(b) In order to qualify for a sole owner/operator junket enterprise endorsement:

1. No person other than the licensed junket representative may hold any equity interest in, or share in the profits or losses of, the junket activities of the junket enterprise; and

2. The licensed junket representative may not employ any other junket representative.

(c) Except as otherwise provided in (b) above, a properly licensed sole owner/operator junket enterprise shall be considered, and may perform the functions of, a licensed junket enterprise.]

19:49-3.1 Junket schedules

(a) A junket schedule shall be prepared by a casino licensee for each junket which involves [either:

- 1. A junket enterprise; or
- 2. A sole owner/operator] a junket enterprise.

(b) (No change.)

(c) Junket schedules shall be certified by an authorized agent of the casino licensee and shall include:

1.-4. (No change.)

5. The name [and license number] of all junket representatives and the name and license or vendor registration number of all junket enterprises involved in the junket.

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

19:49-3.2 Junket arrival reports

(a) An arrival report shall be prepared by a casino licensee for each junket which involves either:

1. (No change.)

[2. A sole owner/operator junket enterprise; or]

[3.]2. An offer of complimentary services or items which have a value in excess of \$200.00 per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9; or

[4.]3. Complimentary guest room accommodations.

(b) Arrival reports shall be prepared and maintained by the casino licensee on the premises of its casino hotel in accordance with the following:

1. (No change.)

2. An arrival report on a junket required by (a)1 [through 3] or 2 above shall be prepared by 5:00 P.M. of the next calendar business day following arrival. A junket arrival which occurs after 12:00 A.M. but before the [close of] **end of the gaming [operations] day** shall be deemed to have occurred on the preceding calendar day. For the purposes of this section, a business day shall be defined as any day except a Saturday, Sunday or State and Federal holiday.

(c) (No change.)

19:49-3.5 Purchases of patron lists

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

(d) If a list of names of junket patrons or potential junket patrons has been compiled in whole or in part by selecting the names included therein on a "basis related to their propensity to gamble," as the phrase is defined in N.J.A.C. 19:49-1.2, the seller of such list shall be appropriately licensed or registered in accordance with the provisions of N.J.S.A. [1:12]5:12-102, 5:12-92(c), N.J.A.C. 19:41-11, 19:43 and this chapter prior to engaging in such sale. No casino licensee[,] or junket enterprise [or sole owner/operator junket enterprise] shall purchase a list of names compiled in such fashion unless the seller has been so licensed or registered.

HEALTH

(a)

THE COMMISSIONER

Attorney General Opinion 92-0094

Whether A-1144 Violates the Constitutional

Principles of Separation of Powers and Due Process

Take notice that Robert J. Del Tufo, Attorney General of New Jersey, by Michael J. Haas, Deputy Attorney General, issued on July 15, 1992 Opinion 92-0094, addressing the issue of whether Assembly Bill 1144 violates the constitutional principles of separation of powers and due process. Assembly Bill 1144 was enacted by the New Jersey Legislature on June 29, 1992, and concerns the nature of the State Health Plan. State Health Plan administrative rules, at N.J.A.C. 8:100, were adopted effective July 20, 1992, and published in the New Jersey Register of that date at 24 N.J.R. 2561(a); included in that notice of adoption is the full text of Assembly Bill 1144. This notice publishing the Opinion is provided in order to present a complete documentary background for the adoption of N.J.A.C. 8:100.

Full text of Attorney General Opinion 92-0094 follows:

July 15, 1992

Frances J. Dunston, M.D., M.P.H.
Commissioner
Department of Health
CN 360
Trenton, New Jersey 08625

Re: 92-0094: Whether A-1144 Violates the Constitutional Principles of Separation of Powers and Due Process

Dear Commissioner Dunston:

You have asked for an opinion as to the constitutionality of A-1144. This bill, which was enacted by the Legislature on June 29, 1992 after an over-ride of the Governor's veto, in part prohibits both the Health Care Administration Board and the Department of Health from promulgating any regulation "which implements any goals, objectives or any other health planning recommendations" included in the State Health Plan. For the reasons which follow, you are advised that this provision violates constitutional principles of separation of powers and due process.

By way of background, the Health Care Cost Reduction Act, L. 1991, c. 187, was enacted by the Legislature and became effective in large part on July 1, 1991. As originally enacted, §34a of the Act required the State Health Planning Board¹ to "prepare and revise annually a State Health Plan." The Plan, which assesses future health needs and sets priorities for health care spending, was intended as a blueprint for statewide health planning. The plan is supposed to identify unmet health care needs "by service and location," and set forth criteria which applicants must meet to obtain certificates of need to provide these services. The Plan touches upon a wide spectrum of health planning issues such as long-term care, hospital care, infant and child health, infectious diseases, AIDS and HIV infection prevention and control, and addictions.

Section 34a specifically provided that the Plan was to "be adopted by the Commissioner of Health pursuant to the 'Administrative Procedure Act' . . . subject to the approval of the Health Care Administration Board." At its public meeting on February 27, 1992, a portion of the "State Health Plan" was approved by the State Health Planning Board. This Plan consisted of seven "chapters," which covered such diverse items as cardiovascular diseases, acute hospital services, maternal and child health, high technology services and long-term care services. The chapters of the Plan consisted of lengthy narrative descriptions of the specific health service, the issues needing to be addressed regarding the service, and goals and objectives which the State should follow in dealing with the service in the future.

The State Health Planning Board thereafter, and pursuant to §34a of the Act, submitted the chapters to the Commissioner of Health

and the Health Care Administration Board (HCAB). The Commissioner and the HCAB subsequently determined to promulgate certain portions of the State Health Plan in regulation form. A rule proposal was published in the *New Jersey Register* on April 6, 1992. A 60-day comment period was provided and public hearings on the proposed regulations were conducted. On June 18, 1992, the HCAB approved the regulations for adoption. The required adoption notice has been forwarded to the Office of Administrative Law and you have advised that the regulations will appear in the July 20, 1992 edition of the *New Jersey Register*. The regulations will also become effective on July 20, 1992.

On June 29, 1992, the Legislature enacted A-1144 over the Governor's veto. This bill amends §34a of the Health Care Cost Reduction Act in two significant aspects. First, the bill continues to provide that the State Health Planning Board shall prepare and annually revise a State Health Plan. The bill, however, changes the provision in §34a which provided that the plan "shall serve as the basis upon which all certificate of need applications shall be approved." In place of this provision, A-1144 provides that the plan "shall serve as an advisory document which may be considered when certificate of need applications are reviewed for approval. Upon completion of the entire State Health Plan, the State Health Planning Board shall submit the plan to the commissioner and the Board² for their use on an advisory basis." Thus, while the State Health Plan remains a document which the Commissioner, the State Health Planning Board and local advisory boards may consider in reviewing certificate of need applications, the goals and objectives set forth therein by the State Health Planning Board, including recommendations for planning criteria, are not to be considered as "binding" on these agencies.

If the legislation had only contained this provision, there would not appear to be a problem of constitutional dimensions. Under this provision of the bill, the State Health Plan, like other planning and informational documents developed by other agencies and task forces operating in the health care field, would be one of many items which could be considered by the Department of Health in its administration of the Health Care Cost Reduction Act. The constitutional problem with A-1144, however, arises from the following provision, which has now also been included in §34a of L. 1991, c. 187:

Effective May 15, 1992, notwithstanding any other provision of law to the contrary, neither the Health Care Administration Board or the Department of Health shall adopt any regulation which implements any goals, objectives or any other health planning recommendations that have been included in the State Health Plan prepared by the State Health Planning Board.³

This provision, for the reasons which follow, violates the separation of powers provision of the New Jersey Constitution. It also contravenes established due process guarantees.

The doctrine of separation of powers is a fundamental principle of the federal and State constitutions. *Gilbert v. Gladden*, 87 N.J. 275, 281 (1981). The New Jersey Constitution (1947), Art. III, ¶1 provides that:

The powers of the government shall be divided among three distinct branches, the legislative, executive and judicial. No person or persons belonging to or constituting one branch shall exercise any of the power belonging to either of the others, except as expressly provided in this Constitution.

This provision contemplates that each of the three branches will exercise its powers within its own sphere without transgressing on the functions of a coordinate branch or aggregating the powers of another branch. *Knight v. Margate*, 86 N.J. 374 (1981). It is "designed to prevent a single branch from claiming or receiving inordinate power." *Brown v. Heymann*, 62 N.J. 1, 11 (1972), by creating a system of checks and balances intended to safeguard the "essential integrity" of each. *Massett Building Co. v. Bennett*, 4 N.J. 53, 57 (1950). As our Supreme Court has observed, however, the system of separa-

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tion of powers was principally aimed at the over-concentration of power in the legislative branch. "No concentration of power offers greater potential for abuse than the ability to both make and enforce the law." *General Assembly v. Byrne*, 90 N.J. 376, 383 (1982); see I W. Blackstone, *Commentaries* at 146-47 (T. Cooley ed. 1899).

The application of these principles is illustrated by two Supreme Court decisions concerning the separation of powers doctrine. In *General Assembly v. Byrne*, *supra*, the Court ruled that the Legislative Oversight Act, which authorized the Legislature to veto any administrative rule or regulation proposed by the Executive Branch simply by passing a resolution in each house of the Legislature which did not have to be presented to the Governor for review, violated the separation of powers doctrine and the constitutional requirement that all bills passed by the Legislature must be sent to the Governor for review (the "presentment clause"). 90 N.J. at 385-388. The Court held that the Legislative Oversight Act gave excessive power to impede the Executive in its constitutional mandate to faithfully execute the law. Further, the Act gave the Legislature the ability to effectively amend or repeal existing laws without participation by the Governor. *Id.* at 388. For these reasons, the Court held that the separation of powers clause and the related presentment clause was violated. *Id.* at 392.

In reaching its conclusion, the Court emphasized the importance of the Executive's authority to execute the laws passed by the Legislature. "Any legislative action which excessively interferes with the Executive's ability to carry out this constitutional mandate violates the separation of powers." 90 N.J. at 384. Moreover, the Court ruled that in judging the constitutionality of the legislative veto provision at issue, "the court must determine its practical effects upon lawmaking and law enforcement." *Id.* at 385. While recognizing that "under appropriate circumstances, the Legislature can cooperate with the Executive without violating the separation of powers," the Court cautioned that "[i]f an exercise of functions which lie at the center of another branch is attempted on a long-term and routine basis, a violation of the constitutional rule requiring separation of powers is more easily established." 90 N.J. at 388, quoting *Chadha v. INS*, 634 F.2d 408, 425 (9th Cir. 1998), affirmed 462 U.S. 919 (1983). The veto provision in *General Assembly* clearly permitted legislative interference with Executive Branch functions on a long-term and regular basis, and therefore violated the separation of powers doctrine.

On the other hand, in a case decided the same day as *General Assembly v. Byrne*, the Court issued its decision in *Enourato v. N.J. Building Auth.*, 90 N.J. 396 (1982). In *Enourato*, the Court upheld, among other things, a requirement that certain leases entered into by the Building Authority must be approved in advance by the presiding officers of both houses of the Legislature. The Court reasoned that since the Building Authority projects were subject to appropriations, and since the building projects were discrete and did not undermine the Governor's performance of his broad-based responsibilities, the limited intrusion by the Legislature in the lease area into the workings of the Executive did not contravene separation of powers. In approving the oversight requirement in *Enourato*, however, the Court cautioned that "the argument for the narrow legislative veto in this case would [not] apply equally to all Executive programs requiring legislative appropriations." *Id.* at 404. The Court indicated that the veto provisions at issue there were constitutional "only because they are both necessary to effectuate the statutory scheme and . . . they offer little potential for interference with executive functions or alternation of the statute's purpose." *Id.*

In light of the cases discussed above, it is clear that the provisions in A-1144, which bar the Department of Health and the Health Care Administration Board from promulgating any regulations on topics which have been included as goals, objectives or recommendations in the State Health Plan, are unconstitutional. As specifically set forth in *N.J.S.A. 26:2H-1, L. 1991, c. 187, §27*, "the Department of Health shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services and health care facility cost containment programs . . ." To fulfill this responsibility, the Department must necessarily promulgate regula-

tions. As the New Jersey Supreme Court held in the landmark case of *Metromedia, Inc. v. Director of Div. of Taxation*, rule-making is ordinarily required to validate agency actions or determinations when most of the following factors are present:

The agency action (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication, or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy. [*Id.* at 331-332].

Thus, for example, if the Department of Health wishes to establish criteria or standards which an applicant must meet in order to be considered for a certificate of need, it ordinarily must promulgate the criteria and standards in regulation form. Similarly, if the Department wishes its licensees to abide by certain rules of conduct in the provision of health care services, regulations must be adopted establishing those standards.

For this reason, the Health Care Cost Reduction Act, L. 1991, c. 1987, and its predecessor, (and still effective) Health Care Facilities Planning Act, *N.J.S.A. 26:2H-1 et seq.*, grant the Commissioner of Health and the Health Care Administration Board broad powers in the area of rule-making. Thus, the Legislature has specifically provided that "the [C]ommissioner [of Health,] with the approval of the [Health Care Administration] [B]oard, shall adopt and amend rules and regulations in accordance with the Administrative Procedure Act . . . to effectuate the provisions and purposes of" the Health Care Facilities Planning Act. Indeed, even A-1144 itself provides that, among many items to be considered by the Department in determining whether to grant a certificate of need, the Department shall consider "such other factors as may be established by regulation." See §2 of A-1144; (*N.J.S.A. 26:2H-8(f)*).

Under these circumstances, the prohibition in A-1144 against the promulgation of regulations by the Department and the HCAB on matters addressed in the State Health Plan constitutes an unconstitutional intrusion by the Legislature into matters entrusted to the Executive Branch, *i.e.*, the implementation and enforcement of the Health Care Cost Reduction Act and Health Care Facilities Planning Act. For example, one of the purposes of the State Health Plan is to establish criteria for the review of certificate of need applications. If, however, the Plan includes a recommendation that certain criteria be used by the Department in reviewing certificate of need applications, the Department would be barred from promulgating these criteria in regulation form. Absent regulations, the criteria in many cases would not be able to be applied to applications, (*Metromedia, supra*), with the result that the Department would be unable to perform its functions under the existing health planning laws of this State. Plainly, therefore, A-1144 destroys the ability of the Executive Branch to fulfill its responsibilities in this area.

The provision in A-1144 which bars the Department and the Health Care Administration Board from promulgating regulations is also contrary to the general requirement that, in their decision-making activities, administrative agencies must afford due process to the regulated public. See, *e.g. Metromedia, supra*, 97 N.J. at 336-37. Indeed, the requirement that the regulated public be apprised of the standards by which their conduct will be judged is one of the bases for the requirement that agencies act through rule-making. Thus, it is well established that principles of due process require that an agency promulgate regulatory standards to guide its substantive decision-making. See *In re Promulgation of Guardianship Services Reg.*, 103 N.J. 619, 642 n.6 (1986); *Department of Labor v. Tian*

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Constr. Co., 102 N.J. 1, 17-18 (1985). As discussed above, A-1144 bars the Department from promulgating these regulatory standards and, therefore, necessarily results in a denial of due process. Absent regulations, for example, an applicant for a certificate of need would not be able to determine what criteria it had to meet to obtain Department approval and the Department, being unable to rely upon published standards for the review of applications, would be unable to act on applications in a manner consistent with the guarantee of due process.

Rulemaking is a power delegated to the Executive Branch to permit government to function efficiently on a day-to-day basis. Where, for the efficient operation of government, the Legislature delegates rulemaking power to the Executive, it cannot micro-manage the Executive's use of that authority, *General Assembly v. Byrne, supra*. Here, unlike the situation in *Enourato, supra*, A-1144 interferes with and prevents the Department's performance of its broad-based responsibilities in the area of health care. This interference with the functions of the Executive Branch violates the separation of powers doctrine. *General Assembly v. Byrne, supra*, 90 N.J. at 388.

Based upon the foregoing you are advised that A-1144's prohibition against the promulgation of regulations by the Department of Health and the Health Care Administration Board on matters contained in the State Health Plan violates constitutional principles of separation of powers and due process guarantees. The Commissioner of Health, the Department of Health and the Health Care Administration Board may therefore promulgate regulations which are based upon the "goals, objectives or any other health planning recommendations" included in the State Health Plan.

Very truly yours,

ROBERT J. DEL TUFO
ATTORNEY GENERAL OF NEW JERSEY

By:

Michael J. Haas
Deputy Attorney General

¹The State Health Planning Board was established in the Department of Health by §33 of the Act. It is made up of the Commissioners of Health and Human Services; the chairpersons of the Health Care Administration Board, the Hospital Rate Setting Commission and the Public Health Council; representatives from the local advisory boards, and five public members.

²Although not stated in A-1144, it appears that the "board" referred to there is the Health Care Administration Board.

³A-1144 also deletes the requirement in §34a that the Commissioner adopt the State Health Plan as a regulation.

(a)

OFFICE OF HEALTH POLICY AND RESEARCH
State Health Plan
Hospital Inpatient Services
Full Rate Review; Specific Recommendations
Proposed Amendments: N.J.A.C. 8:100-14.8 and 14.13

Authorized By: Frances J. Dunston, M.D., M.P.H.,

Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-1 et seq, specifically N.J.S.A. 26:2H-5.
Proposal Number: PRN 1992-357.

Submit comments by September 2, 1992 to:

Dorothy Barker, Administrative Practice Officer
Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The State Health Plan proposed in the April 6, 1992 issue of the New Jersey Register and adopted in the July 20, 1992 issue of the New Jersey Register (see 24 N.J.R. 1164(a) and 2561(a), respectively) elicited a number of comments requesting changes to requirements on hospitals. These changes, due to their substantive nature, could not be made on adoption. The Department, as stated in the responses to these comments, agrees that, based upon additional information provided by the hospitals, certain changes should be made to the State Health Plan, and has done so as follows:

The original proposal at N.J.A.C. 8:100-14.8(d) required two conditions to trigger full rate review for hospitals recommended for phase out of acute care services: (1) extremely low utilization and (2) financial insolvency. In this proposal, the rule is amended so that either of these conditions will trigger full rate review. This amendment makes this rule consistent with existing hospital rate setting rules at N.J.A.C. 8:31B-3.52.

N.J.A.C. 8:100-14.13 has been amended from the original proposal in which 15 hospital pediatric units were recommended for closure, to the current proposal which recommends closing three units, downsizing six units, and encouraging merger or consolidation with downsizing for the remainder. This amendment reflects more accurate reporting provided by the hospitals affected. Also, this rule has been amended to clarify that all hospitals are required to participate in bed need studies conducted by their LABs.

Social Impact

Since the Department can initiate a full rate review of a hospital if it determines that either of these conditions are present, pursuant to N.J.A.C. 8:31B-3.52, there is no change in the social impact upon the hospitals or upon their patients.

The text added at N.J.A.C. 8:100-14.13(c) will have an impact on all hospitals in New Jersey, since this text requires them to participate in the bed need studies as conducted by their particular LAB.

The proposed amendments to N.J.A.C. 8:100-14.13 which change the requirements to downsize pediatric unit bed capacity will affect the following hospitals and their patients or potential patients:

Hackettstown Community Hospital; Warren Hospital; Pascack Valley Hospital; St. Francis Hospital in Hudson County; St. Mary Hospital in Hudson County; Clara Maass Medical Center; Rahway Hospital; Helene Fuld Hospital; St. Francis Hospital in Mercer County; Rancocas Hospital; Kennedy Memorial Hospitals, Stratford Division, in Camden County; South Jersey Hospital System, Bridgeton Division; and Underwood-Memorial Hospital.

Insofar as the rule is now based upon data that more accurately depicts the hospitals' current level of operations, the requirements placed upon a particular hospital via the State Health Plan will be more in line with actual community needs.

Economic Impact

The original proposal recommended eliminating 235 pediatric beds, which would avoid the expenditure of \$58 million in replacement costs. This proposal recommends eliminating an estimated 140 pediatric beds, which would avoid the expenditure of \$35 million in replacement costs. Hospital participation in the bed need study will not result in increased costs to the hospitals. The amendment to N.J.A.C. 8:100-14.8, regarding the full rate review will have no additional economic impact, as the rule is being made consistent with N.J.A.C. 8:31B-3.52.

Regulatory Flexibility Statement

The regulated entities, "Chapter 83" hospitals, all employ more than 100 people, and therefore are not considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

8:100-14.8 Limitations on hospitals and areas with excess bed capacity

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

(d) The Department of Health may initiate a full rate review under N.J.A.C. 8:31B-3.52 for a hospital which has been recommended for phase out of all acute care services in the following circumstances:

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1. Patient volume falls below an average daily census of 50, or to a level which the Department determines will result in adverse patient care outcomes or risk to patient safety; [and] or

2. The hospital is financially insolvent.

8:100-14.13 Specific recommendations

(a) (No change.)

(b) Based upon the criteria contained in N.J.A.C. 8:100-4 and N.J.A.C. 8:100-14.3, 14.5, 14.7 and 14.8, certificate of need applications shall be consistent with the following list of responsibilities and provisions:

1. Local Advisory Board I—shall submit to the State Health Planning Board and the Department of Health: a M/S bed need study for each county, an OB/GYN bed need study for Warren County which addresses consolidation of programs at one site, and a pediatric bed need study for Morris County and the city of Passaic. The LAB shall also submit a bed need study that addresses the conversion of St. Mary's and the need to continue the psychiatric outpatient programs currently provided at St. Mary's. The specific responsibilities of the hospitals in LAB I are listed by county, as follows:

i.-iii. (No change.)

iv. Warren County:

(1) (No change.)

(2) [(Reserved)] **Hackettstown Community Hospital shall participate in the LAB OB/GYN bed need study.**

(3) **Warren Hospital shall participate in the LAB OB/GYN bed need study. It may apply for designation as a community pediatric center.**

2. Local Advisory Board II shall submit to the State Health Planning Board and the Department of Health a M/S bed need study that addresses the feasibility of maintaining M/S beds at Bergen Pines County Hospital. The specific responsibilities of the hospitals in LAB II are listed by county as follows:

i. Bergen County:

(1)-(5) (No change.)

(6) [(Reserved)] **Pascack Valley Hospital shall reduce its number of licensed pediatric beds to 14 and may apply for designation as a community pediatric center, following the bed reduction.**

(7) (No change.)

ii. Hudson County:

(1)-(5) (No change.)

(6) [(Reserved)] **St. Francis Hospital shall consolidate its licensed pediatric beds at one site with St. Mary Hospital. The consolidation shall include a reduction in the total number of licensed pediatric beds. St. Francis Hospital or St. Mary Hospital may apply for designation as a community pediatric center at the single site, following the pediatric bed consolidation.**

(7) **St. Mary Hospital shall eliminate its licensed OB/GYN unit or reduce its number of OB/GYN beds. St. Mary shall consolidate its licensed pediatric beds at one site with St. Francis Hospital. The consolidation shall include a reduction in the total number of licensed pediatric beds, St. Mary Hospital or St. Francis Hospital may apply for designation as a community pediatric center at the single site, following the pediatric bed consolidation.**

3. Local Advisory Board III shall submit to the State Health Planning Board and the Department of Health M/S bed need studies for Essex and Union Counties. The specific responsibilities of the hospitals in LAB III are listed by county as follows:

i. Essex County:

(1) **Clara Maass Medical Center shall reduce its number of licensed pediatric beds or consolidate its pediatric service with an area hospital. Any consolidation shall include a reduction in the total number of licensed pediatric beds. If pediatric beds are maintained at Clara Maass, Clara Maass may apply for designation as a community pediatric center, following the pediatric bed reduction or consolidation. Clara Maass Medical Center shall participate in a LAB bed need study to determine if further acute care bed reductions are warranted.**

(2)-(12) (No change.)

ii. Union County:

(1)-(3) (No change.)

(4) **Rahway Hospital shall reduce its number of licensed OB/GYN beds. Rahway Hospital shall reduce its number of licensed pediatric beds to 17 and may apply for designation as a community pediatric center, following the pediatric bed reduction.**

(5) (No change.)

4. Local Advisory Board IV shall submit to the State Health Planning Board and the Department of Health M/S bed need studies for Mercer and Middlesex Counties. The LAB shall develop a strategy for acute care bed reductions in Mercer County, including consideration of converting one existing facility to another needed service. The LAB shall submit a study recommending a plan to consolidate to one site pediatric and OB/GYN services at Helene Fuld Medical Center and St. Francis Medical Center. Also, it shall submit a study of Raritan Bay Medical Center and South Amboy Memorial Hospital to determine the appropriateness and feasibility of joint ventures, particularly to retain South Amboy's inpatient psychiatric programs in the county as South Amboy transitions from general acute care services. The specific responsibilities of the hospitals in LAB IV are listed by county as follows:

i. (No change.)

ii. Mercer County:

(1)-(2) (No change.)

(3) [and (4) (Reserved)] **Helene Fuld Medical Center shall participate in the LAB pediatric and OB/GYN bed need study to determine if it should eliminate its units, reduce the number of licensed beds or consolidate pediatric and OB/GYN services at one site with St. Francis Medical Center. Any consolidation shall include a reduction in the total number of licensed pediatric and OB/GYN beds. If pediatric services are consolidated at Helene Fuld, Helene Fuld may apply for designation as a community pediatric center following the pediatric bed consolidation.**

(4) **St. Francis Medical Center shall participate in the LAB pediatric and OB/GYN bed need study to determine if it should eliminate its units, reduce the number of licensed beds or consolidate pediatric and OB/GYN services at one site with Helene Fuld Medical Center. Any consolidation shall include a reduction in the total number of licensed pediatric and OB/GYN beds. If pediatric services are consolidated at St. Francis, St. Francis may apply for designation as a community pediatric center following the bed consolidation.**

(5)-(6) (No change.)

iii.-iv. (No change.)

5. Local Advisory Board V shall submit to the State Health Planning Board and the Department of Health M/S bed need studies for Camden, Cumberland and Salem Counties. The LAB shall submit a plan to maintain access to the psychiatric and substance abuse services currently being provided by Zurbrugg's Riverside Division as the hospital transitions from general acute care services. The specific responsibilities of the hospitals in LAB V are listed by county as follows:

i. Burlington County:

(1) (No change.)

(2) [(Reserved)] **Rancocas Hospital shall reduce its number of licensed pediatric beds to 10 and may apply for designation as a community pediatric center following the pediatric bed reduction.**

(3) (No change.)

ii. Camden County:

(1) (No change.)

(2) [(Reserved)] **Kennedy Memorial Hospitals (Stratford Division) shall reduce its number of licensed pediatric beds to 10 and may apply for designation as a community pediatric center following the bed reduction.**

(3)-(5) (No change.)

iii. Cumberland County:

(1)-(3) (No change.)

(4) **South Jersey Hospital System (Bridgeton Division) shall reduce its number of licensed OB/GYN beds, eliminate the unit or consolidate at one site with Newcomb Medical Center. South Jersey Hospital System (Bridgeton Division) shall reduce its number of licensed pediatric beds to 10 and may apply for designation as a community pediatric center following the pediatric bed reduction.**

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- iv. Gloucester County:
 - (1) (No change.)
 - (2) Underwood-Memorial Hospital shall reduce its number of licensed OB/GYN beds. **Underwood-Memorial shall also reduce its number of licensed pediatric beds to 10 and may apply for designation as a community pediatric center following the pediatric bed reduction.**
 - v. (No change.)
 - 6. (No change.)
 - (c) **All hospitals shall participate in bed need studies conducted by their LABs.**
- Recodify (c)-(e) as (d)-(f) (No change in text.)

INSURANCE

(a)

DIVISION OF ADMINISTRATION

**Public Advocate Reimbursement Disputes
Proposed New Rules: N.J.A.C. 11:1-33**

Authorized By: Samuel F. Fortunato, Commissioner,
Department of Insurance.
Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); *State Farm Mutual Automobile Insurance Company v. Department of the Public Advocate*, 118 N.J. 336 (1990).
Proposal Number: PRN 1992-344.

Submit comments by September 2, 1992 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN-325
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 52:27E-19b authorizes the Division of Rate Counsel, Department of Public Advocate (Public Advocate) to obtain reimbursement of its expenses for counsel and experts in rate change proceedings initiated by insurance companies or non-profit service plans subject to Title 17 or Title 17B of the New Jersey Statutes. These statements are to be paid to the Department of the Treasury within 30 days after the date of assessment by the Public Advocate.

The New Jersey Supreme Court has directed the Department of Insurance (Department) to provide a forum for the resolution of disputes by insurers and others to Public Advocate requests for reimbursement. (*State Farm Mutual Automobile Insurance Company v. Department of the Public Advocate*, 118 N.J. 336 (1990)). The Court determined that, in cases where an insurer disputes the charges requested by the Public Advocate, the usual form of judicial review of agency action (review by the Appellate Division) is inappropriate because the disputes often require the resolution of essentially factual issues, or mixed issues of fact and law. In the absence of specific direction from the Legislature, the Court found that the Department was the proper agency to review and resolve these disputes after a hearing before the Office of Administrative Law (OAL), when necessary. In the absence of legislative action since the Court's decision, the Department now proposes these rules to set forth the procedures for resolving such disputes.

As suggested by the Court, these proposed rules provide that disputes concerning requests for reimbursement by the Public Advocate be brought before the Commissioner of Insurance (Commissioner) by the filing of a petition no later than 30 days after the insurer receives the request. A copy of the petition is to be filed with the Public Advocate, which may file a response with the Commissioner no later than 30 days after its receipt of the petition. The Commissioner will determine whether the matter is a contested case, and thus requires a hearing before the OAL, not later than 60 days after receipt of the petition. This 60-day time period provides the parties and the Department with an opportunity to resolve the dispute, if possible, without the necessity of an OAL hearing. If a hearing is required, procedures for the conduct of

the hearing shall be in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 (UAPR).

These proposed rules also set forth minimum requirements for the contents of an insurer's petition requesting Department review of the Public Advocate's charges. Consistent with the Court's decision, the petition shall state the insurer's objections phrased in terms of the proper standard for review of agency actions. Specifically, the insurer's objections should raise one or more of the following issues for review:

- (1) Whether the statement of charges violates expressed or implied legislative policies;
- (2) Whether there is an adequate factual basis to sustain the Public Advocate's charges; and
- (3) Whether the charges are unreasonable under the circumstances of the case and thus constitute a clear abuse of discretion.

These proposed rules further require that the petitioner identify any undisputed portions of the Public Advocate's charges, and pay all undisputed charges no later than the date on which the petition is filed.

Finally, these proposed rules provide that failure to comply with the terms of these rules may result in the dismissal of the petition with prejudice. The Department notes that in such circumstances the Public Advocate thereafter is entitled to summary entry of judgment by an appropriate court for the total amount of the charges billed.

N.J.A.C. 11:1-33.1 sets forth the purpose and scope of the rules, which is to establish a procedure for the expeditious resolution of disputes concerning statements of charges submitted by the Public Advocate in connection with insurance rate proceedings.

N.J.A.C. 11:1-33.2 sets forth definitions of various terms used throughout the subchapter.

N.J.A.C. 11:1-33.3 sets forth the procedural steps of the Department's review.

N.J.A.C. 11:1-33.4 sets forth the requirements for the contents of a petition for review.

N.J.A.C. 11:1-33.5 sets forth the requirement that undisputed portions of the Public Advocate's bill shall be paid as a condition of review by the Department.

N.J.A.C. 11:1-33.6 provides that failure to comply with these proposed rules may result in the dismissal of the Petition with prejudice.

Social Impact

These proposed rules affect insurers, rating organizations and non-profit service plans that file rates with the Department pursuant to Title 17 and Title 17B of the New Jersey statutes; the Public Advocate; and the Department. The rules will have a positive social impact by providing a straightforward and expeditious method for resolving disputes regarding statements submitted by the Public Advocate for reimbursement of expenses in connection with insurance rate proceedings. These procedures are in accordance with the decision of the New Jersey Supreme Court in *State Farm Mutual Automobile Insurance Company v. Department of the Public Advocate*, 118 N.J. 336 (1990).

Economic Impact

These proposed rules will impact insurers, rating organizations and non-profit plans; the Department; the Public Advocate; and the Office of Administrative Law. Although there will be some costs imposed, it must be noted that the purpose of this rule is to establish procedures to resolve disputes between the Public Advocate and insurance rate filers that wish to contest the statement of charges submitted by the Public Advocate pursuant to N.J.S.A. 52:27E-19b. The alternative (that is, an action in the courts) presumably would be more expensive and has, in any event, been precluded by decision of the New Jersey Supreme Court. The costs to the parties are limited to necessary expenses required to present their side of the dispute. Insurers and other petitioners have no incentive to undertake these expenses unless they perceive that it is in their economic interest to do so by initiating the administrative proceedings. The Public Advocate may, according to the decision of the Court, recover its expenses. The Department and the Office of Administrative Law will be required to absorb the additional costs involved in receiving, processing, hearing and deciding these cases.

Regulatory Flexibility Analysis

These proposed rules will apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq. These "small businesses" are insurance companies authorized to transact the business of insurance in New Jersey.

Such companies will be required to obtain professional legal services to prosecute the administrative actions provided in these proposed rules.

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It must be noted these rules are intended merely to provide for an administrative forum in which to resolve disputes expeditiously when insurers, which may include "small businesses," choose to initiate an action to dispute a request for reimbursement by the Public Advocate. Prior to the decision of the New Jersey Supreme Court in *State Farm Mutual Automobile Insurance Company v. the Department of the Public Advocate*, 118 N.J. 336 (1990), these disputes were resolved in actions in the Superior Court. Presumably the proceedings provided by these proposed rules pursuant to the Court's decision will reduce the costs of litigating such disputes since an administrative action is generally less expensive than a lawsuit.

Although these proposed rules provide no difference in procedures based upon business size, the procedures set forth are, the Department believes, the minimum necessary to carry out the mandate by the Court to provide an appropriate means of resolving these disputes. The standards set forth in the rules likewise are only those necessary to process the cases and resolve the disputes consistent with the directions of the Court. To this extent, compliance requirements have been minimized for small business insurers as well as other petitioners that may choose to avail themselves of the processes set forth in these proposed rules.

The Department further notes that although the statutes providing for reimbursement of expenses to the Public Advocate provide a cap on the obligations on some small business public utilities (see N.J.S.A. 52:27E-19a and e), no difference based upon business size is provided for insurance companies or other filers (see N.J.S.A. 52:27E-19b).

Full text of the proposed new rules follows:

SUBCHAPTER 33. PUBLIC ADVOCATE REIMBURSEMENT DISPUTES

11:1-33.1 Purpose and scope

(a) This subchapter sets forth the procedures used by the Department to review and resolve disputes concerning statements rendered by the Public Advocate for reimbursement of expenses incurred in connection with insurance rate change matters. These rules are intended to carry out the mandate of the New Jersey Supreme Court set forth in its decision of *State Farm Mutual Automobile Insurance Company v. Department of the Public Advocate*, 118 N.J. 336 (1990).

(b) This subchapter applies to all insurance companies, rating organizations and non-profit service plans required to reimburse the Public Advocate for expenses in connection with insurance rate matters pursuant to N.J.S.A. 52:27E-19.

11:1-33.2 Definitions

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

"Flex rate proceeding" means a challenge by the Public Advocate to a Statewide rate change filed by a private passenger automobile insurer pursuant to N.J.S.A. 17:29A-44 which results in a reduction or rescission of the rate change.

"Commissioner" means the New Jersey Commissioner of Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person authorized or admitted to transact the business of insurance in this State which files rates and rating systems pursuant to N.J.S.A. 17:29A-1 et. seq. and N.J.S.A. 17:29AA-1 et. seq.; and any non-profit service plan as defined herein.

"Non-profit service plan" means a hospital service corporation as defined in N.J.S.A. 17:48-1; a medical service corporation as defined in 17:48A-1; a dental service corporation as defined in N.J.S.A. 17:48C-2(a); or a health service corporation as defined in N.J.S.A. 17:48E-1(e).

"Public Advocate" means the Division of Rate Counsel, Office of the Public Advocate, established pursuant to N.J.S.A. 52:27E-16.

"Public Advocate's Statement" means the statement of the compensation and expenses of counsel, experts and assistants employed by the Public Advocate which is issued by the Director of the Division of Rate Counsel pursuant to N.J.S.A. 52:E-19b.

"Rate change proceeding" means any process initiated by an insurance company, rating organization or non-profit service plan to increase or change the rates or charges for insurance, including, but not limited to, a filing to amend rates pursuant to N.J.S.A.

17:29A-14; a filing of rates or supplementary rate information pursuant to N.J.S.A. 17:29AA-5; a flex rate proceeding as defined herein; the filing of rates by any non-profit service plan pursuant to N.J.S.A. 17:45-9; N.J.S.A. 17:48A-10; N.J.S.A. 17:48C-14 and N.J.S.A. 17:48E-27 and 27.1; or any change in a rating system accomplished by filing policy forms or rating rules that effect a change in rates.

"Rating organization" means every person or persons, corporation, partnership, company, society or association engaged in the business of ratemaking for two or more insurers, licensed in accordance with N.J.S.A. 17:29A-2.

11:1-33.3 Procedural provisions

(a) Any insurer, rating organization or non-profit service plan that desires to challenge or dispute a Public Advocate's Statement shall, within 30 days of receiving the Public Advocate's Statement, file a petition with the Commissioner that includes at minimum the information set forth in N.J.A.C. 11:1-33.4, except that any insurer, rating organization or non-profit service plan which notified the Department of a pending reimbursement dispute no later than 30 days prior to the effective date of this subchapter shall file a petition pursuant to the provisions herein within 30 days of the effective date of this subchapter.

1. The petitioner shall serve a copy of the petition on the Public Advocate simultaneously with filing the petition with the Department.

(b) The Public Advocate may file a response not later than 30 days after receipt of the petition.

1. The response by the Public Advocate, if filed, may identify any errors on the disputed Public Advocate's Statement, or set forth any revisions or amendments to the Public Advocate Statement as sent to the petitioner.

2. In the absence of any response by the Public Advocate, the Commissioner shall deem that the Public Advocate confirms the original Public Advocate's Statement as sent.

(c) The Commissioner shall, within 60 days of receipt of the petition, determine whether the petition satisfies the requirements of N.J.A.C. 11:1-33.4 and whether the matter is a contested case. The Commissioner shall notify the petitioner and the Public Advocate of the determination.

1. If the Commissioner finds that the petition does not meet the requirements of N.J.A.C. 11:1-33.4, the Commissioner may dismiss the petition with prejudice.

2. If the Commissioner finds that there are no good faith disputed issues of material facts and that the matter may be decided on the documents filed, the Commissioner shall issue a written decision either granting or denying, or partially granting and partially denying, the petition.

3. If the Commissioner finds that the matter is a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing to be conducted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) Nothing in this subchapter shall prohibit the resolution of any disputed issue at any time between the petitioner and the Public Advocate.

11:1-33.4 Contents of petition

(a) A petitioner requesting review of a disputed Public Advocate's Statement shall set forth at minimum the following information in the petition:

1. The name and address of the petitioner;
 2. The name, address and telephone number of the attorney for the petitioner, including the name of the attorney personally handling the matter;

3. The date the Public Advocate's Statement was received by the petitioner;

4. The petitioner's request that the Commissioner review the Public Advocate statement to resolve one or more of the following issues:

i. Whether the Public Advocate's Statement violates expressed or implied legislative policies;

INSURANCE

PROPOSALS

ii. Whether there is an adequate factual basis to sustain the Public Advocate's Statement; or

iii. Whether the Public Advocate's Statement charges are unreasonable under the circumstances of the rate change proceeding, and such circumstances shall include, but not be limited to, the petitioner's expenses for counsel, experts, and assistants in the rate change proceeding;

5. Factual and legal contentions that the petitioner wishes to advance in support of its objections; and

6. Those portions of the Public Advocate's Statement, if any, which are not disputed and the date and manner of payment of those undisputed amounts.

(b) A copy of the disputed Public Advocate's Statement shall be appended to the petition.

11:1-33.5 Payment of undisputed amounts

The petitioner shall, as a condition of filing a petition to request review of a disputed Public Advocate's Statement, pay any portion of the charges set forth on the Public Advocate's Statement which are not in dispute.

11:1-33.6 Failure to comply with rules; failure to file

(a) Failure of the petitioner to comply with the rules set forth in this subchapter shall result in the dismissal of the petition with prejudice.

(b) Failure to timely file a petition entitles the Public Advocate to summary judgment in its favor in the Law Division for the full amount charged.

(a)

**DIVISION OF FINANCIAL EXAMINATIONS
Notice of Extension of Public Comment Period
Annual Audited Financial Reports
Proposed Amendments, New Rules and Repeals:
N.J.A.C. 11:2-26**

Take notice that the Department of Insurance hereby extends the public comment period for the proposed new rules and amendments at N.J.A.C. 11:2-26, Annual Audited Financial Reports, published in the New Jersey Register on June 1, 1992 at 24 N.J.R. 1940(a). The new public comment deadline will be August 7, 1992.

Submit comments by August 7, 1992 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
N.J. Department of Insurance
20 W. State Street
CN 325
Trenton, NJ 08625

(b)

**DIVISION OF FINANCIAL EXAMINATIONS AND
LIQUIDATIONS
Notice of Extension of Public Comment Period
Workers' Compensation Self-Insurance
Proposed New Rules: N.J.A.C. 11:2-33
Proposed Amendment: N.J.A.C. 11:1-32.4**

Take notice that the Department of Insurance hereby extends the public comment period for the proposed new rules N.J.A.C. 11:2-33, Workers' Compensation Self-Insurance, and the proposed amendment to N.J.A.C. 11:1-32.4 published in the New Jersey Register on June 1, 1992 at 24 N.J.R. 1944(a). The new public comment deadline will be August 17, 1992.

Submit comments by August 17, 1992 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
N.J. Department of Insurance
20 W. State Street
CN 325
Trenton, NJ 08625

(c)

**DIVISION OF FRAUD
Automobile Physical Damage Inspection Procedures
Proposed Repeal: N.J.A.C. 11:3-36.12**

Authorized By: Samuel F. Fortunato, Commissioner,
Department of Insurance.
Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:33B-33.
Proposal Number: PRN 1992-343.

Submit comments by September 2, 1992 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On February 24, 1992, the Department of Insurance ("Department"), adopted its new proposed rule N.J.A.C. 11:3-36.12, upon publication in the New Jersey Register effective on March 16, 1992 (see 24 N.J.R. 953(b)). This rule provided a delayed operative date for policies written as part of depopulation pursuant to N.J.S.A. 17:33B-11c(5). The Department believed at the time that depopulation would result in a significant transfer of business from the Market Transaction Facility (MTF) to the voluntary market in the period between April and September 1992, during which the transfer of business from the MTF to the voluntary market would burden existing systems of insurers, insurance inspection services and agents. The Department believed that inspections would not be able to be conducted properly with the available resources and that the public would be severely inconvenienced by delays and may suffer unnecessary suspensions of physical damage coverage.

Since the adoption of this rule, the Department has been persuaded by events to reconsider the waiver of the photo inspection for depopulated MTF risks. Some insurers have opted to conduct these inspections in the absence of a mandate, apparently having found them to be cost-effective even though they involve the involuntary transfer of business. Insurers and inspection services have improved the efficiency of their systems so that there appears little likelihood of significant public inconvenience. Therefore, the Department has decided to repeal this provision which delays photo inspections for depopulated MTF risks, and require that mandatory photo inspection be applied to all automobiles as soon as possible.

Social Impact

The Department believes that the deletion of this rule will be cost-effective even though it involves the involuntary transfer of business. Insurers and inspection services have improved the efficiency of their systems so that there now appears little likelihood of significant public inconvenience; therefore, the Department believes that it is desirable to repeal this provision and to implement fully the legislative intent of N.J.S.A. 17:33B-34 that all automobiles covered by newly issued policies be inspected before physical damage coverage is provided. The Department believes that the repeal of this rule will assist in the continuing improvement of the physical damage inspection system which curtails fraudulent physical damage claims. The proposed repeal will affect all New Jersey insurers whose policies are written as part of depopulation pursuant to N.J.S.A. 17:13B-11c(5). Insureds whose business is being transferred from the MTF to the voluntary market will have to make their automobile available for a physical damage insurance inspection.

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

Economic Impact

The Department expects the proposed repeal to improve the physical damage inspection system and further help stabilize premiums on physical damage coverages. The Department expects some insurers that are not currently inspecting these automobiles to incur some costs as the result of the proposed repeal, but the Department believes that these costs should be off-set by savings in claim payments.

Regulatory Flexibility Analysis

The proposed repeal imposes compliance requirements on insurance companies authorized to transact private passenger automobile insurance, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed repeal as described in the Summary above should prove to be cost-effective.

Since insurers have improved the efficiency of their systems and are currently inspecting other automobiles, the Department does not believe additional services will be required. The Department is unable to

estimate the cost that will be incurred or the need for additional professional services that may be required by small businesses to inspect automobiles that are not currently being inspected (depopulation from the MTF). N.J.S.A. 17:33B-33 et seq. requires a newly issued policy to be subject to an automobile physical damage inspection by the insurer. The costs and needs for services will vary substantially depending upon each insurer's external resources and insured's base. In order to effectuate the goals of these rules and to meet the requirements of the FAIR Act, no differential in requirements based on business size can be provided.

Full text of the proposal follows:

[11:3-36.12 Delayed Operative Date for Policies Written as Part of Depopulation Pursuant to N.J.S.A. 17:33B-11c(5)

The operative date of this subchapter is October 1, 1992, for policies written as part of depopulation pursuant to N.J.S.A. 17:33B-11c(5) by voluntary market insurers for insureds which were previously insured by the New Jersey Market Transition Facility.]

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Consumer Checking Accounts

Adopted New Rules: N.J.A.C. 3:1-19

Proposed: May 4, 1992 at 24 N.J.R. 1662(b).

Adopted: July 6, 1992 by Jeff Connor, Commissioner,
Department of Banking.

Filed: July 8, 1992 as R.1992 d.305, with a substantive change
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:16N-1, specifically 17:16N-3.

Effective Date: August 3, 1992.

Operative Date: December 1, 1992.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department received comments from the following:

Andrea L. Center, Paralegal, UJB Financial Corp.

Samuel J. Damiano, President, New Jersey Council of Savings Institutions

Jonathan L. Fiechter, Deputy Director, Office of Thrift Supervision

Louis E. Luddecke, Executive Vice President, Metropolitan State Bank

Robert P. Marasco, City Clerk, Newark, New Jersey

James R. Silkensen, Executive Vice President, New Jersey Savings League

Hattie M. Ulan, Associate General Counsel, National Credit Union Administration

Barry J. Zadworny, Senior Vice President, Roma Federal Savings Bank
The Municipal Council of Newark

COMMENT: A commenter from an institution observed that its computer program will automatically close out an account that has a balance of \$0.00 if there is no activity for 60 days. It would be costly for the institution to reprogram its computer to allow New Jersey Consumer Checking Accounts to be maintained with a \$0.00 balance, as would seem to be required by the \$0.00 minimum balance provision. The commenter suggested instead that the rule require a \$1.00 minimum balance. A commenter from another institution suggested a minimum balance requirement of \$10.00 to protect against negative balances as a result of service charges being taken out. Two other commenters suggested that the minimum balance requirement be set at \$25.00 and \$50.00, respectively. Taking a different view, the Municipal Council of Newark submitted a resolution of the council supporting the Department's proposal, and particularly the elimination of a minimum balance requirement to maintain the accounts.

RESPONSE: The Department desires not to require institutions to overhaul their computer systems just to provide for a technical zero minimum balance requirement. If institution systems now automatically close out accounts when balances reach zero, the Department does not wish to force institutions to change those systems. For this reason, the Department will effect a substantive change upon adoption to permit a minimum balance requirement for New Jersey Consumer Checking accounts of no more than \$1.00. The Department rejects comments suggesting higher minimum balance requirements of \$10.00, \$25.00, and \$50.00. The Department reiterates its concern that a minimum balance requirement might overly restrict the availability and usefulness of the accounts to those customers the legislation was primarily intended to benefit.

COMMENT: A commenter suggested that institutions be permitted to charge a maximum of \$5.00 per month when the balance drops below \$25.00.

RESPONSE: For the reasons set forth above, the Department has concluded that a minimum balance of \$1.00 may be required. The Department concludes that no service charge should be imposed for negative balances because such negative balances may well generate overdraft charges for the institution.

COMMENT: A commenter recommended that the initial deposit amount be increased from \$50.00 to \$100.00. Taking a different position, the City Clerk of Newark, on behalf of the Municipal Council Governing Body, expressed approval of the \$50.00 amount required to open the account and opposition to any higher amount.

RESPONSE: The Department concludes that a \$100.00 initial deposit amount would overly inhibit the availability of New Jersey Consumer Checking Accounts. Therefore, it has adopted the \$50.00 initial deposit amount.

COMMENT: A commenter suggested that each non-check withdrawal from a New Jersey Consumer Checking Account be counted as a "check" for the purposes of these rules. The only types of withdrawals which would not be counted as checks would be withdrawals through domestic ATM's.

RESPONSE: Accounts are debited in numerous ways other than through checks and ATM transactions. These include pre-arranged debits, debits for electronic transfers, debits for printing checks, and debits for overdrafts. The institution may charge for any of the other types of withdrawals to the same degree that it charges its other checking account customers, thus compensating it for providing these services. Given that the institution can be compensated adequately through this fee structure and given that the Department's survey suggests that the \$3.00 per periodic cycle service charge will compensate the institution adequately for the eight "without charge" checks per periodic cycle, the Department does not agree that a debit through means other than checks should result in the loss of one of the eight "without charge" checks.

COMMENT: A commenter opined that the provision allowing an institution to close a New Jersey Consumer Checking Account "for fraudulent activity or overdrafts under the same standards which it applies to holders of its regular checking accounts" is too narrow. Institutions should be allowed to close accounts for additional reasons, for example, if a customer deposits numerous checks which are returned for non-sufficient funds.

RESPONSE: The language which sets forth the permissible reasons for closing an account is set forth in the statute. The Department does not have the authority to specify additional reasons for closing accounts other than those specified in the statute.

COMMENT: A commenter requested confirmation that the designation "New Jersey Consumer Checking Account" is not required to be printed on the checks for the accounts.

RESPONSE: The Department confirms that the designation is not required to be printed on checks.

COMMENT: A commenter inquired whether an institution may conduct credit checks of those who apply to open New Jersey Consumer Checking Accounts, if it does so as to applicants for regular checking accounts.

RESPONSE: An institution may perform credit checks on applicants for New Jersey Consumer Checking Accounts, but only if it also does so for its regular checking account applicants. The institution, however, may refuse to offer a New Jersey Consumer Checking Account only for the reasons expressed in N.J.S.A. 17:16N-3(h)(1) and (2), despite that it may refuse to open a regular account for other reasons.

COMMENT: A commenter asked how "low-income" is determined for the purposes of the rule.

RESPONSE: The Act does not establish low income as a qualifying factor in opening a New Jersey Consumer Checking Account. While it is anticipated that most of those who will establish the accounts will be young, low-income, or elderly, institutions may not refuse to offer a New Jersey Consumer Checking Account to a person on the ground that the person's income is too large.

COMMENT: The National Credit Union Administration and the Office of Thrift Supervision reaffirmed their previously expressed views that, as to Federally-chartered institutions which they regulate, this rule is preempted by Federal regulations. A commenter from a Federally-chartered savings and loan also made this argument.

RESPONSE: The Department's position is that this rule is fully applicable to Federally-chartered institutions because it is not expressly preempted by any Federal law, neither frustrates the purpose for which Federally chartered depositories were created nor impairs their efficiency to discharge the duties imposed upon them by Federal law, and, perhaps most importantly, actually furthers, rather than frustrates, the national interest, as defined most recently by the Bank Enterprise Act of 1991.

ADOPTIONS

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

SUBCHAPTER 19. NEW JERSEY CONSUMER CHECKING ACCOUNTS

3:1-19.1 Definitions

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

"Account agreement" means the agreement governing a New Jersey Consumer Checking Account.

"ATM" means automated teller machine.

"Check" means any check as defined in N.J.S.A. 12A:3-104, share draft, negotiable order of withdrawal, or similar means of making payment or transfers to third parties, the customer, or others, which is drawn on an account in a depository institution and is payable on demand. It shall not include debits to the account for maintenance charges, fees, printing checks, pre-arranged automatic withdrawals, and other similar services.

"Consumer" means a natural person who resides in this State, except that a credit union may require that the natural person be a member of the credit union in accordance with the credit union's rules of membership.

"Customer" means a consumer who has a New Jersey Consumer Checking Account.

"New Jersey Consumer Checking Account" or "account" means a deposit account established pursuant to N.J.S.A. 17:16N-3 and with respect to which the account holder is permitted to make payments to third parties or others by check.

"Non-conforming account" means a New Jersey Consumer Checking Account which does not contain the characteristics set forth in N.J.A.C. 3:1-19.2 but has been individually approved by the Commissioner pursuant to N.J.A.C. 3:1-19.3.

3:1-19.2 Features of New Jersey Consumer Checking Accounts

(a) A New Jersey Consumer Checking Account which is subject to subsection c of N.J.S.A. 17:16N-3 shall have all of the following features:

1. The account agreement shall not require more than \$50.00 as an initial deposit amount;
2. The account agreement shall not require the customer to maintain a minimum balance of more than *[\$0.00]* ***\$1.00*** in order to maintain the account;
3. The account agreement shall allow the customer to make at least eight withdrawals by check per periodic cycle from the account without charge. For the purpose of this paragraph, the withdrawal shall be deemed made when paid by the depository institution. This minimum number of withdrawals is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the minimum number shall be adjusted accordingly;
4. The account agreement shall not authorize a charge exceeding \$0.50 for each transaction in excess of the number required by (a)3 above;
5. The account agreement shall allow a customer, of a depository institution which permits withdrawals to be made from checking accounts by means of withdrawal slips, to make unlimited withdrawals by withdrawal slip from the account without charge;
6. The account agreement shall allow a customer to make unlimited deposits into the account without charge;
7. The account agreement shall not authorize a charge for maintaining the account which exceeds \$3.00 per periodic cycle. Also, the maximum amount of the charge is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the maximum amount shall be adjusted accordingly;
8. The account agreement shall not authorize a charge to the customer for printing checks for the account which is more than its charge to its regular checking account holders for that service; and

9. The account agreement may provide that the depository institution may charge customers for ATM usage and for banking services not specified in this chapter if, and to the same degree that, it charges its regular checking account holders for that usage and services.

3:1-19.3 Non-conforming accounts

(a) A depository institution may apply to the Commissioner for approval of any account, which does not conform to the criteria set forth in N.J.A.C. 3:1-19.2, as a New Jersey Consumer Checking Account.

(b) Each application for approval of a non-conforming account shall provide:

1. The initial deposit amount necessary to open the account;
2. The minimum balance required to maintain the account;
3. The maximum number of checks that may be written per month without charge;
4. The maximum number of non-check withdrawals per month without charge;
5. The maximum maintenance charge per month;
6. The maximum number of deposits which may be made per month without charge;
7. The maximum per transaction charge per month for transactions in excess of those specified in (b)3, 4, and 6 above;
8. The length of the periodic cycle of the account; and
9. Any other fees which will be charged the customer.

(c) In deciding whether to approve such an account, the Commissioner shall consider whether the account meets the stated purpose of the Act to make New Jersey Consumer Checking Accounts available to consumers at low cost, and has substantially equivalent characteristics to the account in N.J.A.C. 3:1-19.2.

(d) The Commissioner shall issue a decision on an application for approval of non-conforming accounts within 30 days of receipt of the application, although the Commissioner may extend the time for issuing such decision by notifying the depository institution of such extension within the 30-day period. If neither a decision or a notice of extension has been issued within that time, the application shall be deemed approved.

3:1-19.4 Closing New Jersey Consumer Checking Accounts

(a) A depository institution may refuse to open or may close a New Jersey Consumer Checking Account for the following reasons:

1. For fraudulent activity or overdrafts under the same standards which it applies to holders of its regular checking accounts;
2. If the consumer has a regular checking account or another New Jersey Consumer Checking Account in that depository institution or in any other depository institution;
3. If the consumer makes an intentional material misrepresentation to the depository institution in connection with the account; or
4. If the fees and other revenue obtained from the account are less than the cost to the depository institution to provide the account, provided that the depository institution complies with the requirements of (b) through (d) below.

(b) No depository institution is required to offer a New Jersey Consumer Checking Account at a cost to a customer which is less than the cost to the depository institution to provide the account. In computing the cost of the account, the depository institution shall deduct the investment value of deposits in the account.

(c) A depository institution which determines that the revenue which it obtains through fees which it charges to the account holder is less than its cost for offering a New Jersey Consumer Checking Account, and which intends to discontinue offering the account on that basis, shall notify the Department 30 days prior to such discontinuance, and shall submit with such notice the data supporting its determination regarding cost.

(d) A depository institution which discontinues an account pursuant to (c) above shall not thereby be relieved from its statutory obligation to provide a New Jersey Consumer Checking Account to consumers unless it provides data supporting a conclusion by the Commissioner that the depository institution would lose money on any account which would satisfy the requirements of P.L. 1991, c.210.

COMMUNITY AFFAIRS

ADOPTIONS

3:1-19.5 Consumer information requirements

(a) A depository institution which is required by P.L. 1991, c.210 to offer a New Jersey Consumer Checking Account shall provide reasonable in-person information and assistance to customers regarding New Jersey Consumer Checking Accounts, checking accounts generally, and related financial services.

(b) A depository institution which is required by P.L. 1991, c.210 to offer a New Jersey Consumer Checking Account shall post in a conspicuous place in the lobby of each office of the depository institution a sign and make material available in the public area which indicates that the office offers New Jersey Consumer Checking Accounts. The notice and material shall explain the material features and limitations of such an account. A depository institution may identify its New Jersey Consumer Checking account by any name, provided that it also indicates conspicuously that the account is a "New Jersey Consumer Checking Account."

(a)

DIVISION OF REGULATORY AFFAIRS

License Fees

Readoption: N.J.A.C. 3:23

Proposed: May 4, 1992 at 24 N.J.R. 1667(a).
Adopted: July 6, 1992 by Jeff Connor, Commissioner,
Department of Banking.
Filed: July 6, 1992 as R.1992 d.303, **without change**.
Authority: N.J.S.A. 17:1-8.1; 17:10-3.9 and 23; 17:11A-38 and 54;
17:15-1; 17:15A-4 and 6; 17:15B-7 and 17; 17:16C-7, 8, 82(a),
(b), and (c); 17:16D-4 and 8; and 45:22-4 and 11.

Effective Date: July 6, 1992.
Expiration Date: July 6, 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. 3:23.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
Standards for Municipal Fees, Departmental Fees
Plumbing Fixtures and Equipment**

Adopted Amendments: N.J.A.C. 5:23-4.18 and 4.20

Proposed: May 18, 1992 at 24 N.J.R. 1846(a).
Adopted: July 8, 1992 by Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.
Filed: July 13, 1992 as R.1992 d.313, **without change**.
Authority: N.J.S.A. 52:27D-124.

Effective Date: August 3, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-4.18 Standards for municipal fees

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

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building, or in the case of alterations, the estimated construction cost, and the number and type of plumbing, electrical and fire protection fixtures or devices as herein provided.

1. (No change.)

2. Plumbing fixtures and stacks: Fees shall be based upon the number of plumbing fixtures, devices, plumbing stacks and utility service connections to be installed. Utility service connections include sewer connections and water service connections. The fee shall be a unit rate per fixture, stack, and utility service connection. The unit rate may vary for different types of fixtures and utility service pipes, but this shall be clearly indicated in the ordinance and schedule. There shall be no inspection fee charged for gas service entrances.

3.-4. (No change.)

(d)-(k) (No change.)

5:23-4.20 Departmental fees

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

(c) Departmental (enforcing agency) fees shall be as follows:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be \$43.00.

i. (No change.)

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) (No change.)

(2) The fee shall be \$60.00 per special device for the following: grease traps, oil separators, water cooled air conditioning units, refrigeration units, utility service connections, back flow preventers, steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, active solar systems, sewer pumps, interceptors and fuel oil piping. There shall be no inspection fee charged for gas service entrances.

iii.-iv. (No change.)

3.-8. (No change.)

EDUCATION

(c)

STATE BOARD OF EDUCATION

Notice of Administrative Correction

Child Nutrition Programs

Policy and Agreement for School Nutrition Programs

N.J.A.C. 6:20-9.2

Take notice that the Department of Education has requested, and the Office of Administrative Law has agreed to permit, an administrative change to N.J.A.C. 6:20-9.2(a) to include 7 CFR Part 215 in the list of Federal regulations under which all school districts shall adopt a free and reduced price policy for meals or free milk. While reference to this regulation is included in the definition of "policy" at N.J.A.C. 6:20-9.1, it was inadvertently omitted from the regulation list in this subsection. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface thus):

6:20-9.2 Policy and Agreement for School Nutrition Programs

(a) All school districts shall adopt a free and reduced price policy pursuant to Federal regulations 7 CFR Parts 210, 215, 220 and 245 on the form prescribed by the Commissioner entitled "Policy for the Free and Reduced-price Meals or Free Milk." This form is available from the Bureau of Child Nutrition, Department of Education, CN 500, Trenton, NJ 08625.

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

ADOPTIONS

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(a)

STATE BOARD OF EDUCATION

Establishment of Pupil Assistance Committees

Adopted New Rules: N.J.A.C. 6:26

Proposed: May 4, 1992 at 24 N.J.R. 1670(a).

Adopted: July 1, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 8, 1992 as R.1992, d.307, **with substantive and technical changes** not requiring further public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:7A-5(e).

Effective Date: August 3, 1992.

Expiration Date: August 3, 1997.

Summary of Public Comments and Agency Responses:

Seven individuals spoke regarding the above captioned rules at the public testimony session provided by the State Board of Education held on May 20, 1992. Sixteen letters with comments were received. The name and affiliation of the commenters follows:

Speakers:

Philip Stern, New Jersey Association of School Administrators; Gary Bowen, Director, Middle Education, Washington Township Board of Education; Joyce Powell, Department Chairperson of Special Education, Vineland High School South; Sandra Heckelman, Teacher, Trenton School District; Arlene McCurdy, District PAC Facilitator, Washington Township School District; Monica L. Brown, Freehold Township Public School; and Charles Dortch, Department of the Public Advocate.

Written comments were received from the following:

Diane H. Woods, Williamstown, NJ; Camille Stahl, Paramus, NJ; Carol A. Pantusco, Washington Twp., NJ; Donna L. Lloyd, Parent Information Center of New Jersey, Inc.; Mr. & Mrs. C.M. Lloyd, Jr., Landing, NJ; Patricia Holliday, Director, Office of Education, Department of Human Services; Ellicot Solomon, Superintendent of Schools, Woodcliff Lake Public Schools; Robert Fishbein, District Supervisor, Special Education Services, Pinelands Regional School District; Daniel R. Mastrobuono, Superintendent, Fairfield Township Board of Education; Barbara N. Selikoff, Director of Special Service, Manchester Township Public Schools; Charles W. Dortch, Jr., Assistant Deputy Public Advocate, Department of Public Advocate, Division of Advocacy for the Developmentally Disabled; James B. Lewis, Ed.D., NCSP School Psychologist, Hunterdon Central Regional High School; Jean Paashauss, Summit, NJ; E. Lee Townsend, Counselor, Galloway Township Public Schools; Marilyn A. Moore, Director of Student Services, Galloway Township Public Schools; Joyce Powell, Department Chairperson of Special Education, Vineland High School South; and Robert M. Bittner, Supervisor of Instruction, Manchester Township Elementary Schools.

COMMENT: Seven commenters supported the intent and potential of the proposed regulations based on experience with similar school structures.

RESPONSE: The Department agrees.

COMMENT: Six commenters suggested that the rules as proposed violate parents' right to timely evaluation of their child for special education and matters related to federal requirement for special education services.

RESPONSE: This rule does not alter parents' right to request an evaluation in accordance with N.J.A.C. 6:28-3.3.

COMMENT: Four commenters supported aspects of the concept and purpose of the proposed rules, but recommended that they not be mandated as they may cause a fiscal and/or administrative burden on school districts.

RESPONSE: The Department's evaluation of a similar structure in 13 school districts and the experience of other states has not demonstrated a significant burden on school districts in implementing building-based problem-solving teams.

COMMENT: Four commenters recommended changes in the composition of the Pupil Assistance Committee (PAC) to require the participation of parents or guardians, school psychologists or principals.

RESPONSE: The required membership of the committee is kept at a minimum to allow for flexibility based on local needs and judgements. School districts have the option of adding members to the committee.

COMMENT: Two commenters recommended that training will be essential for PACs to be successfully implemented.

RESPONSE: The Department agrees, and is committed to offering a program of training and technical assistance options to support the optimal functioning of PACs.

COMMENT: One commenter suggested that the timelines for the Pupil Assistance Plan should be lengthened and made more specific.

RESPONSE: The timeframes in the proposed rules were piloted by 13 school districts and found to be adequate. The rules allow flexibility for locally developed school procedures to time the timeframes to their needs.

COMMENT: One commenter recommended maintaining the name "school resource committee" used for the pilot districts and restrict referrals to serious student problems.

RESPONSE: The change in title is consistent with the purpose of the new structure to focus on pupil problems. Teachers should have the freedom to refer pupils to the PAC based on their perception of pupil needs without restrictions.

Summary of Agency-Initiated Changes:

At N.J.A.C. 6:26-2.2(b), the agency corrected a typographical error in the word "procedures."

At N.J.A.C. 6:26-4.1(a), the agency corrected a typographical error in the word "limited."

At N.J.A.C. 6:26-2.3(a)2, the agency corrected a typographical error and changed "referral" to "referred."

At N.J.A.C. 6:26-3.1(b), the agency added language to clarify the referral process by adding reference to a pupil having been referred to the PAC.

At N.J.A.C. 6:26-3.2(a) the agency added language to clarify that students who "have been referred" and require service receive a written Pupil Assistance Plan.

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 26
PUPIL ASSISTANCE COMMITTEES**

SUBCHAPTER 1. GENERAL PROVISIONS

6:26-1.1 Purpose

The purpose of these rules is to set standards and provide guidance for the establishment of school-based teams, called Pupil Assistance Committees, in all New Jersey public schools.

6:26-1.2 Words and phrases defined

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

"Pupil Assistance Committees" are school-based teams which design and monitor the implementation of strategies for educating non-classified pupils who are referred because they are experiencing difficulties in their classes. Pupil Assistance Committees coordinate and/or deliver intervention and referral services for these pupils, and develop an annual Pupil Assistance Committee Report describing the needs and issues identified through referrals to the committee.

"Pupil Assistance Committee Report" is the annual report developed by the building principal, based on referrals to the Pupil Assistance Committee, for the purpose of identifying and making recommendations to improve school programs and services.

"Regular education pupils" means pupils in grades K through 12, who have not been determined to be in need of special education programs and/or related services pursuant to N.J.A.C 6:28.

**SUBCHAPTER 2. PUPIL ASSISTANCE COMMITTEE
STRUCTURE AND FUNCTIONS**

6:26-2.1 Establishment of committee

(a) Each district board of education shall establish at least one standing committee known as the Pupil Assistance Committee in each of its schools by the beginning of the 1994-95 school year.

(b) The chief school administrator shall submit an annual report to the county superintendent of schools on the functioning of the

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Pupil Assistance Committee. This report shall include, but not be limited to, a summary of the components found in N.J.A.C. 6:26-4.1.

(c) District boards of education shall, on an annual basis, provide training for new Pupil Assistance Committee team members.

6:26-2.2 Committee structure

(a) Pupil Assistance Committees shall be composed of, at a minimum:

1. The building principal or designated regular education staff member with the authority of the principal to implement the recommendations of the committee;

2. A regular education teacher; and

3. A school staff member selected from one of the following professional titles:

i. A guidance counselor;

ii. A learning disabilities teacher-consultant;

iii. A school social worker;

iv. A school nurse;

v. A school psychologist;

vi. A speech-language specialist or speech correctionist; or

vii. A substance awareness coordinator.

(b) The membership of the Pupil Assistance Committee shall be determined by *[procedures]* ***procedures*** developed by the chief school administrator and approved by the district board of education.

(c) The principal or designated regular education staff member shall serve as chairperson of the Pupil Assistance Committee.

(d) The Committee shall include the staff member who referred the pupil in need of assistance or who identified the issue which may be adversely affecting pupil performance or behavior in a particular class or in the school.

(e) The membership of the Committee may be expanded to include other school staff to aid in the process of developing and implementing the Pupil Assistance Plan.

6:26-2.3 Committee functions

(a) The Pupil Assistance Committee shall serve referred pupils by:

1. Providing support and guidance to classroom teachers;

2. Coordinating the access to and the delivery of school services for *[referral]* ***referred*** pupils;

3. Planning and providing for appropriate interventions for referred pupils;

4. Actively involving parents and guardians in the development and implementation of the Pupil Assistance Plan; and

5. Coordinating the services of community-based social and health provider agencies.

SUBCHAPTER 3. PUPIL ASSISTANCE COMMITTEE PROCEDURES AND PLANS

6:26-3.1 Procedures

(a) The chief school administrator shall approve procedures for the operation of Pupil Assistance Committees in each school which have been developed at the building level based on the specific needs of the individual school. The procedures should include, but not be limited to:

1. Requesting services of the Pupil Assistance Committee;

2. Planning and implementing committee recommendations;

3. Notifying parents that their child has been referred to the Pupil Assistance Committee;

4. Communicating with and involving parents in the development and implementation of Pupil Assistance Plans; and

5. Maintaining records of all referrals to the Committee, including changes in the status and the disposition of Pupil Assistance Plans.

(b) If ***a pupil has been referred to the Pupil Assistance Committee and*** an educationally handicapping condition is indicated, the pupil may be referred to the child study team by the Pupil Assistance Committee or parent/guardian in accordance with N.J.A.C. 6:28-3.3 to determine eligibility for special education and or related services.

(c) The Pupil Assistance Committee shall gather relevant information regarding the educational status, attendance, classroom behavior, and conduct of a referred pupil in consultation with the

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classroom teacher, as well as additional relevant information from any school district employee, the pupil's parents or guardian.

1. The school nurse shall review the pupil's health records and apprise the committee of all relevant information about the pupil being discussed.

2. Community-based social and health provider agencies providing services to the referred pupil or the pupil's family should be contacted to obtain relevant information when appropriate.

6:26-3.2 Pupil Assistance Plans

(a) The Pupil Assistance Committee shall prepare a written plan for pupils who ***have been referred and*** require supportive services, modifications to their regular education program, or assessment and referral to school or community-based social and health provider agencies.

(b) The Pupil Assistance Plan shall:

1. Detail the modification(s) in the pupil's education program;

2. List the persons to be involved in the implementation of the plan;

3. Specify the recommendations for assessment and referral to specified school or community-based social and health services; and

4. Document that the pupil's parent(s) or guardian(s) were notified that their child was referred to the Pupil Assistance Committee and advised of any changes made in their child's program. In cases of suspected child abuse pursuant to the provisions of N.J.A.C. 6:3-5, or cases in which the drug and alcohol confidentiality requirements established in Federal regulations 42 CFR Part II apply, notification may be restricted.

(c) The Pupil Assistance Plan shall be reviewed by the Committee within eight calendar weeks of the beginning of its implementation. The review shall include an assessment of the plan's implementation and effectiveness by the requesting school staff members.

(d) Parents and guardians shall be:

1. Encouraged to participate in the development of the plan;

2. Given the necessary support to participate in the implementation of the plan; and

3. Assisted in finding and utilizing services and resources needed for family problems affecting the pupil's educational progress.

(e) The district shall implement the recommendation(s) contained in the Pupil Assistance Plan and shall identify:

1. The person(s) responsible for implementing the recommendations contained in the plan; and

2. A Committee member who will serve as case monitor to review the pupil's progress.

(f) If implementation of the recommendations of the Pupil Assistance Plan are ineffective, the plan shall be reviewed and amended as necessary. If an educationally handicapping condition is indicated, based on this review, the pupil shall be referred to the child study team in accordance with N.J.A.C. 6:28-3.3 to determine eligibility for special education and/or related services.

SUBCHAPTER 4. PUPIL ASSISTANCE COMMITTEE REPORT

6:26-4.1 Report development

(a) At the end of each school year, the building principal shall, in consultation with the Pupil Assistance Committee, develop a report based on, but not *[limitd]* ***limited*** to, concerns and problems identified through the Pupil Assistance Committee discussions and documented in the Pupil Assistance Plans. The report shall include, but not be limited to, the following components:

1. A description of the needs and issues identified through referrals to the Pupil Assistance Committee;

2. An identification and analysis of significant needs and issues which could facilitate school planning for the subsequent year; and

3. A description of activities planned in response to the needs and issues significant for school planning.

(b) A copy of the Pupil Assistance Committee Report shall be on file at the district board of education and be subject to review by the Commissioner or his or her designee.

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AND ENERGY**

OFFICE OF LEGAL AFFAIRS

Notice of Administrative Correction

Water Supply Management Act Rules

N.J.A.C. 7:19-6.8

Take notice that the Department of Environmental Protection and Energy has discovered that N.J.A.C. 7:19-6.8(a) contains an incorrect cross-reference to N.J.A.C. 7:6-6.2. The correct cross-reference is to N.J.A.C. 7:19-6.2. The cross-reference pertains to definitions of the terms "Class A standard" and "Class B standard," both of which are defined at N.J.A.C. 7:19-6.2; N.J.A.C. 7:6-6.2 is not logically connected to N.J.A.C. 7:19-6.8(a). Therefore, the erroneous cross-reference is obvious, easily recognizable, and apparent to the Department and to the regulated public, and can be corrected through this notice of administrative correction under N.J.A.C. 1:30-2.7.

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

7:19-6.8 Interconnections

(a) In order to assure the availability of water during times of emergency, including drought, the Department may require interconnections of the Class A or Class B standard (see N.J.A.C. [7:6-6.2] 7:19-6.2, Definitions) to the extent practicable and economically feasible for all Class 2 and 3 purveyors. The purveyor, upon being notified of such a requirement, is required to conduct [a] an interconnection feasibility study which must identify the most cost-effective alternative and schedule for project completion. The conclusions of the study shall be approved by the Department before project implementation. Prior to issuing an order requiring interconnections, the Department shall advise the purveyor(s) of the proposed action and thereafter allow 30 days for submission of information by the purveyor(s). If undue hardship would be caused by the proposed action, it may be waived by the Department.

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

(a)

**DIVISION OF FISH, GAME AND WILDLIFE
FISH AND GAME COUNCIL**

1992-1993 Game Code

Adopted Amendment: N.J.A.C. 7:25-5

Proposed: May 18, 1992 at 24 N.J.R. 1847(b).

Adopted: July 10, 1992 by the Fish and Game Council,
Cole Gibbs, Chairman.

Filed: July 13, 1992 as R.1992 d.315, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-29 et seq.

DEPE Docket Number: 015-92-04.

Effective Date: August 3, 1992.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by mailing press releases to 200 newspapers, posting copies of the rule proposal including summaries of the amendments and notice of the public hearing in Division field offices and mailing copies of summaries of the proposed amendments to 14 interested organizations and delivering notices of the public hearing to the Atlantic City Press and the Newark Star Ledger. Seven written comments were received by the end of the comment period. A public hearing was held by and before the Fish and Game Council (Council) on June 9, 1992. Fifteen commenters presented oral comments. The public hearing record may be inspected, or a copy obtained upon payment of the Department's nominal copying charges, by contacting Sam Wolfe, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, 401 East State Street, CN 402, Trenton, New Jersey 08625. A summary of the comments and responses follows:

General Comments

COMMENT: Rita Cileo, coordinator of the anti-hunting committee of the New Jersey Animal Rights Alliance, and Stu Chafitz, member of the above, expressed opposition to recreational hunting and hunting as a management tool. Mr. Chafitz also questioned the Division's media output. Nina Austenberg, Director, The Humane Society of the United States, rejected the 1992-93 Game Code amendments, structuring of seasons to benefit consumptive users of wildlife and use of National Wildlife Refuges by bow and arrow hunters. Evie Kramer, President of Deer, Ecology, Environment & Resources, was opposed to the 1992-93 Game Code regarding deer hunting at the Great Swamp National Wildlife Refuge and to any increase in the number of days allowed to hunt.

RESPONSE: The Council is legally mandated by N.J.S.A. 13:1B-29 et seq. to manage wildlife throughout the State of New Jersey, including public lands, as a renewable resource and to maximize the benefits derived from this resource, including the taking of game species, while minimizing negative impacts. Annual promulgation of amendments to the Game Code by the Council is essential to meet its responsibilities by adjusting seasons, bag limits and methods of taking according to the best scientific information available.

COMMENT: Mark Lanzin, independent sportsman, was in favor of the 1992-93 Game Code as presented; John Clements, President of United Bow Hunters of New Jersey, thanked the Council and Division for their efforts and success; John Abbondanza, Italian American Sportsmen's Club, thanked the Council for their efforts; and Mike Fusco, member of the Italian American Sportsmen's Club, commented that the deer herd is in good condition.

RESPONSE: The Council and Division acknowledges the support of these individuals.

N.J.A.C. 7:25-5.7

COMMENT: Joseph Cinotti, independent sportsman, suggested increasing the turkey permit quota in area 9 from 60 to 100 or more permits per segment; and Helen Heinrich, representing herself and the New Jersey Farm Bureau, was pleased with the increase in turkey permits.

RESPONSE: The Council and Division acknowledges the support of Helen Heinrich and the New Jersey Farm Bureau. The weekly permit quota for area 9 was increased from 60 to 75 based on current available data relative to the turkey population in this area and the amount of occupied, huntable land available. Increasing the weekly permit quota over 75 cannot be justified at this time.

N.J.A.C. 7:25-5.9(c)

COMMENT: Fred Stine, trapper, questioned the reduction in beaver permits and the surveys used to determine population status.

RESPONSE: Beaver quotas are based on a combination of the number of active sites per zone (all sites are categorized by colonies, bank dens, dams and cuttings), number of complaints per zone, trapper success and the recommendations of the area wildlife control representative. All zones in northern New Jersey were surveyed thoroughly in 1990 and are scheduled for a resurvey in 1992. The majority of the zones in south Jersey were surveyed in 1991 and are scheduled for resurvey in 1993. Reductions or increases in permit quotas are zone specific and based on the aforementioned data resources. It should be noted that although there is a decrease of two special beaver permits, there is an increase of two special site specific permits, resulting in no net change in the total number of permits available which remains at 100.

N.J.A.C. 7:25-5.10(c)

COMMENT: Fred Stine, trapper, questioned the reduction in river otter permits and the surveys used to determine population status.

RESPONSE: Otter permit quotas are zone specific and based on an allowable removal rate per linear mile of stream, habitat availability and quality, and rate of development. On a statewide basis, there are more permits available than issued. In 1992 only 57.4 percent of permits available were issued. Permits are zone specific and several zones were undersubscribed particularly in south Jersey. In general, zones in north Jersey are usually oversubscribed and the zone quotas are filled, however, 1992 was an exception. Reductions in 1993 permit quotas for the northern zones of 1, 2, 4 and 5 were reduced by one each for 1993 due to changes in habitat availability and quality and increased development.

N.J.A.C. 7:25-5.23(p)

COMMENT: John Abbondanza, member of the Italian American Sportsmen's Club, indicated he was not in favor of allowing scopes on

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muzzleloaders because muzzleloader hunting should be kept a primitive sport. Diane L. Melillo, sportswoman and hunter education instructor, spoke in support of allowing scopes on muzzleloaders for certain visually impaired individuals.

RESPONSE: This change will only allow persons with a documented and otherwise uncorrectable vision disability to hunt deer with a scoped muzzleloading rifle during prescribed seasons. A maximum magnification of 1.5x (an agency-initiated change) will limit scope capabilities. Issuance of the special permits will be strictly controlled by the guidelines established in this provision, and the change will be carefully monitored and evaluated after the first year.

N.J.A.C. 7:25-5.25(a)

COMMENT: Frank Paciullo, independent hunter; Bob Zuber, independent sportsman; Donte S. Maiore, independent hunter; Sal Policastro, independent hunter; and Joseph Cinotti, independent hunter, opposed limiting the harvest in deer management zones 7, 8, 10, 11, 12 and 41 to antlerless deer only during the first week of the fall bow season. Donte S. Maiore also questioned why zones 9 and 13 were not included in the program; and Sal Policastro was concerned about getting applicable information to the sportsmen. Ron Krajcovic, representing the Ocean County Federation of Sportsmen's Clubs, and Ben Glashan, president of Ocean County Federation of Sportsmen's Clubs, expressed support for changing the bag limit to antlered bucks only during the first three weeks of the fall bow season in zones 18 and 21.

RESPONSE: The Council and Division acknowledges the support of Ron Krajcovic and Ben Glashan regarding the bag limit change for zones 18 and 21. The change in bag limit in zones 7, 8, 10, 11, 12 and 41 was made on an experimental basis with an objective of more equitably distributing the antlered buck harvest between firearm hunters and bow hunters. An estimated four to seven percent of the available antlered bucks will be redistributed to six-day firearm hunters as a result of this change. Zones 9 and 13 were not included in the program, because it was designed as a limited, experimental program. The change will be highlighted in the August issue of the *New Jersey Fish and Wildlife Digest*, and announced via news release and other means.

N.J.A.C. 7:25-5.29(d)

COMMENT: Helen Heinrich, representing herself and the New Jersey Farm Bureau, and Peter Furey, representing the New Jersey Farm Bureau, opposed eliminating the concurrent opening of the six-day firearm deer season with the permit shotgun deer season and decreasing the duration of the permit shotgun season from seven to six days in zones: 5, 7, 8, 10, 11, 12, 41 and 63. John Abbondanza and Chris Cryeidi, both members of the Italian American Sportsmen's Club, and Karl Kramer, independent hunter, opposed the three days of permit shotgun season hunting in January in Hunterdon County.

RESPONSE: Shotgun permit season permit quotas, deer quotas, daily bag limits and season lengths are determined based on zone management objectives, hunter success rates and permit demand. A total of 12 permit shotgun season length options were developed for 1992-93 and apply to 62 of 65 zones. The six-day permit shotgun season option referred to above (three days in December and three days in January) will provide for the anticipated deer harvest which is consistent with applicable zone management strategies. Furthermore, a reduction in a zone deer population will generally result in a corresponding reduction in the number of antlerless deer available for the hunting seasons. In order to achieve a reduced permit shotgun season harvest objective, the season duration and/or the number of permits issued is reduced. Likewise, the inclusion of three days of permit shotgun hunting in January, which is not a change from the 1991-92 season, remains an integral part of the either-sex season structure necessary to achieve antlerless harvest objectives in many zones including those encompassing Hunterdon County.

Summary of Agency-Initiated Changes:

The proposed shotgun permit season dates for Zone 38 (Great Swamp National Wildlife Refuge) were listed under N.J.A.C. 7:25-5.29(d)6, 5.29(m)6 and 5.31(c) as December 3, 4, 10, 11 and 12, 1992; however, according to the U.S. Fish and Wildlife Service, the area's administering authority, the planned dates were December 3, 4, 5, 10 and 11, 1992. Since the number of days remain the same, the Council finds that the substitution of December 5 for December 12, 1992, does not reflect a substantive change requiring reproposal.

The Council, in reviewing the proposed special muzzleloader scope permit for certain visually handicapped individuals, determined that rifle scopes permitted under the permit should be fixed power of no more

than 1.5X in order for the proposal to better achieve its intended purpose of enabling visually handicapped individuals, as defined by the Code, to participate in the muzzleloader rifle hunting season. The Council believes that limiting scopes to only fixed power of no more than 1.5X will deter non-qualified individuals from applying while still meeting the needs of those for whom the proposal is intended. Therefore, the Council provided this change at N.J.A.C. 7:25-5.23(p).

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

SUBCHAPTER 5. 1992-93 GAME CODE

7:25-5.2 Pheasant—Chinese ringneck (*Phasianus colchicus torquatus*), English or blackneck (*P. c. colchicus*), Mongolian (*P. mongolicus*), Japanese green (*Phasianus versicolor*); including mutants and crosses of above

(a) The duration for the male pheasant season is November 7, to December 5, 1992 inclusive, and December 14, 1992 through January 2, 1993 excluding December 16, 17, and 18, 1992 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December 5, 1992 inclusive and December 14, 1992 through March 31, 1993, excluding November 5, 1992 and December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those management zones in which a shotgun deer permit season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic, and Cape May and on all wildlife management areas is November 7 to December 5, 1992, inclusive, and December 14, 1992 through February 15, 1993, excluding December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(e) The hours for hunting pheasants on November 7, 1992 are 8:00 A.M. to ½ hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to ½ hour after sunset.

(f) (No change.)

(g) The season for properly licensed semi-wild preserves is November 7, 1992 to March 15, 1993 inclusive.

(h) (No change.)

7:25-5.3 Cottontail rabbit (*Sylvilagus floridanus*), black-tailed jack rabbit (*Lepus californicus*), white-tailed jack rabbit (*Lepus townsendii*), European hare (*Lepus europeus*), chukar partridge (*Alectoris graeca*), and quail (*Colinus virginianus*)

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November 7 through December 5, 1992, inclusive, and December 14, 1992 to February 15, 1993, excluding December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December 5, 1992, inclusive, and December 14, 1992 through March 31, 1993, excluding November 6 and December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November 7, 1992, 8:00 A.M. to ½ hour after sunset.

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On all other days for which hunting for these animals is legal, the hours are sunrise to ½ hour after sunset.

(e) The quail and chukar partridge season for properly licensed semi-wild preserves is November 7, 1992 to March 15, 1993 inclusive.

(f) (No change in text.)

7:25-5.4 Ruffed grouse (*Bonasa umbellus*)

(a) The duration of the season for the hunting of grouse is October 10 through December 5, 1992, inclusive, and December 14, 1992 to February 15, 1993, excluding December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a shotgun permit deer season is authorized and excluding any extra deer permit season day(s) that is declared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse are sunrise to ½ hour after sunset, with the exception of November 7, 1992 when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.5 Eastern gray squirrel (*Sciurus carolinensis*)

(a) The duration of the season for the hunting of squirrels is October 10 through December 5, 1992, inclusive, and December 14, 1992 to February 15, 1993, excluding December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit season day(s) if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December 5, 1992, inclusive, and December 14, 1992 through March 31, 1993, excluding December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise to ½ hour after sunset, with the exception of November 7, 1992 when legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(e) (No change.)

7:25-5.7 Wild turkey (*Meleagris gallapavo*)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or ten days each. The hunting periods for all hunting areas shall be:

1. Monday, April 26, 1993-Friday, April 30, 1993
2. Monday, May 3, 1993-Friday, May 7, 1993
3. Monday, May 10, 1993-Friday, May 14, 1993
4. Monday, May 17, 1993-Friday, May 21, 1993 and Monday, May 24, 1993-Friday, May 28, 1993

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5. Saturday, May 1, 1993; Saturday, May 8, 1993; Saturday, May 15, 1993; and Saturday, May 22, 1993.

(b)-(f) (No change.)

(g) Special permits consist of a back display which includes a wild turkey transportation tag. The back portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm or archery license. Any wild turkey killed must be tagged immediately with the completed wild turkey transportation tag. This completely filled in wild turkey transportation tag allows legal transportation of the wild turkey to an authorized checking station only. Personnel at the checking station will issue a "possession tag". Any permit holder killing a wild turkey must transport this wild turkey to an authorized checking station by 3:00 P.M. on the day killed to secure the legal "possession tag". The possession of a wild turkey after 3:00 P.M. on the date killed without a legal "possession tag" shall be deemed illegal possession.

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, address, 1993 firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-15, 1993, inclusive. Applications received after February 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for 1993, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-15, 1993. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. (No change.)

(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1993 Spring Turkey Hunting Season Permit Quotas are as follows:

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1993 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	100	500	Sussex
2	120	600	Sussex, Warren
3	80	400	Sussex, Warren
4	120	600	Sussex, Warren, Morris
5	100	500	Sussex
6	150	750	Sussex, Passaic, Bergen
7	150	750	Sussex, Morris, Passaic
8	70	350	Warren, Hunterdon
9	75	375	Warren, Hunterdon, Morris
10	30	150	Essex, Middlesex, Morris, Somerset, Union
11	50	250	Middlesex, Mercer, Hunterdon, Somerset
13	15	75	Burlington, Ocean
14	60	300	Burlington, Ocean, Mercer, Monmouth
15	55	275	Burlington, Camden, Atlantic
16	60	300	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	70	350	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	1,355	6,775	

*Applied to each of the five hunting periods (A,B,C,D,E) in all areas:

- A. Monday, April 26, 1993-Friday, April 30, 1993
- B. Monday, May 3, 1993-Friday, May 7, 1993
- C. Monday, May 10, 1993-Friday, May 14, 1993
- D. Monday, May 17, 1993-Friday, May 21, 1993 and Monday, May 24, 1993-Friday, May 28, 1993
- E. Saturday, May 1, 1993; Saturday, May 8, 1993; Saturday, May 15, 1993; and Saturday, May 22, 1993.

(l)-(m) (No change.)

7:25-5.8 Mink (*Mustela vison*), muskrat (*Ondatra zibethicus*) and nutria (*Myocaster coypus*) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, 1992 through March 15, 1993, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, 1992 through March 15, 1993, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, 1993, inclusive.

(c)-(e) (No change.)

7:25-5.9 Beaver (*Castor canadensis*) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February 28, 1993, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications shall be received in the Trenton office during the period December 1, 1992-December 26, 1992. Applicants may apply for only one beaver trapping permit and shall provide their 1992 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-8, Zone 2-7, Zone 3-2, Zone 4-4, Zone 5-3, Zone 6-16, Zone 7-3, Zone 8-1, Zone 9-3, Zone 10-5, Zone 11-3, Zone 12-3, Zone 13-0, Zone 14-1, Zone 15-0, Zone 16-3, Zone 17-3, Zone 18-2. Total 67. Successful applicants must trap with a valid, current trapping license.

(d) Special Site Specific Permit: During the initial application period, applicants may also apply for one special site specific beaver permit. The total number of permits available shall not exceed 33. Site specific permits will be issued for specific locations or properties where the Division has determined that beaver damage or nuisance problems exist. A random drawing will be held to determine permit holders; however, applicants unsuccessful in obtaining the special

permit as set forth at (c) above will be given first opportunity. Permits will be valid only during the beaver trapping season.

(e) (No change.)

(f) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than March 6, 1993.

(g)-(i) (No change.)

7:25-5.10 River otter (*Lutra canadensis*) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be February 1 through February 28, 1993, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period December 1, 1992-December 26, 1992. Only one application per person may be submitted for trapping otter and applicants shall provide their 1992 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-7, Zone 2-7, Zone 3-2, Zone 4-3, Zone 5-2, Zone 6-9, Zone 7-3, Zone 8-6, Zone 9-3, Zone 10-4, Zone 11-5, Zone 12-2, Zone 13-14, Zone 14-7, Zone 15-12, Zone 16-4, Zone 17-2, Zone 18-5. Total 97. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than March 6, 1993, where a pelt tag will be affixed and the carcass surrendered.

Recodify existing (g)-(j) as (f)-(i) (No change in text.)

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7:25-5.11 Raccoon (*Procyon lotor*), red fox (*Vulpes vulpes*), gray fox (*Urocyon cinereoargenteus*), Virginia opossum (*Didelphis virginiana*), striped skunk (*Mephitis mephitis*), long-tailed weasel (*Mustela frenata*), short-tailed weasel (*Mustela erminea*), and coyote (*Canis latrans*) trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, 1992 to March 15, 1993, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, 1993 to March 15, 1993, inclusive.

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

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November 7, 1992, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to take, hunt for or have in possession, any migratory game birds, including waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the 1992-93 hunting season. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the 1992-93 hunting season.

(d)-(g) (No change.)

(h) Hunting hours for waterfowl shall be those hours that are prescribed by the Department of the Interior, United States Fish and Wildlife Service for the 1992-93 hunting season.

(i)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November 7, 1992. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the 1992-93 Game Code.

15.-19. (No change.)

(n) Seasons and Bag Limits are as follows:

1. Mourning dove (*Zenaidura macroura*) are protected. There will be no open season on these birds during 1992-93.

2. Rail and gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (*Rallus longirostris*), Virginia rail (*Rallus limicola*), sora rail (*Porzana carolina*) and common gallinule or moorhen (*Gallinula chloropus*) is September 1 through November 9, 1992, inclusive.

ii. (No change.)

(o) Woodcock zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for Woodcock are sunrise to sunset except on November 7, when the hunting hours are 8:00 A.M. to sunset.

(p)-(r) (No change.)

7:25-5.15 Crow (*Corvus spp.*)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August 10, 1992 through March 20, 1993, inclusive, excluding December 7-12 and December 16, 17, and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a shotgun permit deer season is authorized.

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(b) (No change.)

(c) The hours for hunting crows shall be sunrise to ½ hour after sunset, except on November 7, 1992 when the hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.17 Raccoon (*Procyon lotor*) and Virginia opossum (*Didelphis virginiana*) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, 1992 to one hour before sunrise on March 1, 1993. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December 7-12 and on December 16, 17, and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones for which a shotgun permit deer season is authorized and including any extra permit deer season day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, 1992 and from March 1 to May 1, 1993. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (*Marmota monax*) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March 13 through September 18, 1993. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (*Vulpes vulpes*) and gray fox (*Urocyon cinereoargenteus*) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Bow and Arrow Only—September 26 through November 6, 1992.

2. Firearm or Bow and Arrow—November 7, 1992 through February 20, 1993, excluding December 7-12, 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of September 26-November 6, 1992. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during the firearm deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he must cease all hunting immediately.

(c) The hours for hunting fox are 8:00 A.M. to ½ hour after sunset on November 7, 1992 and on other days from sunrise to ½ hour after sunset.

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

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November 6, 1992.

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

7:25-5.23 Firearms and missiles, etc.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then

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southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their 1993 firearm hunting license may hunt for squirrels between January 25 and February 15, 1993 using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December 7-12, 1992, inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow based slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license or a person legally engaged in hunting woodcock from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than T (.200 inch) steel shot during the shotgun deer seasons.) A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his or her trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the 1992 six day firearm deer season and the permit muzzleloader rifle deer season.

2. Muzzleloader rifles used for hunting deer are restricted to single-shot single barreled weapons with flintlock or percussion actions, shall not be less than .44 caliber and shall fire a single missile or projectile. Except as provided in (p) below, only open iron sights and peep sights shall be attached or affixed to the muzzleloader rifle while engaged in hunting for deer. Only one muzzleloader rifle may be possessed while hunting. Double barrel and other types of muzzleloader rifles capable of firing more than one shot without reloading or holding more than one charge are prohibited. Persons who are properly licensed may hunt for deer with a smoothbore muzzleloader during the permit muzzleloader rifle season. Smoothbore muzzleloaders are restricted to single-shot, single barreled weapons with flintlock or percussion actions, shall not be smaller than 20 gauge or larger than 10 gauge, and shall fire a single missile or projectile. Except as provided in (p) below, no telescopic

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sights shall be attached or affixed to the smoothbore muzzleloader while engaged in hunting for deer. Only one muzzleloader rifle or smoothbore muzzleloader may be possessed while deer hunting. Double barrel and other types of smooth bore muzzleloaders capable of firing more than one shot without reloading or holding more than one charge are prohibited.

3.-5. (No change.)

(g)-(o) (No change.)

(p) The Division may issue a Special Muzzleloader Rifle Scope Permit to certain visually handicapped individuals which would allow these individuals as specified below in this subsection to hunt with a muzzleloader rifle during the prescribed seasons. Special Muzzleloader Rifle Scope Permit applications will require certification by a Doctor of Ophthalmology, licensed to practice in New Jersey, and be subject to Division review and ratification. For the purposes of this permit, a visually handicapped individual is defined as one who is incapable of achieving proper sight alignment/sight picture using a muzzleloader rifle equipped with open sights or peep sights due to a permanent vision disability which cannot be adequately addressed through the use of corrective lenses. ***The rifle scopes permitted under a Special Muzzleloader Rifle Scope Permit shall be fixed power of not more than 1.5x.***

(q) (No change in text.)

7:25-5.24 Bow and arrow, general provisions

(a) (No change.)

(b) No person shall use a bow and arrow for hunting, on December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993 in those deer management zones in which a permit shotgun deer season is authorized, on any additional Permit Deer Season Day(s) if declared open, during the 6-Day Firearm Deer Season, or between ½ hour after sunset and sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

(c)-(f) (No change.)

7:25-5.25 White-tailed deer (*Odocoileus virginianus*) fall bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September 26-November 6, 1992, inclusive; except in Zones 4, 18 and 21 only deer with antlers at least three inches long may be taken from September 26 to October 16, 1992; and in Zones 7, 8, 10, 11, 12 and 41 where only deer without antlers and deer with antlers which are less than three inches long may be taken from September 26 to October 2, 1992. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(b) Bag Limit: Two deer of either sex, except as noted in (a) above. Only one deer may be taken in a given day. Deer shall be tagged immediately with completely filled in "transportation tag" and shall be transported to a deer checking station before 8:00 P.M. E.S.T. on the day killed. Upon completion of registration of first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow this person to continue hunting and take one additional deer of either sex during the current fall bow deer season. The second tag shall not be valid on the day of issuance and all registration requirements apply.

1. (No change.)

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

7:25-5.26 White-tailed deer winter bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from ½ hour before sunrise on January 4 to ½ hour after sunset on January 27, 1993 inclusive, excluding January 15, 16 and 23, 1993 in those management zones in which a shotgun permit season is authorized. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

7:25-5.27 White-tailed deer six day firearm season

(a) Duration for this season will be December 7-12, 1992 inclusive with shotgun or muzzleloader rifle, exclusively.

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(b) **Bag Limit:** Two deer, with antler at least three inches long; except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either sex. Only one deer may be taken in a given day per person on a regular firearm hunting license. Persons awarded Zone 9 or Zone 13 shotgun permits may also take one deer of either sex and any age, per permit, on December 7 and 12, 1992 subject to the provisions of N.J.A.C. 7:25-5.29. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

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

(e) **Hunting Hours:** December 7-12, 1992, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T., with shotgun or muzzleloader rifle.

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

7:25-5.28 **White-tailed deer muzzleloader rifle permit season (either sex)**

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

(d) **Duration of the muzzleloader rifle permit season** is December 14, 15, 19, 21, 22, 23, 24, 26, 28, 29, 30, 31, 1992 and January 2, 1993 in zones 1-3, 5-36, 41-51, 55, 57, 58, 61, 63 and 65; December 14, 15, 19, 21, 22, 23, 24, 26, 1992 in zone 4; November 7-14, 1992 (first segment) and December 14-25, 1992 (second segment) in zones 37 and 52; December 14, 1992 to January 2, 1993 in zones 39, 54 and 62; November 28-December 5, 1992 (first segment) and De-

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ember 14-31, 1992 (second segment) in zone 53 or any other time as determined by the Director. Legal hunting hours shall be sunrise to ½ hour after sunset E.S.T.

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

(h) **Muzzleloader Rifle Permit Season Permits** shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses may apply by detaching from their hunting license the stub marked "Special Deer Season 1992", signing as provided on the back, and sending the stub, together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 15-September 10, 1992 inclusive. Applications postmarked after the September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-7. (No change.)

(i) **Farmer Muzzleloader Rifle Permit Season Permits** shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. **THIS APPLICATION MUST BE NOTARIZED.** Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, 1992. There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4.-5. (No change.)

(j) (No change.)

(k) **The Deer Management Zone Map** is on file at the Office of Administrative Law and is available from that agency or the Division. The 1992 Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

1992 MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1992	Permit Quota 1992	Portions of Counties Involved
1	1	123	500	Sussex
2	1	145	600	Sussex
3	1	156	800	Sussex, Passaic, Bergen
4	2	134	370	Sussex, Warren
5	1	293	1225	Sussex, Warren
6	1	143	750	Sussex, Morris, Passaic, Essex
7	1	143	650	Warren, Hunterdon
8	1	319	1735	Warren, Hunterdon, Morris, Somerset
9	1	131	450	Morris, Somerset
10	1	176	850	Warren, Hunterdon
11	1	74	400	Hunterdon
12	1	201	1050	Mercer, Hunterdon, Somerset
13	1	44	270	Morris, Somerset
14	1	125	700	Morris, Somerset, Middlesex, Burlington
15	1	125	450	Mercer, Monmouth, Middlesex
16	1	97	425	Ocean, Monmouth
17	1	57	275	Ocean, Monmouth, Burlington
18	1		275	Ocean
19	1	73	400	Camden, Burlington
20	1	53	300	Burlington
21	1	126	550	Burlington, Ocean
22	1	36	110	Burlington, Ocean
23	1	154	825	Burlington, Camden, Atlantic
24	1	154	600	Burlington, Ocean
25	1	101	600	Gloucester, Camden, Atlantic, Salem

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26	1	182	800	Atlantic
27	1	178	650	Salem, Cumberland
28	1	113	475	Salem, Cumberland, Gloucester
29	1	77	385	Salem, Cumberland
30	1	35	160	Cumberland
31	1	14	67	Cumberland
32	1	5	50	Cumberland
33	1	45	210	Cape May, Atlantic
34	1	100	525	Cape May, Cumberland
35	1	126	570	Gloucester, Salem
36	1	13	60	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	3	70	260	Burlington (Fort Dix Military Reservation)
38				Morris (Great Swamp National Wildlife Refuge)
39	4	20	35	Monmouth (Earle Naval Weapons Station)
40				Monmouth (Earle Naval Weapons Station—Waterfront)
41	1	45	250	Mercer, Hunterdon
42	1	8	65	Atlantic
43	1	44	220	Cumberland
44	1	26	75	Cumberland
45	1	55	340	Cumberland, Atlantic, Cape May
46	1	63	250	Atlantic
47	1	21	90	Atlantic, Cumberland, Gloucester
48	1	35	250	Burlington
49	1	8	40	Burlington, Camden, Gloucester
50	1	44	250	Middlesex, Monmouth
51	1	34	150	Monmouth, Ocean
52	3	29	100	Ocean (Fort Dix Military Reservation)
53	5	7	32	Ocean (Lakehurst Naval Engineering Center)
54	4	2	6	Morris (Picatinny Arsenal—ARRAD Com)
55	1	12	75	Gloucester
56				Atlantic (Forsythe National Wildlife Refuge)
57	1	4	40	Atlantic (Forsythe National Wildlife Refuge)
58	1	9	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59				Salem (Supawna National Wildlife Refuge)
60				Hunterdon (Round Valley Recreation Area)
61	1	11	105	Atlantic (Atlantic County Parks)
62	4	1	6	Monmouth (Fort Monmouth)
63	1	53	200	Salem
64			0	Monmouth (Monmouth Battleground State Park)
65	1	13	100	Gloucester
Total		<u>4,733</u>	<u>22,101</u>	

(l) The Season Dates Code Referred in the table in (k) above is as follows:

1. Indicates the season dates will be December 14, 15, 19, 21, 22, 23, 24, 26, 28, 29, 30, 31, 1992 and January 2, 1993.

2. Indicates the season dates will be December 14, 15, 19, 21, 22, 23, 24, 26, 1992.

3. Indicates the season dates will be November 7-14, 1992 (first segment); and December 14-25, 28-31, 1992 (second segment).

4. Indicates the season dates will be December 14, 1992—January 2, 1993.

5. Indicates the season dates will be November 28-December 5, 1992 (first segment) and December 14-31, 1992 (second segment).

(m) Permit quotas in zones 37, 39, 52-54, 57-58, 61 and 62 are contingent upon approval by appropriate land management agencies for those zones.

(n) Muzzleloader rifle permit season permits not applied for by September 10, 1992 will be reallocated to shotgun and bow permit season applicants.

7:25-5:29 White-tailed deer shotgun season (either sex)

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

(c) The season bag limit per permit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 20, 21, 22, 23, 24, 26, 30, 31, 32, 34, 37, 43, 45, 46, 52, 53, 55, 64 and 65; two deer of either sex and any age with a shotgun permit season permit in Zones 2, 5-17, 19, 25, 27-29, 33, 35, 36, 41, 42, 44, Zones 47-51, 54 and 63; three deer of either sex and any age with a shotgun permit season permit in Zones 39, 56, 59, 60 and 61; six deer of either sex and any age in Zone 57 and 58;

and 10 deer of either sex and any age in Zone 38. Only one deer may be taken in a given day per permit except in Zone 38 where the limit is two deer in a given day per permit. Persons awarded Zone 9 and 13 shotgun permits may also take a deer with antler at least three inches long on December 7 or 12, 1992 with a regular firearm license, subject to the provisions of N.J.A.C. 7:25-5.27. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the permit shotgun deer season is from sunrise to ½ hour after sunset E.S.T. on the following dates:

1. December 16, 1992 in Zones 1, 3, 4, 18, 20, 21, 22, 23, 24, 26, 30, 31, 32, 34, 43, 45, 46, 55 and 65.

2. December 16, 17, and 18, 1992 and January 15, 16, and 23, 1993 in Zones 2, 5, 7, 8, 10, 11, 12, 14, 15, 17, 25, 27, 36, 41, 47, 48, 49, 50 and 63.

3. December 16, 17 and 18, 1992 in Zones 6, 16, 19, 28, 29, 33, 35, 42, 44, 51, 56, 60 and 61.

4. December 7, 12, 16, 17 and 18, 1992, and January 15, 16 and 23, 1993 in Zones 9 and 13.

5. December 26, 1992 in Zones 37 and 52.

6. December 3, 4, *5,* 10, *and* 11 *[and 12]*, 1992 in Zone 38.

7. December 19, 1992, and January 23 and 30, 1993 in Zones 39 and 62.

8. January 2, 1993 in Zone 53.

9. December 19, 1992 and January 16, 1993 in Zone 54.

10. December 7, 8, 9, 16, 17 and 18, 1992 in Zones 57 and 58.

ADOPTIONS

11. December 7, 8 and 9, 1992 (first segment), December 16, 17 and 18, 1992 (second segment), and January 15, 16 and 23, 1993 (third segment) in Zone 59.

12. January 15, 1993 (first segment), January 16, 1993 (second segment), and January 23, 1993 (third segment) in Zone 64.

13. (No change in text.)

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

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season 1992," signing as provided on the back, and sending the stub, together with the permit applied for and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection

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which are received in the Trenton office during the period of August 15—September 10, 1992. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permits will be made by random selection.

4.-6. (No change.)

(i) Farmer Shotgun Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, 1992. There is no fee required, and all qualified applicants will receive a farmer, shotgun permit season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map on file at the Office of Administrative Law and is available from that agency or the Division. The 1992 Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

1992 SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1992	Permit Quota 1992	Portions of Counties Involved
1	1	166	807	Sussex
2	2	599	1447	Sussex
3	1	51	556	Sussex, Passaic, Bergen
4	1	47	366	Sussex, Warren
5	2	1823	3797	Sussex, Warren
6	3	317	1321	Sussex, Morris, Passaic, Essex
7	2	722	1580	Warren, Hunterdon
8	2	2034	4571	Warren, Hunterdon, Morris, Somerset
9	4	532	1516	Morris, Somerset
10	2	1018	2357	Warren, Hunterdon
11	2	586	1218	Hunterdon
12	2	1029	2394	Mercer, Hunterdon, Somerset
13	4	323	795	Morris, Somerset
14	2	624	1919	Morris, Somerset, Middlesex, Burlington
15	2	435	845	Mercer, Monmouth, Middlesex
16	3	124	460	Ocean, Monmouth
17	2	300	628	Ocean, Monmouth, Burlington
18	1	13	123	Ocean
19	3	148	496	Camden, Burlington
20	1	33	195	Burlington
21	1	29	218	Burlington, Ocean
22	1	35	180	Burlington, Ocean
23	1	32	238	Burlington, Camden, Atlantic
24	1	24	139	Burlington, Ocean
25	2	225	652	Gloucester, Camden, Atlantic, Salem
26	1	27	170	Atlantic
27	2	322	831	Salem, Cumberland
28	3	43	234	Salem, Cumberland, Gloucester
29	3	176	665	Salem, Cumberland
30	1	29	125	Cumberland
31	1	0	0	Cumberland
32	1	4	28	Cumberland
33	3	76	187	Cape May, Atlantic
34	1	24	134	Cape May, Cumberland
35	3	223	883	Gloucester, Salem
36	2	45	117	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	5	24	120	Burlington (Fort Dix Military Reservation)
38	6	208	600	Morris (Great Swamp National Wildlife Refuge)
39	7	104	74	Monmouth (Earle Naval Weapons Station)
40				Monmouth (Earle Naval Weapons Station—Waterfront)
41	2	426	867	Mercer, Hunterdon
42	3	15	56	Atlantic

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ADOPTIONS

43	1	0	0
44	3	23	75
45	1	0	0
46	1	17	83
47	2	44	105
48	2	291	613
49	2	37	45
50	2	121	412
51	3	82	325
52	5	12	65
53	8	7	38
54	9	18	28
55	1	3	30
56	3	28	20
57	10	22	40
58	10	15	50
59	11	42	75
60	3	40	120
61	3	27	108
62	7	12	24
63	2	157	336
64	12	65	135
65	1	15	53
Total		<u>14,093</u>	<u>36,689</u>

Cumberland
 Cumberland
 Cumberland, Atlantic, Cape May
 Atlantic
 Atlantic, Cumberland, Gloucester
 Burlington
 Burlington, Camden, Gloucester
 Middlesex, Monmouth
 Monmouth, Ocean
 Ocean (Fort Dix Military Reservation)
 Ocean (Lakehurst Naval Engineering Cente)
 Morris (Picatinny Arsenal—ARRAD Com)
 Gloucester
 Atlantic (Forsythe National Wildlife Refuge)
 Atlantic (Forsythe National Wildlife Refuge)
 Burlington, Ocean (Forsythe National Wildlife Refuge)
 Salem (Supawna National Wildlife Refuge)
 Hunterdon (Round Valley Recreation Area)
 Atlantic (Atlantic County Parks)
 Monmouth (Fort Monmouth)
 Salem
 Monmouth (Monmouth Battleground State Park)
 Gloucester, Camden

(l) Shotgun permit season permits not applied for by September 10, 1992 may be reallocated to muzzleloader rifle, permit season applicants.

(m) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates one day shotgun permit season—December 16, 1992.
2. Indicates six-day shotgun permit season—December 16, 17 and 18, 1992 and January 15, 16 and 23, 1993.
3. Indicates three-day shotgun permit season December 16, 17 and 18, 1992.
4. Indicates an eight-day shotgun permit season December 7, 12, 16, 17 and 18, 1992, and January 15, 16 and 23, 1993.
5. Indicates a one-day shotgun permit season December 26, 1992.
6. Indicates a five-day shotgun permit season December 3, 4, *[10, 11 and 12,]* *5, 10 and 11,* 1992.
7. Indicates a three-day shotgun permit season December 19, 1992 and January 23 and 30, 1993.
8. Indicates a one-day shotgun permit season January 2, 1993.
9. Indicates a two-day shotgun permit season December 19, 1992 and January 16, 1993.
10. Indicates a six-day shotgun permit season December 7, 8, 9, 16, 17 and 18, 1992.
11. Indicates three, three-day shotgun permit season segments—December 7, 8, and 9, 1992 (first segment); December 16, 17 and 18, 1992 (second segment); and January 15, 16, 23, 1993 (third segment).
12. Indicates three one-day shotgun permit season segments—January 15, 1993 (first segment), January 16, 1993 (second segment), and January 23, 1993 (third segment).

(n) (No change.)

(o) Permit quotas for Zones 37, 38, 39, 52-54, 56-62 and 64 are contingent upon approval by appropriate land management agencies for those zones.

(p) Deer Management zones are located as follows:

1.-24. (No change.)

25. Zone No. 25: That portion of Gloucester, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of Rts. Rt. 54 and Rt. 40 near Buena; then west on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to its intersection with Rt. 610 (Aura Road); then southeast on Rt. 610 to its intersection with Rt. 655 (Fries Mill Road); then north on Rt. 655 to its intersection with Rt. 322; then west on Rt. 322 to its intersection with Rt. 47 at Glassboro; then north on Rt. 47 to its intersection with County Road 635 (Hurville-Grenloch Road); then eastward on County Road 635 to its intersection with county road Rt. 707 (Woodbury-Turnersville Rd.); then southeast along Gloucester County Road Rt. 707 (which becomes Camden County

Road Rt. 705) to its intersection with County Road 688 (Turnerville-Hickstown Road); then eastward along County Road 688 to its intersection with County Road 689 (Berlin-Crosskeys Road); then northeast along County Road 689 to its intersection with Rt. 73 at Berlin; then south on Rt. 73 to its intersection with Rt. 30; then southeast along Rt. 30 to its intersection with Blue Anchor Brook, just past Cedar Avenue, south of Ancora; then eastward along Blue Anchor Brook until it becomes Albertson Brook at Fleming Pike; then eastward along Albertson Brook to its intersection with Rt. 206 (about four miles north of Hammonton); then south on Rt. 206 to its intersection with Great Swamp Branch (just past the intersection of Rt. 206 and Middle Road); then eastward along Great Swamp Branch to its intersection with Nescochague Creek; then eastward along Nescochague Creek to Nescochague Lake, at Pleasant Plains; then westward along the north and western shore of Nescochague Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then southeast on Rt. 30 to its intersection with Rt. 559 (Weymouth Road); then southward on Rt. 559 to its intersection with the Atlantic City Expressway; then west along the Atlantic City Expressway to its intersection with Eighth Street; then south along Eighth Street to its intersection with Rt. 322; then westward on Rt. 322 to its intersection with Rt. 54; then southward on Rt. 54 to its intersection with Rt. 40 near Buena, the point of beginning. Zone 65 is excluded from Zone 25.

26. Zone No. 26: That portion of Atlantic and Burlington Counties lying within a continuous line beginning at the intersection of Rts. 40 and 54 near Buena; then southeast on Rt. 40 (40-322) to its intersection with the Garden State Parkway; then northeast on the Garden State Parkway to its intersection with the Mullica River; then northwest along the south bank on the Mullica River to its intersection with Rt. 563 at Green Bank; then north on Rt. 563 to its intersection with Rt. 542, then west on Rt. 542; to its intersection with Nescochague Creek at Pleasant Mills; then south along the west bank of Nescochague Creek to Nescochague Lake; then southwest along the western bank of Nescochague Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then south on Rt. 30 to its intersection with Rt. 559 (Weymouth Rd.); then south on Rt. 559 to its intersection with the Atlantic City Expressway; then northwest along the Atlantic City Expressway to its intersection with Eighth Street; then southwest along Eighth Street to its intersection with Rt. 322 (Black Horse Pike); then northwest along Rt. 322 to its intersection with Rt. 54; then southwest along Rt. 54 to its intersection with Rt. 40 at Buena, the point of beginning.

27.-38. (No change.)

ADOPTIONS

39. Zone No. 39: That portion of Naval Weapons Station Earle, U.S. Department of the Navy designated as open for deer hunting, lying within Monmouth County.

40. Zone No. 40: That portion of Naval Weapons Station Earle, Waterfront Section, U.S. Department of the Navy, designated as open for deer hunting, lying within Monmouth County.

41.-48. (No change.)

49. Zone No. 49: That portion of Gloucester, Camden and Burlington Counties lying within a continuous line beginning at the mouth of Mantua Creek on the Delaware River; then northeast along the east bank of the Delaware River to Rt. 541 at the City of Burlington; then southeast along Rt. 541 to its intersection with Interstate 295; then southwest along Interstate 295 to its intersection with Rancocas Creek; then east along the Rancocas Creek to its intersection with the New Jersey Turnpike; then southwest along the New Jersey Turnpike to its intersection with Rt. 73; then south along Rt. 73 to its intersection with County Road 689 at Berlin; then southwest along County Road 689 to its intersection with County Road 688; then west along County Road 688 to its intersection with County Road 705; then northwest along County Road 705 to its intersection with County Road 635; then southwest on County Road 635 to its intersection with Mantua Creek; then northwest along Mantua Creek to its mouth at the Delaware River, the point of beginning. Petty Island lying in the Delaware River is in this zone.

50. Zone No. 50: That portion of Monmouth and Middlesex Counties lying in a continuous line beginning at the intersection of the New Jersey Turnpike and Rt. 522 near Jamesburg; then southeast on Rt. 522 to its intersection with Rt. 537 at Freehold; then southwest on Rt. 537 to its intersection with Rt. 33; then east on Rt. 33 to its intersection with the western edge of the fenced boundary of the Earle Naval Weapons Depot; then north and east along the fenced boundary of the Earle Depot to its intersection with county route 38 (Wayside Road); then south on County Route 38 to its intersection with Rt. 547; then north on Rt. 547 and to

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its intersection with the Garden State Parkway; then north on the Garden State Parkway to its intersection with Rt. 36 near Eatontown; then east on Rt. 36 to the Atlantic Ocean; then north along the Atlantic coastline to the Raritan Bay; then south and west along the shore of Raritan Bay to the Raritan River; then continuing west along the southbank of the Raritan River to its intersection with the New Jersey Turnpike; then southwest along the New Jersey Turnpike to its intersection with Rt. 522, the point of beginning. Monmouth Battlefield State Park, Zone 64, and Earle Naval Weapons Station, Zone 40, are excluded from this zone.

51.-65. (No change.)

7:25-5.30 White-tailed deer bow permit season (either sex)

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

(d) Duration of the bow permit season is from November 7-December 5, 1992 in Zones 1-3, 5-37, 39, 41-55, 58, 59, 61-63 and 65; and November 7-January 2, 1993 in Zone 40; or any other time as determined by the Director. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting license the stub marked special deer season 1992, signing as provided on the back, and sending the stub together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-8. (No change.)

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

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1992 Bow Permit Season Quotas (Either Sex) are as follows:

1992 BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1992	Permit Quota 1992	Portions of Counties Involved
1	1	93	840	Sussex
2	1	107	1150	Sussex
3	1	70	1040	Sussex, Passaic, Bergen
4	1	0	0	Sussex, Warren
5	1	288	2500	Sussex, Warren
6	1	120	1200	Sussex, Morris, Passaic, Essex
7	1	146	1300	Warren, Hunterdon
8	1	351	3025	Warren, Hunterdon, Morris, Somerset
9	1	132	1150	Morris, Somerset
10	1	186	1680	Warren, Hunterdon
11	1	90	900	Hunterdon
12	1	179	1900	Mercer, Hunterdon, Somerset
13	1	101	775	Morris, Somerset
14	1	120	1300	Mercer, Somerset, Middlesex, Burlington
15	1	129	920	Mercer, Monmouth, Middlesex
16	1	72	700	Ocean, Monmouth
17	1	66	500	Ocean, Monmouth, Burlington
18	1	42	340	Ocean
19	1	60	500	Camden, Burlington
20	1	25	300	Burlington
21	1	54	490	Burlington, Ocean
22	1	22	160	Burlington, Ocean
23	1	65	650	Burlington, Camden, Atlantic
24	1	44	340	Burlington, Ocean
25	1	84	700	Gloucester, Camden, Atlantic, Salem
26	1	67	400	Atlantic
27	1	99	750	Salem, Cumberland
28	1	52	400	Salem, Cumberland, Gloucester
29	1	71	500	Salem, Cumberland
30	1	17	150	Cumberland

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ADOPTIONS

31	1	7	64
32	1	4	40
33	1	22	200
34	1	62	425
35	1	109	840
36	1	26	230
37	1	7	100
38		0	0
39	1	20	50
40	2	10	20
41	1	43	500
42	1	6	75
43	1	28	150
44	1	14	50
45	1	33	250
46	1	16	200
47	1	10	90
48	1	61	500
49	1	4	40
50	1	36	450
51	1	47	400
52	1	5	70
53	1	5	38
54	1	14	36
55	1	9	80
56		0	0
57		0	0
58	1	6	50
59	1	12	35
60		0	0
61	1	13	135
62	1	3	30
63	1	52	300
64			
65	1	13	115
Total		<u>3,649</u>	<u>32,123</u>

Cumberland
 Cumberland
 Cape May, Atlantic
 Cape May, Cumberland
 Gloucester, Salem
 Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
 Burlington (Fort Dix Military Reservation)
 Morris (Great Swamp National Wildlife Refuge)
 Monmouth (Earle Naval Weapons Station)
 Monmouth (Earle Naval Weapons Station Waterfront)
 Mercer, Hunterdon
 Atlantic
 Cumberland
 Cumberland
 Cumberland, Atlantic, Cape May
 Atlantic
 Atlantic, Cumberland, Gloucester
 Burlington
 Burlington, Camden, Gloucester
 Middlesex, Monmouth
 Monmouth, Ocean
 Ocean (Fort Dix Military Reservation)
 Ocean (Lakehurst Naval Engineering Center)
 Morris (Picatinny Arsenal—ARRAD Com)
 Gloucester
 Atlantic (Forsythe National Wildlife Refuge)
 Atlantic (Forsythe National Wildlife Refuge)
 Burlington, Ocean (Forsythe National Wildlife Refuge)
 Salem (Supawna National Wildlife Refuge)
 Hunterdon (Round Valley Recreation Area)
 Atlantic (Atlantic County Parks)
 Monmouth (Fort Monmouth)
 Salem
 Monmouth (Monmouth Battleground State Park)
 Gloucester, Camden

(1) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be November 7-December 5, 1992.

2. Indicates the season dates will be November 7, 1992 to January 2, 1993.

(m)-(n) (No change.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38).

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

(c) Duration of the Great Swamp Permit Shotgun Season permit shall be from sunrise to ½ hour after sunset on the following dates: December 3, 4, *[10, 11 and 12]* *5, 10 and 11*, 1992, or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d)-(i) (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the 1992-93 season. However, hunting with firearms shall be prohibited on November 6, 1992 on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

7:25-5.37 Fish and Game Law Enforcement Region Headquarters

(a) North—No. Region Office, R.R. 1, Box 383, Hampton, N.J. 08827 (908) 735-8240.

(b) (No change.)

(c) South—Winslow WMA, 220 New Brooklyn/Blue Anchor Road, Sickleville, N.J. 08081. (609) 629-0555.

(d) (No change.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Annual Adjustment of Solid Waste Fees

Adopted New Rule: N.J.A.C. 7:26-4.6

Proposed: December 16, 1991 at 23 N.J.R. 3690(a) (see also 24 N.J.R. 1458(a)).

Adopted: July 8, 1992, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: July 10, 1992 as R.1992 d.311, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-18.

DEPE Docket Number: 044-91-11.

Effective Date: August 3, 1992.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (Department) is adopting a new rule at N.J.A.C. 7:26-4.6. The adopted new rule establishes a procedure under which the Department will annually adjust its solid waste fees under N.J.A.C. 7:26-4.3, 4.4 and 15.6, based upon changes in the Department's costs in performing activities for which fees are charged.

The proposed new rule was published in the New Jersey Register on December 16, 1991 at 23 N.J.R. 3690(a). The Department published notice of the proposal in the following newspapers: Asbury Park Press, Trenton Times, Star Ledger, Record, North Jersey Herald and News, Home News, Courier Post and Burlington County Times. The Department received written comments from the following persons during the public comment period, which closed on January 15, 1992, and was reopened and extended to May 4, 1992:

ADOPTIONS

1. Carolyn C. Seifried, Environmental Engineer, Warner Lambert
2. Frederick F. Gallo, Clerk/Administrator, Burlington County Board of Chosen Freeholders
3. Teresa H. Martin, Director, Hunterdon County Solid Waste Recycling Department
4. David M. Beavens, Plant Manager, Wheelabrator Gloucester Company L.P.

Summaries of all comments, and the Department's responses, follow:

1. COMMENT: Warner Lambert noted that the New Jersey Register does not always reach the appropriate person in a timely manner, if at all. For this reason, the commenter recommended that the Department provide additional notice of the updated fee schedule through a postcard or other simple mailing addressed to the "hands-on" waste administrator involved in the day-to-day operations directly impacted by the fee schedule.

RESPONSE: The Department substantially agrees with this comment. Under the rule as proposed, the Department is required to provide a copy of the annual fee report to all persons who were required to pay a fee under N.J.A.C. 7:26-4.3, 4.4 or 15.6 during the previous year; in most cases, the administrator involved in the affected day-to-day operations will be the Department's contact, and therefore will receive the report. In addition, to broaden the scope of the notice of the annual update, the Department has modified N.J.A.C. 7:26-4.6(c) upon adoption. Under the provision as modified, the Department will provide notice to each owner or operator of a registered solid waste vehicle or facility; to the County Board of Chosen Freeholders of each solid waste management district and to the district solid waste management implementing agency as designated in accordance with N.J.S.A. 13:1E-21; and the Hackensack Meadowlands Development Commission. The Department also will publish notice of the fee adjustment in the DEPE Bulletin.

2. COMMENT: The Burlington County Board of Chosen Freeholders had submitted comments to the amended solid waste fee rules which the Department promulgated on July 15, 1991 (the 1991 fee rule). The commenter resubmitted those comments and reiterated its objections to the 1991 fee rule and the annual increases that may result under this new rule.

RESPONSE: The Department recognizes the commenter's objections to the fee increases implemented in the 1991 fee rule. The Department responded to those comments in the adoption of the 1991 fee rule (see 23 N.J.R. 2166(b)).

The Department understands the commenter's concerns over the prospect of additional annual increases under this new rule, but believes that the new rule is the best way to address those concerns. Providing for an annual review of the solid waste program's fees will increase the accountability and efficiency of all levels of the Department's management in the performance of the activities for which the fees are assessed. The annual fee report will state the Department's estimate of the number of hours which will be required to perform each type of activity for which fees are charged; if the time required for an activity increases, the increase will have to be justified to all levels of management, including the Commissioner, who in turn will be called upon to justify any increase in fees to the regulated community. In contrast, amendments to the fee schedule through the rulemaking process take substantially more time to complete and are therefore performed less frequently; as a result, the Department would be less frequently called to account for fees established in that manner than for fees established under this new rule.

3. COMMENT: The Hunterdon County Solid Waste Recycling Department commented that the use of average numbers of hours spent per activity was not appropriate. The commenter noted that a particular solid waste facility may require more or less professional services from the Department, and concluded that there is no precise accountability when the Department assumes that every facility of a certain type requires the same number of hours. The commenter found classification of facilities based upon their capacities insufficient as well, because the classification still assumes an average number of hours for a facility within the classification.

The commenter recommended that each activity should be charged fees according to a specific record, because timekeeping records are kept for a particular activity. The commenter noted that under the Municipal Land Use Law, N.J.S.A. 40:55D-53.1, a municipality is required to maintain an escrow account for an application, and suggested that the Department handle applications for solid waste facilities similarly. Since one particular solid waste facility may consume more or less professional services, the discrimination based on tons per day is not sufficient accountability because it still assumes average hours.

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RESPONSE: For several reasons, the Department has not made the changes which the commenter suggests. Most importantly, the approach suggested by the commenter would be substantially more expensive due to the cost of maintaining an individualized cost accounting system for billing, the cost of preparing and sending individualized bills, and the cost of resolving disputes over individual bills. If the Department adopted an individualized fee system, it would need to increase fees to cover these additional costs. In addition, the fee schedule provides certainty to the regulated community regarding the fees it will incur allowing members of the regulated community to budget those fees accordingly. The Department also notes that basing fees upon an average number of hours required creates an incentive for efficiency, in contrast to an individualized system which would allow the Department simply to pass along the entire cost for each application without any time constraints for completion of the activity.

4. COMMENT: The Hunterdon County Solid Waste Recycling Department suggested that the State evaluate the feasibility of privatizing inspection and review fees.

RESPONSE: The concerns raised by the commenter are under consideration by the Department. As part of a comprehensive analysis of all of its permitting activities, the Department will be assessing the financial and environmental implications of privatizing various aspects of its permitting functions for solid waste facilities.

5. COMMENT: Wheelabrator Gloucester Company, L.P. requested that Wheelabrator's petition to reconsider and amend N.J.A.C. 7:26-4.3(b) concerning annual fees for compliance monitoring services for thermal destruction facilities be processed in accordance with N.J.S.A. 52:14B-4C and N.J.A.C. 7:1-1.2(f).

RESPONSE: The Department has proposed an amendment to N.J.A.C. 7:26-4.3(b). The proposed amendment reduces the annual compliance monitoring fee 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 proposal appeared in the June 1, 1992 New Jersey Register at 24 N.J.R. 1999(a).

6. COMMENT: Wheelabrator Gloucester Company, L.P. noted that the Department's determination of the number of hours required to perform an activity is based on timekeeping records, but that the rule allows the Department to adjust the fee to avoid the adverse effects of a temporary aberration in the data. The commenter stated that this provision would result in the funding of a service which is contemplated but not actually performed for the regulated facility. The commenter also questioned how this excess funding would be reconciled should the shortage of staff not be temporary but indefinite.

RESPONSE: The Department recognizes that circumstances other than a lack of fee revenue (for example, a hiring freeze) may prevent it from hiring sufficient staff to perform an activity at the frequency upon which a fee is based. The Department agrees with the commenter that in this situation, a facility would have paid for an activity which was not fully performed. To address this problem, the Department has modified N.J.A.C. 7:26-4.6(b)v upon adoption. As modified, this paragraph now states that if the Department committed to an activity (such as compliance monitoring) during a given year and because of staff shortage was not able to meet its commitment, the excess fees paid for the activity over the year will be credited toward the revenues needed to fund the activity in the following year.

In contrast, if the Department determines that the actual average time required to perform an activity is greater than or less than the projected average time, the resulting excess or deficiency in fees collected for that activity will not be applied against the revenues needed to fund that activity in the following year. However, the Department will adjust the fee in the following year to reflect the new data. For example, if an annual compliance monitoring fee for a class of facilities is based upon 12 monthly inspections, and the Department performs an average of 10 inspections for facilities in that class, the excess fees paid to fund the other two inspections would be applied as a credit toward the cost of performing compliance monitoring for that class of facility in the following year. In contrast, if the Department performed an average of 12 monthly inspections, but found that the time required to perform an average inspection was more or less than projected, the excess or deficiency in fees would not be carried forward. However, the fee established for the following year would be raised or lowered to reflect the new data regarding the time required to perform an average inspection.

The shortage of staff is not expected to be a permanent state of affairs. As stated in the rule, the fee would fund staff sufficient to perform the

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activity in question the expected number of times. The Department could not maintain the reduced staffing level without compromising its ability to perform an activity with the frequency it has determined is necessary. Alternatively, if the Department concluded that the reduced staffing level is adequate to perform the service for which a fee is charged, the fee would be reduced accordingly. Moreover, the Annual Solid Waste Fee Schedule Report will identify those areas of temporary staff shortages. If a staff shortage persisted, it would be noted in subsequent annual reports and provide grounds for the regulated community to question the use of the fees which were intended to fund increases in staff.

7. COMMENT: Wheelabrator Gloucester Company, L.P. noted that the proposal assumes that past activity is an accurate indicator of future activity. If past activity does not prove to be an accurate indicator of future activity, the strict reliance on historical data in determining fees could result in a serious excess or deficiency in funding of the Department. The commenter also stated that the proposal fails to provide any concrete information as to how the Department proposes to determine the fee for a service where historical information is an inadequate basis upon which to set the fee. The commenter recommended that, in this situation, the proposed fee and the supporting documentation be published as a proposed new rule in the New Jersey Register, subject to comment and hearing.

RESPONSE: The Department agrees that the rule reflects its assumption that past activity is an important indicator of future activity. As stated in the proposed rule, the Department will substantially rely on timekeeping records for the period which is the subject of the Annual Report and data from previous years for those activities which have not been performed a sufficient number of times to determine the number of hours required to perform an activity. The Department also recognizes that circumstances not reflected in the historical data may affect the time required to perform an activity. For this reason, the proposed rule also provides for additional factors to be considered in the Department's adjustment of fees for the following year, provided that the Annual Report explains these factors and how such factors support the estimate. The Department believes its ability to consider other factors in addition to historical data in determining the estimated number of hours which will be required to perform an activity will substantially reduce the possibility of an excess or deficiency in funding of any solid waste fee category or activity.

In addition, if there is a change in applicable law, Department regulations or policy which affects the amount of time which the Department will spend on an activity, the fee would be amended through a rulemaking pursuant to the Administrative Procedure Act, rather than through the annual adjustment provided in this rule. The Department also agrees that to create a new category of fees for a class of facilities and/or activities not already contained in the existing fee rules, it would be necessary to propose the new category and associated fees through rulemaking.

8. COMMENT: Wheelabrator Gloucester Company, L.P. recommended that the annual fee report provide for a reconciliation of the projected "hours required" and "hourly rate" contemplated in the previous year's report with the actual data for the year. The commenter suggested that if the data shows any excess or deficiency in the funding of the Department, the excess or deficiency should be reconciled as part of the hourly rate for the future period.

RESPONSE: The Department agrees in part with the commenter's recommendation. The annual fee report will reconcile the "hours required" and "hourly rate" projected for the year with the actual data for the year. The Department has modified N.J.A.C. 7:26-4.6(b)1 upon adoption to provide for this reconciliation. In addition, as described in the response to Comment 6, if a fee is based upon performing an activity a certain number of times during the year for a class of facilities, and the Department performs the activity less than the number of times upon which the fee is based, the excess fee collected will be credited against the revenues needed to fund the activity for the following year.

However, the Department disagrees with the commenter's recommendation for other types of activities funded by fees. If there is an excess of funds as a result of an overstatement of the number of hours to perform an activity, the average number of hours required to perform the activity will be reduced. Similarly, if there is a shortfall of funds as a result of an understatement of the number of hours to perform an activity, the average number of hours required to perform the activity will be increased. However, if the Department determines, based upon a qualitative assessment of the available data, that the average time to perform an activity is correct, no revisions to the hours required to

perform an activity will be made. If an excess in funds results from performing an activity in less time than the amount of time upon which the fee is based, no credit will be made. In these cases, the Department will use any excess funds from one solid waste fee activity to offset any shortfalls in another solid waste fee activity where the actual time required to perform the activity was more than the amount of time upon which the fee was based. If any excess funds still remain at the end of the year, these funds will be carried forward to offset any shortfalls in a solid waste fee activity which may result in the following year. However, as noted in the response to Comment 7 above, the Department does not anticipate any substantial surplus or shortfall resulting in any solid waste fee category or activity.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:26-4.6(b)iv provides that the Department may add classifications of a type of facility or activity, if the addition would result in a substantially more equitable assessment of fees. The Department has clarified this provision on adoption to add that existing classifications may be consolidated, if there is no difference in the time required to perform various classes of an activity. The change is not substantive, because the effect of consolidating existing classes would be the same as if the Department established the same fee for those classes.

Full text of the adopted new rule follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from the proposals indicated in brackets with asterisks ***[thus]***):

7:26-4.6 Annual adjustment of fees

(a) The Department shall adjust the fees for each activity provided in N.J.A.C. 7:26-4.3, 4.4 and 15.6 annually, based upon the following formula:

$$\text{Fee} = (\text{hours required}) \times (\text{hourly rate})$$

where "hours required" and "hourly rate" are as set forth in the Annual Solid Waste Fee Schedule Report provided in (b) below.

(b) Each year, the Department shall prepare an Annual Solid Waste Fee Schedule Report. The report shall include the following:

1. The Department's ***actual number of hours to perform each type of activity and the*** 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. 7:26-4.3, 4.4 and 15.6. In ***reporting the actual hours and*** 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 has not performed an activity a sufficient number of times within the period covered by the report to provide data sufficient to reliably determine the hours required to perform the activity;

iii. Any other factors relevant to the estimate, provided that the report explains any such other factors considered, and explains how such factors support the estimate;

iv. If the Department determines that the creation of additional classifications of facilities or activities would result in a substantially more equitable assessment of fees, the Department may establish such additional classifications. The Department's determination shall be in its reasonable discretion, based on 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. ***The Department may also consolidate existing classifications of facilities or activities for which it determines that the same number of hours is required to perform an activity for more than one classification of facility or activity.*** This subparagraph (b)1 provides only for the creation of additional classifications ***(or consolidation of existing 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;

v. With respect to fees assessed for an activity to be performed more than once in the period covered by the fee (such as an annual compliance monitoring fee assessed for several compliance monitoring inspections to be performed in a one-year period), the data upon

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which the report is based may show a decrease in the amount of time required to perform an activity, all or part of which decrease results from a lack of Department staff sufficient to perform the activity the expected number of times within the period. In such event, the Department may maintain the fee at the level required to defray the cost of staff sufficient to perform the activity the expected number of times within the period*. **If the Department has performed the activity for any category of facilities at an average frequency less than the frequency upon which the fee is based, the Department shall credit the total excess fees paid by the facilities in the category against the revenues necessary to fund the same activity for the following year***; and

2. A statement of the hourly rate for calculating fees. The hourly rate is the average cost of one hour of Department staff time, 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 solid waste program;

ii. FB equals the fringe benefits of a full-time Department employee working in the Department's solid waste program, calculated as a percentage of the average salary, which 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 full-time Department employee, 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 and data system management) attributable to a full-time Department employee working in the Department's solid waste program;

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 solid 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 solid waste program spends annually performing activities for which fees are to be imposed under N.J.A.C. 7:26-4.3, 4.4 or 15.6.

(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. 7:26-4.3, 4.4 or 15.6 within the one-year period covered by the report.

(d) Promptly after making the adjustment of fees pursuant to the report described in (b) above, the Department shall publish in the New Jersey Register a notice of administrative change, pursuant to N.J.A.C. 1:30-2.7(c), setting forth adjusted fees and the operative date thereof. ***The Department shall also publish a notice of the adjusted fees and the operative date thereof in the DEPE Bulletin, and mail a copy of the notice to each owner or operator of a registered solid waste vehicle or facility; to the County Board of Chosen Freeholders of each solid waste management district and to the district solid waste management implementing agency as designated in accordance with N.J.S.A. 13:1E-21; and the Hackensack Meadowlands Development Commission.*** The notice shall state that the report is available, and 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.

HEALTH

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Good Drug Manufacturing Practices

Adopted New Rules: N.J.A.C. 8:21A

Proposed: June 1, 1992 at 24 N.J.R. 2003(c).

Adopted: July 10, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Filed: July 13, 1992 as R.1992 d.316, **without change.**

Authority: N.J.S.A. 24:5-1 et seq., especially 24:5-1 and 24:2-1.

Effective Date: August 3, 1992.

Expiration Date: August 3, 1997.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption 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

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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)

HEALTH FACILITIES RATE SETTING

**Residential Alcoholism Treatment Facilities (RATF)
Cost Accounting and Rate Evaluation Guidelines**

Adopted Amendments: N.J.A.C. 8:31C-1.5 and 1.6

Proposed: April 20, 1992 at 24 N.J.R. 1463(a).

Adopted: June 11, 1991 by Frances J. Dunston M.D., M.P.H., Commissioner, Department of Health, (with approval of the Health Care Administration Board).

Filed: July 10, 1992 as R.1992 d.312, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: August 3, 1992.

Expiration Date: April 20, 1997.

Summary of Public Comments and Agency Responses:

COMMENTERS: Center for Addictive Illnesses

Carrier Foundation

Riker, Danzig, Scherer, Hyland & Perretti

Sunrise House Foundation

COMMENT: The commenters support the Department's position that the Target Occupancy limitation be removed from the rate setting methodology, since its presence may create a "double penalty" situation, as delineated in the proposal.

RESPONSE: The Department agrees that the limitation for Target Occupancy should be eliminated from the rate setting methodology. The Department agrees that Target Occupancy may create a double penalty situation.

COMMENTER: Blue Cross and Blue Shield of New Jersey.

COMMENT: Blue Cross and Blue Shield of New Jersey opposes the elimination of target occupancy to the pass through costs. The primary concern is that without some limitation, many facilities will be unnecessarily reimbursed for under utilized space.

RESPONSE: The Department maintains the position that the use of target occupancy unduly penalizes the facilities and prevents the implementation of reasonable reimbursement rates.

Full text of the adoption follows.

8:31C-1.5 Maintenance

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

(e) The per diem amount for maintenance and replacements will be determined by dividing (d) above by actual patient days.

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

8:31C-1.6 Per diem reimbursement

Actual base period patient days will be used to develop reasonable per diem amounts.

HUMAN SERVICES

(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Patient Supervision At State Psychiatric Hospitals

Readoption: N.J.A.C. 10:36

Proposed: May 4, 1992 at 24 N.J.R. 1728(a).

Adopted: June 29, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: June 29, 1992 as R.1992 d.302, **without change.**

Authority: N.J.S.A. 30:1-12 and 30:4-27.21.

Effective Date: June 29, 1992.

Expiration Date: December 31, 1992.

Summary of Public Comments and Agency Responses:

No public comments were received on the proposal and no changes have been made to the proposal upon adoption.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 10:36.

ADOPTIONS

LAW AND PUBLIC SAFETY

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Administrative Correction

Inmate Discipline

Prohibited Acts

N.J.A.C. 10A:4-4.1

Take notice that the Department of Corrections has discovered an error in the text of N.J.A.C. 10A:4-4.1(a). The term "pressant" in prohibited act .150 is a typographic error. As proposed and adopted by the Department (see 23 N.J.R. 658(a) and 1797(b)), the correct term is "suppressant." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface thus; deletion indicated in brackets [thus]):

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions For Prohibited Acts).

*.001-.103 (No change.)

.150 tampering with fire alarms, fire equipment or fire [pressant] **suppressant** equipment

.151-.803 (No change.)

(b) (No change.)

(b)

THE COMMISSIONER

Inter-Jurisdictional Agreements and Statutes

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

Proposed: June 1, 1992 at 24 N.J.R. 1939(a).

Adopted: July 6, 1992 by William H. Fauver, Commissioner, Department of Corrections.

Filed: July 9, 1992 as R.1992 d.310, **without change**.

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

Effective Date: July 9, 1992, Readoption;

August 3, 1992, Amendments.

Expiration Date: July 9, 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. 10A:10.

Full text of the adopted amendments follows.

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 the receiving state; 3.-8. (No change.)

9. The offender must meet all of the eligibility requirements of the treaty with the receiving state.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF CONSUMER AFFAIRS

BOARD OF MEDICAL EXAMINERS

Declaration of Death Upon the Basis of Neurological Criteria

Adopted New Rule: N.J.A.C. 13:35-6A

Proposed: December 2, 1991 at 23 N.J.R. 3635(a).

Adopted: June 10, 1992 by the Board of Medical Examiners, Sanford Lewis, M.D, President.

Filed: July 9, 1992 as R.1992 d.309, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:6A-1 et seq. (P.L. 1991, c.90), specifically 26:6A-4.

Effective Date: August 3, 1992.

Expiration Date: September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:35-6A, relating to declaration of death upon the basis of neurological criteria. The official comment period ended on January 1, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on December 2, 1991 at 23 N.J.R. 3635(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Asbury Park Press, the State Department of Health, the Medical Society of New Jersey, the New Jersey Association of Osteopathic Physicians and Surgeons, the New Jersey Hospital Association, the University of Medicine and Dentistry of New Jersey, various professional groups and practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Medical Examiners, Room 602, 28 West State Street, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Responses:

The Board of Medical Examiners received comments from 16 individuals during the 30 day comment period. A list of the commenters together with a summary of the comments received and the Board's responses follows.

Preliminary Statements

COMMENT: One commenter objected to the Economic Impact statement because it failed to recognize that additional costs incurred by hospitals in order to comply with these rules will be passed on to patients and consumers.

RESPONSE: The Board agrees that the Economic Impact Statement should be modified to note possible increases in consumer costs in some cases. The Economic Impact Statement should thus be modified to include, at the end of the first paragraph, the following additional sentence:

However, to the extent that additional physician involvement and/or testing (beyond that which would have occurred prior to implementation of these rules) is now mandated, the Board anticipates that the families of patients may incur additional expenses.

N.J.A.C. 13:35-6A.2 Definitions

COMMENT: One commenter requested clarification of the definition of attending physician. Specifically, the commenter asked whether the attending physician can designate his or her duties as attending physician.

RESPONSE: The definition of attending physician includes the phrase "or his or her designee." Designation is thus permissible.

N.J.A.C. 13:35-6A.3 Requirements for physicians authorized to declare death on the basis of neurological criteria

COMMENT: Two commenters suggested that the definition of "corroborating physician" be expanded to include physicians with a special interest or expertise in surgical or medical critical care (that is, critical care physicians or intensivists).

RESPONSE: The Board rejects the proposed expansion of the definition. The Board points out that these rules aim to ensure that a physician with a high degree of expertise in a specialty with a recognized scope

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of training is involved in making any determinations of brain death, and to that end the Board requires that a neurologist or neurosurgeon be involved in the process.

COMMENT: One commenter stated that neurosurgeons are adequately trained to make determinations of brain death on patients two months of age or below. The commenter requested that the term "pediatric neurosurgeon" be removed and replaced simply with "neurosurgeon."

RESPONSE: The Board is generally in agreement with this comment and has determined to amend N.J.A.C. 13:35-6A.3(b)2 to include the phrase "or a neurologist or neurosurgeon who has been trained in or is experienced in pediatric cases." This will ensure that physicians appropriately trained or experienced in pediatric neurology are allowed to make the determination of brain death.

N.J.A.C. 13:35-6A.4 Standards for determination of brain death
Subsection (a)

COMMENT: The Board received five comments regarding this subsection, which requires the initial examination to be performed by the attending physician and the second examination to be performed by the corroborating physician. The commenters noted that the neurologist or neurosurgeon often performs the initial examination leading to the diagnosis of brain death and suggested that the regulation should be changed to allow the initial examination to be performed by any physician who is caring for the patient.

RESPONSE: The Board concurs with the commenters that the two required physicians may perform the examinations in either order and is amending this section accordingly. The Board stresses, however, that one of the examinations must be performed by a specialist with appropriate qualifications. See N.J.A.C. 13:35-6A.3(b).

COMMENT: One commenter suggested that the requirement that the attending physician must participate in the determination of brain death is too restrictive, particularly if the attending physician does not have the expertise to accurately perform all aspects of the clinical determination.

RESPONSE: N.J.A.C. 13:35-6A.2 defines attending physician as the physician primarily responsible for the patient's care and treatment "or his or her designee." Accordingly, an attending physician who felt he or she lacked the necessary expertise could appoint a designee to perform examination and testing.

Subsection (b)

COMMENT: One commenter suggested that this subsection supports an inference that the attending physician cannot discuss the possibility of organ donation with a patient's family.

RESPONSE: This subsection in essence incorporates the legal requirements set forth in the New Jersey Declaration of Death Act at section 4c. The Board notes that the requirement that the physician have no responsibility for any contemplated recovery or transplant of an individual's organs does not support an inference that the physician would be absolutely forbidden in all instances to discuss the possibility of organ donation with family members.

Subsection (c)

COMMENT: One commenter stated that a religious exemption is ludicrous.

RESPONSE: This subsection merely incorporates the legal requirement set forth in the New Jersey Declaration of Death Act at Section 5.

N.J.A.C. 13:35-6A.5 Criteria and testing for establishment of brain death

COMMENT: Two commenters suggested that the term "blood-flow study" in paragraph (a)1 be amended to read "blood-flow study to the brain."

RESPONSE: The Board believes this term is sufficiently clear and that such a modification is unnecessary.

COMMENT: One commenter suggested that this section is confusing. The commenter pointed out that in paragraph (a)1 the examining physician is given discretion to determine whether confirmatory tests are necessary in order to clinically determine that an individual is in a deep coma as marked by cerebral unresponsivity and unresponsivity. However, subparagraph (a)3iii(2)(C) states that, where the patient is above one year of age and has suffered anoxic brain damage, the second examina-

tion must be performed at least 12 hours after the initial examination only if the diagnosis has been established with appropriate confirmatory tests.

RESPONSE: The Board does not believe the two cited sections are inconsistent. In making the initial diagnosis of whether an individual is in a deep coma, the physician must exercise discretion and determine whether medical circumstances require use of confirmatory tests. Because additional assurances can be derived from confirmatory tests, the amount of time one must wait between the initial and second examination depends upon whether confirmatory tests have been used to establish the initial diagnosis. Thus, where a diagnosis of anoxic brain damage has been established without confirmatory tests, the minimum waiting period between the initial and second examination is doubled to twenty four hours. See N.J.A.C. 13:35-6A.5(a)3iii(3)(A).

COMMENT: Two commenters suggested that the technique of apneic oxygenation needs definition or explanation.

RESPONSE: The Board does not believe it necessary to define the test within the parameters of this regulation, as the term is well understood within the medical community.

COMMENT: One commenter questioned why ocular responses must be determined to be absent to passive head turning and to cold caloric testing. The commenter stated that cold caloric testing is not always possible and that cerebral death can be diagnosed in the absence of cold calories.

RESPONSE: The Board is of the opinion that these tests are necessary in order to conclusively determine the absence of brain stem functions. The philosophy underlying these rules is that determinations of brain death should not be "easy" or "simple" to make, and thus the Board has sought to resolve any instances of doubt (as to the necessity for specific testing) in favor of inclusion of testing.

COMMENT: Two commenters suggested that the regulation should specify that the core temperature must be at least 92 degrees Fahrenheit in order that the electroencephalogram be meaningful.

RESPONSE: The Board does not find it necessary to include such specification within the regulation, noting that the regulation merely lists a number of procedures which may be used to seek to establish the cause of coma. The Board presumes that physicians will perform only procedures which will be meaningful.

COMMENT: Two commenters stated that the regulation is unclear so as to what drugs are to be included in toxicology screening and in what patients screening would be mandated before death could be declared on the basis of neurological criteria. It was also suggested that the phrase "reliable history" should have a defined time frame.

RESPONSE: As written, the regulation requires each examining physician to establish that there is no possibility of any recovery of any brain functions by excluding the possibility of reversible conditions such as drug or metabolic intoxication. The regulation also requires that toxicology screening is required unless there is a reliable history that the individual did not use sedative drugs, including ethanol. Accordingly, toxicology screening would be mandated by the rules in all patients unless the examining physician was able to obtain a reliable history that the patient did not use sedative drugs, including ethanol. While the Board recognizes that the rule neither specifies which drugs must be tested for nor defines the term "reliable history," the Board is of the opinion that these decisions are better left to the examining physician, on a case-by-case basis, rather than being incorporated within formal rulemaking.

COMMENT: Two commenters questioned why a specific category for anoxic brain damage has been established at N.J.A.C. 13:35-6A.5(a)3iii, stating that they were not aware of a clinical distinction between anoxic brain damage and other causes of brain death.

RESPONSE: Distinctions set forth in the regulation parallel commonly accepted standards. See, Guidelines for Determination of Death, Report of the Medical Consultants on the Diagnosis of Death to the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Journal of the American Medical Association, Vol. 246, No. 19 (Nov. 13, 1981).

COMMENT: Four commenters questioned whether the regulation is too complex in setting three distinct time standards for the second examination.

RESPONSE: These distinctions parallel commonly accepted standards. See, Guidelines for the Determination of Death, cited in response to the previous comment.

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N.J.A.C. 13:35-6A.7 Certification of death

COMMENT: One commenter suggested that the requirement that both physicians certify death in the patient chart be amended so as to require only the second examining physician to certify death in the chart.

RESPONSE: The requirement that both physicians sign the chart and certify death in the chart is intended to assure physician accountability and to assure that the physicians have complied with the requirements of this section. Given the vital importance of the determination of brain death, the Board does not find sufficient reason to relax these standards.

COMMENT: One commenter suggested that the issue of whether both physicians must be present at the time death is certified needed to be clarified.

RESPONSE: The regulation does not require both physicians to be physically present when death is certified, but does require both examiners to certify death on the patient chart and does require the attending physician to certify death on the death certificate.

General Comments

COMMENT: One commenter stated that it is inappropriate to categorize an electroencephalogram as an objective test.

RESPONSE: The electroencephalogram is a generally accepted and appropriate test. The Board's approach is consistent with that suggested within the Presidential Commission's Guidelines for the Determination of Death. See, Guidelines for the Determination of Death, cited above.

COMMENT: One commenter noted that an electroencephalography and angiography are listed as "confirmatory tests" several times. The commenter stated that an electroencephalogram is confirmatory only when a cause of coma is known, whereas the blood flow test is absolute. Accordingly, the commenter suggested that when the absence of blood flow is found, other examinations should be unnecessary.

RESPONSE: Again, the criteria set forth in the regulation for determining brain death are consistent with those recommended within the Guidelines for the Determination of Death. The regulations leave open flexibility for the individual physician to determine the appropriate confirmatory tests, and there may well be situations where an angiogram is a more appropriate test than an electroencephalogram. However, defining those instances goes beyond the scope of reasonable regulation.

COMMENT: One commenter suggested that the criteria are not sufficient for patients less than one year of age.

RESPONSE: The Board is satisfied that the criteria set forth in the regulation are consistent with generally accepted standards. See, Guidelines for the Determination of Death, cited above.

COMMENT: One commenter suggested generally that the Board should not list specific studies to confirm brain death, or specific aspects of the neurological examination, as these will change rapidly as medical technology changes.

RESPONSE: The Board recognizes that medical technology and specific tests may well change, and notes that the references to specific tests generally require "appropriate" tests. The composition of the list of "appropriate" tests will change as technology changes. The Board also notes that, pursuant to the New Jersey Declaration of Death Act, the regulations must be evaluated and a report, including recommendations for changes, must be made to the Legislature before October 5, 1996.

List of Commenters

Paul R. Megibow, M.D., Treasurer, Bergen County Medical Society
 John P. Mudry, M.D., President, Bergen County Medical Society
 Robert Bayly, M.D.
 John Sutyak, M.D.
 Jerry Belsh, M.D.
 Roger W. Countee, M.D., President, NJ Neurological Society
 Hugo Lijtmaer, M.D.
 Audrey Meyers, Vice President, Valley Hospital
 Louis Scibetta, President, NJ Hospital Association
 Robert Kamrin, M.D.
 Henry Liss, M.D.
 Robert Pickens, M.D.
 Maureen P. Barnes, Director of Risk Management/Insurance, Cooper Hospital/University Medical Center
 Melvin Vigman, M.D.
 Patricia Klein, M.D.
 Stephen Sachs, M.D.

Summary of Changes Made upon Adoption

1. The Board has amended the Economic Impact Statement contained in the preamble of the rule proposal to clarify that the regulation may

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result in increases in consumer costs in some cases. The amendment does not substantially alter the substance of the original statement. The following is a restatement of the first paragraph of the Economic Impact Statement:

Economic Impact

In general, the Board does not anticipate any negative economic impact upon licensees, health care facilities or the public as a result of the proposed new rules. The required tests and procedures set forth in the rules as the base-line criteria for establishing brain death represent no major departure from currently accepted medical standards. However, to the extent that additional physician involvement and/or testing (beyond that which would have occurred prior to implementation of these rules) is now mandated, the Board anticipates that the families of patients may incur additional expenses.

2. The Board has amended N.J.A.C. 13:35-6A.3(b)2 to include as corroborating physicians neurologists or neurosurgeons who have been trained in or are experienced in pediatric cases. In the Board's opinion, these physicians are adequately trained to make determinations of brain death on patients two months of age or below.

3. Based upon the suggestions of commenters that the initial examination is often performed by the neurologist or neurosurgeon rather than the attending physician, the Board has amended N.J.A.C. 13:35-6A.4(b) to indicate that the two required physicians may perform the examinations in either order. The Board notes that the critical element is the participation of at least one specialist, not the order in which the examinations are performed.

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

SUBCHAPTER 6A. DECLARATIONS OF DEATH UPON THE BASIS OF NEUROLOGICAL CRITERIA

13:35-6A.1 Purpose

(a) The rules in this subchapter are established pursuant to N.J.S.A. 26:6A-1 et seq. (P.L. 1991, c.90), the New Jersey Declaration of Death Act, and set forth:

1. Requirements, by specialty or expertise, for physicians authorized to declare death upon the basis of neurological criteria; and
2. Currently accepted medical standards, including criteria, tests and procedures, to govern declarations of death upon the basis of neurological criteria.

13:35-6A.2 Definitions

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

"Appropriate period of observation" means the minimum amount of time which must pass between the performance of the initial examination to determine whether brain death has occurred and the second corroborative examination.

"Attending physician" means the physician (or his or her designee) primarily responsible for the care and treatment of the individual upon whom a declaration of brain death is to be made.

"Brain death" means the irreversible cessation of all functions of the entire brain, including the brainstem.

"Corroborating physician" means the physician responsible for performance of the second examination to determine whether brain death has occurred.

"Duly qualified" means the satisfactory completion of a residency program approved by the Accreditation Council for Graduate Medical Education.

13:35-6A.3 Requirements for physicians authorized to declare death on the basis of neurological criteria

(a) The attending physician shall be a plenary licensed physician. The attending physician may specialize or engage in any area of practice.

(b) The corroborating physician shall be a plenary licensed physician, who shall:

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1. When determinations of brain death are to be made upon individuals above two months of age, be either a duly qualified neurologist or a neurosurgeon;

2. When determinations of brain death are to be made upon individuals at or below two months of age, be either a duly qualified neonatologist, a pediatric neurologist or a pediatric neurosurgeon *****, or a neurologist or neurosurgeon who has been trained in or is experienced in pediatric cases^{*}.

(c) In the event the attending physician meets the standards for qualification as a corroborating physician set forth in (b) above, then the corroborating physician may specialize or engage in any area of practice.

13:35-6A.4 Standards for determination of brain death

(a) A person may be pronounced dead if it is determined by that person's attending physician, and confirmed independently by a corroborating physician, that brain death has occurred. ***[The]*** ***Either the*** attending physician ***or the corroborating physician*** shall perform the initial clinical examination. After passage of an appropriate period of time, in accordance with the standards set forth in N.J.A.C. 13:35-6A.5(a)3iii, ***[the corroborating physician]*** ***the physician who did not perform the initial clinical examination (that is, the corroborating physician if the initial clinical examination was performed by the attending physician or the attending physician if the initial clinical examination was performed by the corroborating physician)*** shall perform a second independent clinical examination. Determinations of brain death shall be made in accordance with the mandatory criteria set forth in N.J.A.C. 13:35-6A.5.

(b) If the individual to be declared dead upon the basis of neurological criteria is or may be an organ donor, then neither the attending physician nor the corroborating physician shall have any responsibility for any contemplated recovery or transplant of that individual's organs, including, but not limited to, being the organ transplant surgeon, the attending physician of the organ recipient, or otherwise an individual subject to a potentially significant conflict of interest relating to procedures for organ procurement.

(c) Death shall not be declared on the basis of neurological criteria if either the attending physician or the corroborating physician has any reason to believe, on the basis of information in the individual's available medical records, or information provided by a member of the individual's family or any other person knowledgeable about the individual's personal religious beliefs that such a declaration would violate the personal religious beliefs of the individual. In these cases, death shall be declared, and the time of death fixed, solely upon the basis of cardiorespiratory criteria.

13:35-6A.5 Criteria and testing for establishment of brain death

(a) Declarations of brain death shall be made in accordance with accepted medical standards. At a minimum, each examining physician must be able to make the mandatory determinations set forth below and must document the method(s) by which said determinations are made within the patient's chart:

1. Clinical determination that the individual is in a deep coma as marked by cerebral unresponsiveness and unresponsivity: Each examining physician must be able to clinically determine that the individual is in a deep coma as marked by cerebral unresponsiveness and unresponsivity. In making that determination, the examining physician shall test to ensure that the individual has no behavioral or reflex response to painful stimuli presumed to be mediated at a level above the spinal cord. If, in the opinion of the examining physician, medical circumstances require confirmation of the determination, the examining physician shall confirm the determination with appropriate studies, including but not necessarily limited to an electroencephalogram or blood-flow study.

2. Clinical determination that brain stem functions are absent: Each examining physician must be able to clinically determine that brain stem functions are absent. In making said determination, the examining physician shall test pupillary light, corneal, oculocephalic, oculovestibular, oropharyngeal and respiratory (apnea) reflexes. Absence of all such reflexes must be found. In testing for apnea, pupillary response to light and ocular movements, the examining

physician must be able to make the determinations specified below and, in so doing, perform the tests specified below:

i. Apnea: Spontaneous respirations must be determined to be absent. Confirmation of apnea may be made using the technique of apneic oxygenation or by using other appropriate tests;

ii. Pupils: Pupillary response to light must be determined to be absent. The effect of mydriatic agents must be excluded; and

iii. Ocular responses: Ocular responses must be determined to be absent to passive head turning and to cold caloric testing.

3. Clinical determination of irreversibility: Each examining physician must be able to establish that the cessation of all functions of the entire brain is irreversible. In making said determination, the examining physician shall:

i. Make reasonable efforts to establish the cause of the coma, which cause should be determined to be sufficient to account for the loss of brain functions. The determination may be made by careful clinical examination and investigation of history. If the history is unknown, relevant knowledge of causation may be acquired by computed tomographic scan, measurement of core temperature, drug screening, electroencephalogram, angiography, or other appropriate procedures.

ii. Establish that there is no possibility of any recovery of any brain functions by excluding the possibility of reversible conditions such as hypothermia, neuromuscular blockade, shock, or drug or metabolic intoxication. Toxicology screening is required unless there is a reliable history that the individual did not use any sedative drugs, including ethanol; and

iii. Establish that the cessation of all brain functions persists for an appropriate period of observation. In order to so determine, all of the required findings specified above shall be independently made by both examining physicians, and the second examination shall be performed no sooner than:

(1) Six hours after the initial examination, in all instances where the individual upon whom the determination of brain death is to be made is above the age of one year and has not sustained anoxic brain damage, only so long as the cause of coma can be established to be irreversible and the diagnosis has been established with appropriate confirmatory tests such as an electroencephalogram or a blood flow study;

(2) Twelve hours after the initial examination, in all instances where the individual upon whom the determination of brain death is to be made is:

(A) Above the age of one year and has not sustained anoxic brain damage, so long as the cause of coma can be well established to be irreversible without confirmatory tests; or

(B) Above the age of one year and has sustained anoxic brain damage, so long as irreversibility has been established with confirmatory tests; or

(C) At or below the age of one year and has not sustained anoxic brain damage, so long as the cause of coma can be established to be irreversible and the diagnosis has been established with confirmatory tests.

(3) Twenty-four hours after initial examination, in all instances where the individual upon whom the determination of brain death is to be made:

(A) Has sustained anoxic brain damage, where irreversibility has not been established by confirmatory tests; or

(B) Is at or below the age of one year, where the diagnosis has not been established with confirmatory tests.

13:35-6A.6 Objective documentation

When objective documentation shall be needed to substantiate clinical findings, confirmation shall be made by appropriate tests such as an electroencephalogram, four-vessel angiography or radioisotope cerebral angiography.

13:35-6A.7 Certification of death

The attending physician and the corroborating physician shall both document within the patient record the results of all tests performed during their examinations, and shall both sign the chart. After the two clinical examinations and appropriate confirmatory tests have been completed and documented on the patient's chart, and if both

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examiners have been able to make all requisite determinations, then brain death may be declared. The two physicians who performed the clinical examinations shall both certify death in the patient's chart and the attending physician shall certify death on the death certificate.

(a)**DIVISION OF OF STATE POLICE****Criminal History Record Information Background Checks for Non-Criminal Justice Purposes; Authorized and Unauthorized Access and Uses****Adopted Amendments: N.J.A.C. 13:59-1.1, 1.2, 1.3, 1.4 and 1.8**

Proposed: June 1, 1992 at 24 N.J.R. 1963(a).

Adopted: July 7, 1992 by Colonel Justin J. Dintino, Superintendent, Division of State Police.

Filed: July 7, 1992 as R.1992 d.308, **without change**.

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.

Effective Date: August 3, 1992.

Expiration Date: July 30, 1995.

The Division of State Police afforded all interested persons an opportunity to comment on the adoption of proposed amendments to N.J.A.C. 13:59-1.1, 1.2, 1.3, 1.4 and 1.8. These amendments regard: (1) the furnishing of New Jersey State conviction data and all New Jersey State pending charges to authorized agencies; and (2) the authorized and unauthorized access and uses of criminal history record information. Announcement of the opportunity to comment on the proposed amendments appeared in the New Jersey Register on June 1, 1992 at 24 N.J.R. 1963(a). Secondary publication of the proposed amendments, and a 30-day opportunity to comment thereon, appeared in the Newark Star Ledger, the Trenton Times, the Asbury Park Press and the Camden Courier Post, all newspapers of general circulation.

Summary of Public Comments and Agency Responses:

No comments were received by the Division as a result of the public notice for the proposed rule amendments.

Full text of the adoption follows.

13:59-1.1 Definitions

The following words and terms, when used in this 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 authorized by a Federal or State statute, rule or regulation, executive order, administrative code or local ordinance to access Criminal History Record Information 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 in-

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dividuals, 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 sub-unit 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 cost established by law for processing all criminal history record requests for authorized agencies for noncriminal justice purposes, including licensing and/or employment.

"Licensing and/or employment purpose" means any noncriminal justice purpose, including licensing and/or employment, 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.

"Processing Criminal History Record background checks" means:

1. 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 a set of classifiable fingerprints or to conduct a name search request to determine if New Jersey Criminal History Record Information exists for the person identified by the 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 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 requests from authorized agencies will be subject to the prescribed fees as set forth at N.J.A.C. 13:59-1.2. 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 agencies shall be on forms as prescribed by this section.

(b) The prescribed forms shall be used to access Criminal History Record Information for any requests from authorized agencies for noncriminal justice purposes, including licensing and/or employment.

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

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

(a) Access to Criminal History Record Information for non-criminal justice purposes, including licensing and/or employment is restricted to authorized agencies as defined by this chapter. Such

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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

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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.

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(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Route 10 in Morris County

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

Proposed: June 1, 1992 at 24 N.J.R. 1967(a).

Adopted: July 6, 1992 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: July 7, 1992 as R.1992 d.304, **without change**.

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

Effective Date: August 3, 1992.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.8 Route 10

(a) (No change.)

(b) The certain parts of State highway Route 10 described in 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 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.)

EMERGENCY ADOPTION

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Equine Entry Restriction

Adopted Emergency New Rules and Concurrent Proposed New Rules: N.J.A.C. 2:5-1

Emergency New Rules Adopted and Concurrent Proposed New Rules Authorized: July 15, 1992 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): July 20, 1992.

Emergency New Rules Filed: July 20, 1992 as R.1992, d.321.

Authority: N.J.S.A. 4:1-21.5; 4:5-1 et seq.; and 4:5-4 et seq.

Emergency New Rules Effective Date: July 20, 1992.

Emergency New Rules Expiration Date: September 18, 1992.

Concurrent Proposal Number: PRN 1992-363.

Submit written comments by September 2, 1992 to:

Ernest W. Zirkle, DVM, Director
Division of Animal Health
New Jersey Department of Agriculture
CN 330
Trenton, NJ 08625

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency new rules are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rules become effective upon the acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary

An outbreak and the potential for the spread to New Jersey of a contagious and infectious disease in horses at race tracks in the New England states of Massachusetts, New Hampshire, Maine and Vermont requires prompt action on the part of the State of New Jersey to prevent spread to New Jersey's race tracks and equine industry. Although the specific virus has not yet been isolated, it appears to be Equine Viral Arteritis (EVA).

In the affected New England states, the disease has made it necessary to quarantine the Rockingham Park Race Track in New Hampshire, where after only five days, the disease has sickened over 50 horses. It is predicted that at the current rate of transmission, the disease will affect at least 200 horses before it runs its course at that track. In addition, the disease has affected horses at Suffolk Downs and Foxboro race tracks in Massachusetts. Because of the nature of the horse racing industry and the industry's mobility between regional race tracks in the affected states, a uniform application of restrictive measures to horses entering New Jersey from the region where the disease is present is necessary to prevent its spread to New Jersey. Other states, including New York, Pennsylvania, Maryland, Kentucky, Ohio and Delaware, have already initiated emergency orders to address this equine health emergency.

These emergency rules prohibit horses which have been stabled, exercised or raced at race tracks in the New England states of New Hampshire, Massachusetts, Maine and Vermont from entry into New Jersey without a permit issued by the Director of the Division of Animal Health, New Jersey Department of Agriculture. In addition, the emergency rules prohibit horses that have been in contact with horses from these race tracks from entering New Jersey without that permit.

Social Impact

The emergency and concurrent proposed new rules affect equine owners and race tracks in New Jersey. Horses which have been at race

tracks in these New England states will not be allowed to enter New Jersey without a permit until the disease is under control and the emergency rule is rescinded or expires. This will result in the restricted movement of equine into New Jersey; however, it will prevent the spread of the disease.

Economic Impact

The cost associated with the emergency and concurrent proposed new rules will be minimal. The new rules will reduce the potential for loss in the equine industry by providing a mechanism to control the spread of the disease to New Jersey equines, race tracks and breeding farms. The specific virus has not yet been isolated, but it appears to be Equine Viral Arteritis (EVA). This disease not only causes race horses to become ill and lose up to three weeks training time but, if introduced into breeding farms, causes high numbers of abortions in a short period of time. New Jersey's horse breeding industry would suffer severe economic damage if an entire year's foal crop were lost. Additionally, exposure to the virus could jeopardize shipment of horses to most foreign countries and devastate New Jersey's horse export business which currently ranks second in the United States.

Regulatory Flexibility Analysis

The emergency and concurrent proposed new rules would impose an additional compliance requirement on race tracks, equine breeders or owners seeking to bring into New Jersey horses which have been stabled, exercised or raced at race tracks in Maine, Vermont, New Hampshire and Massachusetts, or have been in contact with horses which have been so stabled, exercised or raced. Some of these breeders or owners may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirement imposed is that a permit must be obtained from the Director, Division of Animal Health, before any such horse can be brought into New Jersey. The permit application will provide information necessary to determine the history and current health status of the horse. The Division anticipates minimal cost of an administrative nature in applying for a permit. No fee is charged, nor will any professional services be required. In order to ensure the health of the State's equine population, no exceptions or lesser requirement can be provided based upon the size of the breeder's or owner's business.

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

SUBCHAPTER 1. [(RESERVED)] EQUINE ENTRY RESTRICTION

2:5-1.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Contact" means any exposure with horses from the states of Maine, Vermont, New Hampshire and Massachusetts which is sufficient to transmit a disease from one equine to another equine.

"Director" means the Director of the Division of Animal Health, New Jersey Department of Agriculture.

2:5-1.2 Equine prohibition

(a) Any equine which has been stabled, exercised or raced at race tracks located in the states of Maine, Vermont, New Hampshire and Massachusetts is prohibited from entering the State of New Jersey, unless accompanied by a permit issued by the Director.

(b) Any equine which has had contact with equines stabled, exercised or raced at race tracks in the states of Maine, Vermont, New Hampshire and Massachusetts is prohibited from entering the State of New Jersey, unless accompanied by a permit issued by the Director.

2:5-1.3 Permit procedure

(a) Any equine owner who intends to transport into New Jersey an equine which is otherwise prohibited pursuant to N.J.A.C. 2:5-1.2 shall apply to the Director for permission to transport the equine into the State.

AGRICULTURE

(b) The Director shall provide application forms to elicit information for the purpose of determining the history and current health status of the equine.

EMERGENCY ADOPTION

(c) Upon a finding by the Director that the equine is free of disease, the Director shall issue a permit granting entry of the equine into New Jersey. _____

PUBLIC NOTICES

EDUCATION

(a)

BUREAU OF STUDENT SUPPORT SERVICES

Notice of Availability for Review of Chapter 2 Application for Funds for FY 1993 and 1994

Take notice that pursuant to P.L. 100-297, Section 1522(a)(5), notice is hereby given that the New Jersey State Department of Education's Chapter 2 application for funds for FY 1993 and FY 1994 is available for public review at all 21 County Offices of Education from August 10, 1992 to August 17, 1992. Persons wishing to review this document should contact the County Superintendent of Schools' office within their county. Please call Mr. Ted Robak at (609) 292-5935 for additional information.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking comment on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment, which was proposed by the Bordentown Sewerage Authority (BSA), would adopt the BSA Wastewater Management Plant (WMP). This WMP specifies a future wastewater planning flow to the Black's Creek sewage treatment plant (STP) of 4.127 million gallons per day (MGD). The WMP also proposes to correct errors and omissions in the 1986 201 Facilities Plan service area mapping and to expand the service area boundaries for the Black's Creek STP to coincide with the municipal boundaries of the Township of Bordentown and the City of Bordentown. In addition, the WMP identifies the sewer service area of the E.R. Johnstone Center STP, which has a NJPDES permitted flow limit of 0.08 MGD. Environmentally critical areas have been mapped on the Future Sewer Service Area Map for informational purposes. Development proposed in these areas will have to meet additional State and Federal requirements.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. Donald Russo, BCM Engineers Inc., One Plymouth Meeting, Plymouth Meeting, PA 19462. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person 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 and must be submitted within 30 days of the date of this public notice to Mr. 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.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Mercer County Water Quality Management Plan Public Notice

Take notice that on June 29, 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, requested by Coca-Cola Foods, modifies the sewer service areas of both the East Windsor Municipal Utilities Authority (MUA) and the Borough of Hightstown sewage treatment plants. The Coca-Cola Foods Hightstown Citrus Plant currently has five points of discharge or connection to three separate sewer treatment agencies and two surface water discharges. The amendment allows Coca-Cola Foods to consolidate sewer service to one agency, the Hightstown Sewage Treatment Plant (STP). The two surface water discharges will be retained. All food process washwaters and sanitary wastes will be conveyed to the Hightstown STP. All food process wastewater will first be directed to a pretreatment facility. The amendment modifies the East Windsor MUA Wastewater Management Plan by removing Lots 26, 32, and 35 of Block 48 in Hightstown Borough, and Lot 106, Block 53.03 in East Windsor Township for the East Windsor MUA sewer service area and including them in the Borough of Hightstown STP.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Mercer Water Quality Management Plan Public Notice

Take notice that on June 10, 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 adopts a wastewater management plan (WMP) for Washington Township, Mercer County. The WMP proposes changes to the sewer service area within Washington Township which is served by the Hamilton Township Water Pollution Control Facility. Areas not proposed for sewer service are to be served by non-surface disposal facilities with design flows of less than 2,000 gallons per day.

This amendment proposal was noticed in the New Jersey Register on September 3, 1991. Mercer County held a public hearing on the proposed amendment on October 9, 1991. Comments on this amendment were received during the public comment period and are summarized below with the County and Department's responses.

COMMENT: Four parties located outside of the proposed sewer service area submitted comments requesting they be included in the sewer service area.

RESPONSE: The American Boss and Wittenborn sites were included into the sewer service area. The County analyzed both sites and determined that both sites could be included into the sewer service area while not increasing the opportunity for intensive development to spread into areas of the Township zoned for low-density development. Also, a portion of the American Boss site was already in the sewer service area. The Garden State Land and Toll Brothers sites were not included in the sewer service area. The County determined that extension of the sewer line to the Garden State Land site would increase pressure for intensive development activity to spread into areas of the Township not planned for such intense growth. The Toll Brothers site has not been included at this time, because a Stipulation of Settlement between Toll Brothers, the Township and the County provides that the site will not be included. Under the Stipulation of Settlement, Toll Brothers will

ENVIRONMENTAL PROTECTION

PUBLIC NOTICES

request a further amendment to the Township's WMP to include the site, if it is determined that development of the site can proceed in a manner consistent with State regulation of wetlands.

(a)

**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. The amendment is for the Wantage Township Wastewater Management Plan (WMP). The WMP delineates the groundwater discharge areas for facilities with a design capacity of less than 2,000 gallons per day (gpd), the groundwater discharge areas for facilities with a design capacity of less than 20,000 gpd (wastewater flows not to exceed 390 gal/acre/day), and the service areas of the Regency at Sussex and High Point High School existing sewage treatment plants (STP's). The WMP also identifies the following three proposed STP's: STP for the Borough of Sussex water treatment facility, STP for Simmons Water Company, and the STP for Baldwin Well Drilling Company. In addition, the WMP allows for the expansion of the Annandale High Point groundwater discharge STP to serve 350 inmates. This portion of the WMP is being processed by the NJDEPE pursuant to N.J.A.C. 7:15-3.4(c).

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, September 9, 1992 at 2:10 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.

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 June 1, 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 MAY 18, 1992

NEXT UPDATE: SUPPLEMENT JUNE 15, 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. 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	24 N.J.R. 2103 and 2314	June 15, 1992
23 N.J.R. 3679 and 3840	December 16, 1991	24 N.J.R. 2315 and 2486	July 6, 1992
24 N.J.R. 1 and 164	January 6, 1992	24 N.J.R. 2487 and 2650	July 20, 1992
24 N.J.R. 165 and 318	January 21, 1992	24 N.J.R. 2651 and 2752	August 3, 1992
24 N.J.R. 319 and 508	February 3, 1992		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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ADMINISTRATIVE LAW—TITLE 1

1:6A-9.2, 14.1, 14.4, 18.1, 18.3, 18.5 Special Education Program	24 N.J.R. 1936(a)		
1:13A-1.2, 18.1, 18.2 Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		

Most recent update to Title 1: TRANSMITTAL 1992-3 (supplement May 18, 1992)

AGRICULTURE—TITLE 2

2:5-1 Equine entry restrictions	Emergency (expires 9-18-92)	R.1992 d.321	24 N.J.R. 2737(a)
2:22 Insect control	24 N.J.R. 1662(a)	R.1992 d.294	24 N.J.R. 2556(a)
2:24-4 Volunteer Inspector Program: noncommercial apiaries and bees	24 N.J.R. 1141(a)	R.1992 d.278	24 N.J.R. 2421(a)
2:32 Sire Stakes Program	24 N.J.R. 1142(a)	R.1992 d.239	24 N.J.R. 2241(a)
2:50 Milk producers	24 N.J.R. 893(a)	R.1992 d.229	24 N.J.R. 2048(a)
2:69-1.11 Commercial values of primary plant nutrients	24 N.J.R. 2318(a)		
2:71-2.2, 2.4, 2.5, 2.6 Jersey Fresh Quality Grading Program	24 N.J.R. 2318(b)		
2:71-2.28, 2.29 Inspection and grading charges for fruits and vegetables	24 N.J.R. 2321(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 1992-1 (supplement May 18, 1992)

BANKING—TITLE 3

3:1-6.6 Entity examination charges	24 N.J.R. 1420(a)	R.1992 d.250	24 N.J.R. 2242(a)
3:1-19 Consumer checking accounts	24 N.J.R. 1662(b)	R.1992 d.305	24 N.J.R. 2710(a)
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)	R.1992 d.242	24 N.J.R. 2242(b)
3:23 Department license fees	24 N.J.R. 1667(a)	R.1992 d.303	24 N.J.R. 2712(a)
3:25 Debt adjustment and credit counseling	24 N.J.R. 2106(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)		
3:38-1.9, 5.2, 5.3 Branch offices; mortgage services licensure exemption; solicitor registration	24 N.J.R. 1937(a)		

Most recent update to Title 3: TRANSMITTAL 1992-4 (supplement April 20, 1992)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

4A:1 General rules and Department organization	24 N.J.R. 2490(a)		
4A:2 Appeals, discipline, separations	24 N.J.R. 2491(a)		
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:4-3.7, 7.10, 7.12	Reinstatement of permanent employee following disability retirement	24 N.J.R. 2107(a)		
4A:4-7.11	Transfers and retention of employee rights in a consolidation	24 N.J.R. 2494(a)		
4A:5	Veterans and disabled veterans preference	24 N.J.R. 2495(a)		
4A:6-1, 2, 3, 4, 5	Leaves, hours of work, and employee development: preproposed readoption	24 N.J.R. 2496(b)		
4A:6-6	Awards program: preproposed readoption	24 N.J.R. 2496(a)		
4A:6-16	Sick leave injury (SLI) benefits: carpal tunnel syndrome and asbestosis	24 N.J.R. 2108(a)		
4A:7	Equal employment opportunity and affirmative action	24 N.J.R. 2496(c)		
4A:9-1	Political subdivision	24 N.J.R. 2498(a)		
4A:10	Violations and penalties	24 N.J.R. 2499(a)		

Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)

COMMUNITY AFFAIRS—TITLE 5

5:4-2	Debarment and suspension from Department contracting	24 N.J.R. 2322(a)		
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)	R.1992 d.290	24 N.J.R. 2556(b)
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)		
5:18-1.5, 4.7	Uniform Fire Code: eating and drinking establishments; exemption from fire suppression system requirement	24 N.J.R. 1938(a)		
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18A-2.9, 4.6	Fire Code enforcement: conflict of interest	24 N.J.R. 678(a)	R.1992 d.243	24 N.J.R. 2422(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)	R.1992 d.291	24 N.J.R. 2556(c)
5:23	Uniform Construction Code	24 N.J.R. 1420(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)	R.1992 d.244	24 N.J.R. 2243(a)
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(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)	R.1992 d.272	24 N.J.R. 2424(a)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.3	Elevator Safety Subcode: enforcement	24 N.J.R. 1148(a)	R.1992 d.245	24 N.J.R. 2244(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)	R.1992 d.243	24 N.J.R. 2422(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)	R.1992 d.313	24 N.J.R. 2712(b)
5:23-5.4	Uniform Construction Code: enforcement interns	24 N.J.R. 1669(b)	R.1992 d.292	24 N.J.R. 2557(a)
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)	Expired	
5:24-3	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)	R.1992 d.287	24 N.J.R. 2429(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)	R.1992 d.246	24 N.J.R. 2244(b)
5:26-9.1, 9.2	Protected housing tenancy in qualified counties and in planned real estate developments	24 N.J.R. 1453(a)	R.1992 d.287	24 N.J.R. 2429(a)
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:100-2.3, 2.4, 2.5	Ombudsman for Institutionalized Elderly: resident advance directives	24 N.J.R. 1455(a)	R.1992 d.284	24 N.J.R. 2431(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)		

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MILITARY AND VETERANS' AFFAIRS—TITLE 5A

5A:5	State veterans' facilities: admission criteria, care maintenance fee, transfer or discharge	24 N.J.R. 2499(b)		
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Most recent update to Title 5A: TRANSMITTAL 1992-1 (supplement February 18, 1992)

EDUCATION—TITLE 6

6:5-2.4, 2.5	Organization of Department: reporting responsibilities; public information requests	Exempt	R.1992 d.279	24 N.J.R. 2431(b)
6:8-9	Educational improvement plans in special needs districts	24 N.J.R. 2323(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 2109(a)		
6:21-6A.6	Pupil transportation: administrative correction to N.J.A.C. 6:21-6A.6 regarding school bus color	24 N.J.R. 2325(a)		
6:26	Establishment of pupil assistance committees	24 N.J.R. 1670(a)	R.1992 d.307	24 N.J.R. 2713(a)
6:28	Special education	24 N.J.R. 1150(a)	R.1992 d.280	24 N.J.R. 2434(a)
6:29-2.4	Attendance at school by pupils or adults infected by HIV	24 N.J.R. 2124(a)		
6:29-8	Nonpublic school nursing services	24 N.J.R. 2325(b)		
6:64	Public, school, and college libraries	24 N.J.R. 2126(a)		

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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)	R.1992 d.252	24 N.J.R. 2245(a)
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. 1968(a)		
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: Statewide general permits	_____	_____	24 N.J.R. 2252(a)
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
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, 12.2-12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(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)		
7:14-8.3	Water Pollution Control Act: administrative correction regarding affirmative defense by violator	_____	_____	24 N.J.R. 2448(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-1.2, 1.7-1.10, 2.1, 2.4, 2.5, 2.12, 2.13, 3.8, 3.9, 3.11, 3.12, 3.13, 3.17, App. A, B, 7.8, 9.1, 10.3, 14.8, App. H	Statewide Stormwater Permitting Program	24 N.J.R. 2352(a)		
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)	R.1992 d.315	24 N.J.R. 2715(b)
7:25-6	1993-94 Fish Code	24 N.J.R. 2539(a)		
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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-1.4, 2.13, 6.3, 6.8	Solid waste management: scrap metal shredding residue, animal manure, interdistrict and intradistrict flow	24 N.J.R. 1995(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)
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)		
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)	R.1992 d.311	24 N.J.R. 2726(a)
7:26-4.6	Solid waste program fees: extension of comment period	24 N.J.R. 1458(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies: reopening of comment period	24 N.J.R. 2002(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)		
7:26-8.16	Hazardous constituents in waste streams: reopening of comment period	24 N.J.R. 2003(a)		
7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
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)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 2003(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels: public meeting and hearing on oxygenated fuels program	24 N.J.R. 2128(a)		
7:27-25.1-25.4, 25.7-25.12	Control and prohibition of air pollution by vehicular fuels	24 N.J.R. 2386(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)		
7:27A-3.10	Civil administrative penalties for violations of Air Pollution Control Act	24 N.J.R. 2386(a)		
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)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
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HEALTH—TITLE 8				
8:13	Shellfish handling and shipping; hard and soft shell clam depuration	24 N.J.R. 2504(a)		
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 2410(b)		
8:21-3A	Registration of wholesale drug distributors and device manufacturers and wholesale distributors	24 N.J.R. 2410(b)		
8:21A	Good drug manufacturing practices; tamper-resistant packaging for over-the-counter products	24 N.J.R. 2003(c)	R.1992 d.316	24 N.J.R. 2729(a)
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)	R.1992 d.281	24 N.J.R. 2448(b)
8:31A-7.4, 7.5	SHARE Hospital system: rebasing and Minimum Base Period Challenge	24 N.J.R. 734(b)	R.1992 d.249	24 N.J.R. 2255(a)
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:31C-1.5, 1.6	Residential alcoholism treatment facilities: target occupancy penalty	24 N.J.R. 1463(a)	R.1992 d.312	24 N.J.R. 2730(a)
8:33	Health care facilities and services: Certificate of Need application and review process	24 N.J.R. 2222(a)		
8:33C	Regionalized perinatal services: Certificate of Need criteria and standards	24 N.J.R. 2005(a)		
8:33H	Long-term care services: Certificate of Need policy manual	24 N.J.R. 2014(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:34-1.7	Licensure examination fee for nursing home administrator	24 N.J.R. 2414(a)		
8:35A	Maternal and child health consortia: licensing standards	24 N.J.R. 2027(a)		
8:42	Home health agencies: standards for licensure	24 N.J.R. 2031(a)		
8:43	Residential health care facilities: standards for licensure	24 N.J.R. 2506(a)		
8:43G-19	Hospital licensing standards: obstetrics	24 N.J.R. 2045(a)		
8:45-1.3, 2.1	Blood bank licensure fees and Department laboratory services charges	24 N.J.R. 2508(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)	R.1992 d.241	24 N.J.R. 2256(a)
8:65-10.1	Controlled dangerous substances: addition of methcathinone to Schedule I	_____	_____	24 N.J.R. 2451(a)
8:65-10.3	Controlled dangerous substances: correction regarding anabolic steroids	_____	_____	24 N.J.R. 2256(b)
8:71	Interchangeable drug products (see 23 N.J.R. 3334(b); 24 N.J.R. 144(b), 948(a))	23 N.J.R. 2610(a)	R.1992 d.295	24 N.J.R. 2558(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), 1897(a))	24 N.J.R. 61(a)	R.1992 d.297	24 N.J.R. 2560(a)
8:71	Interchangeable drug products (see 24 N.J.R. 1896(a))	24 N.J.R. 735(a)	R.1992 d.298	24 N.J.R. 2560(b)
8:71	Interchangeable drug products	24 N.J.R. 1673(a)	R.1992 d.296	24 N.J.R. 2559(a)
8:71	Interchangeable drug products	24 N.J.R. 1674(a)	R.1992 d.300	24 N.J.R. 2557(b)
8:71	Interchangeable drug products	24 N.J.R. 2414(b)		
8:100	State Health Plan	24 N.J.R. 1164(a)	R.1992 d.299	24 N.J.R. 2561(a)
8:100-16	State Health Plan regarding Long-Term Care Services: correction to Economic Impact statement	24 N.J.R. 1675(a)		

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HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1, 3.2, 3.4, 3.5	Teaching university	24 N.J.R. 1464(a)		
9:7	Student Assistance Programs	24 N.J.R. 2510(a)		
9:7-2.3, 2.11	Student Assistance Programs: administrative corrections	_____	_____	24 N.J.R. 2451(b)
9:9-7.2, 7.3, 7.8	NJCLASS program: family income limit, maximum loan amount, repayment	24 N.J.R. 1675(b)	R.1992 d.293	24 N.J.R. 2626(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)		

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10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:15B-1.2	IV-A "At Risk" Child Care Program: client eligibility income schedules	_____	_____	24 N.J.R. 2257(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)	R.1992 d.302	24 N.J.R. 2730(b)
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)		
10:50-1.1-1.4, 1.6, 1.7, 2.1, 2.2	Livery services: Medicaid reimbursement, age of vehicles, workers' compensation coverage; invalid coach services	24 N.J.R. 2517(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)		
10:72	New Jersey Care: Special Medicaid Programs Manual	24 N.J.R. 2145(a)		
10:72-1.1, 3.4, 4.1	New Jersey Care: Medicaid eligibility of children	24 N.J.R. 1860(a)		
10:81-1.6, 1.11, 1.12, 2.1, 2.2, 2.4, 2.7, 2.8, 3.8, 3.9, 3.18, 3.19, 4.2, 4.23, 5.2, 5.7, 5.8, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 14.1, 14.18, 14.20, 14.21	Public Assistance Manual: Family Development Program and REACH/JOBS provisions	24 N.J.R. 2147(a)		

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10:81-11.4, 11.9	Public Assistance Manual: provision of information regarding services to AFDC clients; legal representation in child support matters	24 N.J.R. 2327(a)		
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)		
10:81-14.21	Public Assistance Manual: administrative correction concerning REACH assistance	_____	_____	24 N.J.R. 2257(b)
10:82-1.2-1.5, 1.11, 2.7-2.11, 4.4, 4.8	Assistance Standards Handbook: AFDC program requirements	24 N.J.R. 2155(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)	R.1992 d.261	24 N.J.R. 2258(a)
10:82-2.8	Assistance Standards Handbook: administrative correction regarding earned income in AFDC segments	_____	_____	24 N.J.R. 2626(b)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	24 N.J.R. 2160(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)		
10:85-3.1, 3.3, 4.1	General Assistance allowance determination: household size concept	24 N.J.R. 926(a)	R.1992 d.260	24 N.J.R. 2263(a)
10:85-3.2, 10.1	General Assistance Manual: Family Development Program and work training requirements	24 N.J.R. 2160(b)		
10:86	Family Development Program Manual	24 N.J.R. 2161(a)		
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(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)		
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:131	DYFS: Adoption Assistance and Child Welfare Act of 1980 requirements	24 N.J.R. 2522(a)		
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)		

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10A:1	Department administration, organization, and management	24 N.J.R. 1465(a)	R.1992 d.269	24 N.J.R. 2451(c)
10A:5-1.3, 7	Temporary close custody	24 N.J.R. 1676(a)		
10A:8	Inmate orientation and handbook	24 N.J.R. 2330(a)		
10A:10	Interjurisdictional agreements and statutes	24 N.J.R. 1939(a)	R.1992 d.310	24 N.J.R. 2731(b)
10A:16	Medical and health services	24 N.J.R. 1677(a)	R.1992 d.283	24 N.J.R. 2452(a)
10A:18	Inmate mail, visits, and telephone use	24 N.J.R. 1204(b)	R.1992 d.262	24 N.J.R. 2627(a)
10A:23	Lethal injection	24 N.J.R. 1677(a)	R.1992 d.283	24 N.J.R. 2452(a)

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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)		
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(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)		
11:2-26	Insurer's annual audited financial report	24 N.J.R. 1940(a)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)	R.1992 d.282	24 N.J.R. 2456(a)
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(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)		
11:3-19.3, 34.3	Automobile insurance eligibility rating plans: incorporation of merit rating surcharge	24 N.J.R. 2332(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-20.5, App. 11:3-33.2	Automobile insurance: Excess Profits Report Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 529(a) 24 N.J.R. 2128(b)	R.1992 d.254	24 N.J.R. 2264(a)
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
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12:56-10	Wage and Hour: employment of learners; sub-minimum wage	24 N.J.R. 2129(b)		
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)		

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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)	R.1992 d.275	24 N.J.R. 2460(b)
13:44E-2.7	Chiropractic practice: referral fees	24 N.J.R. 1470(a)		
13:44F	Rules of State Board of Respiratory Care	24 N.J.R. 2336(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)	R.1992 d.248	24 N.J.R. 2285(b)
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14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)		
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15:10-1.5, 7	Distribution of voter registration forms through public agencies: extension of comment period	24 N.J.R. 2531(a)		

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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)
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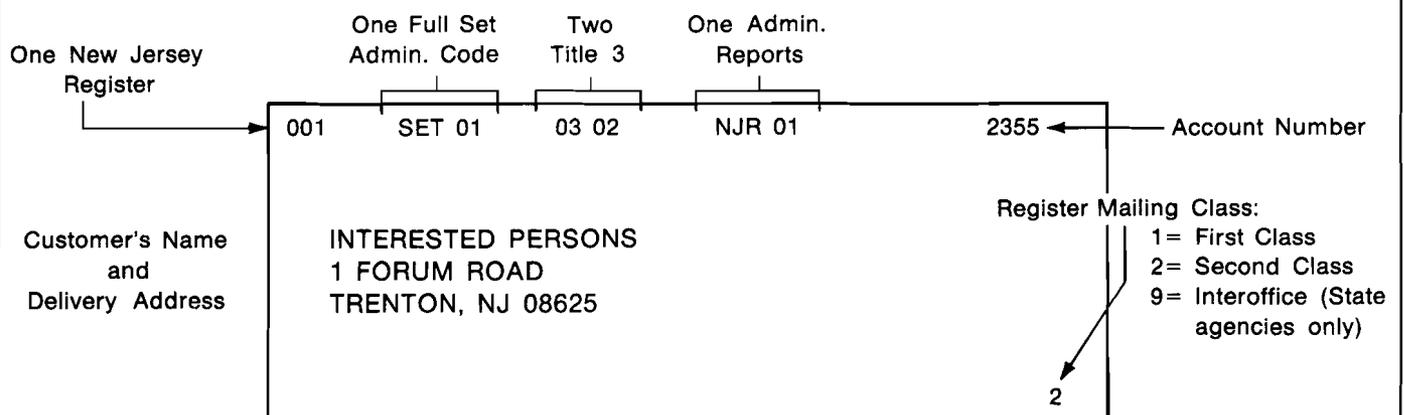
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