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THE JOURNAL OF STATE AGENCY RULEMAKING

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See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT OCTOBER 19, 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 **January 6, 1993.** 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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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
General License Requirements
Elevator Inspectors

Proposed Amendment: N.J.A.C. 5:23-5.4 and 5.5

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1992-507.

Submit comments by January 6, 1993 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX #(609) 633-6729

The agency proposal follows:

Summary

Persons who are not licensed as elevator subcode officials or inspectors are prohibited from serving in either capacity if they were not appointed or employed, by a local enforcing agency or a private enforcing agency, and serving in the same municipality, prior to July 1, 1992, the date upon which elevator licensing requirements became effective. Persons holding such appointment or employment, and serving in that capacity on that date, are prohibited from continuing to hold the appointment or employment, or to serve in that capacity, after June 30, 1996, unless he or she has obtained the necessary license. Existing language providing for the provisional licensure of certain persons certified as elevator inspectors by the Department of Personnel is proposed to be deleted.

The State Uniform Construction Code Act was adopted in 1975 with transitional provisions intended to protect people already employed as inspectors and officials by allowing them to retain their jobs for a reasonable period of time before having to become licensed, while giving at least some of them an opportunity to gain the required experience. N.J.S.A. 52:27D-126 allowed persons serving as the equivalent of municipal construction and subcode officials on the effective date of the act, or within one year thereafter, to continue serving without having to be licensed for not more than four years after that effective date. Those who already had at least six years of experience were thereby enabled to accumulate enough additional experience to qualify. The Department views this approach as indicative of the public policy of the State, as enunciated by the Legislature, and has drafted its rule proposal accordingly.

This amendment was made necessary by reason of the opinion and order granting a preliminary injunction issued by the United States District Court for the District of New Jersey in a case brought by several elevator inspectors who were unable to satisfy the experience requirement that the Department has established for elevator inspector licensure. (See *William Dombrowski, et al. v. Randy R. Primas, et al.,* Civil Action #92-2994 (JEI).) The Court held that the language in N.J.A.C. 5:23-5.5(c) now being proposed for repeal had the effect of allowing persons who might be less qualified than the plaintiffs to continue serving as elevator inspectors on a provisional basis while not offering the same opportunity to the plaintiffs, or offering any alternative procedure to allow them to keep their jobs, thereby denying plaintiffs their constitutional rights to both equal protection of the laws and due process. The Court directed the Department to adopt regulations and procedures that would permit persons who had been serving as elevator inspectors when the licensing rules were proposed to have an opportunity to qualify for licenses, although it acknowledged that such a rule would not necessarily have to result in any of the plaintiffs becoming licensed in order to be valid.

Social Impact

By not forcing all current elevator inspectors who have not yet met all requirements for licensure to lose their jobs, the Department will avoid undue hardship both for these individuals and for their employing agencies. A transitional measure of this sort is consistent with public policy, as evidenced by the analogous provision of N.J.S.A. 52:27D-126.

Economic Impact

This amendment will have a favorable economic impact both upon the inspectors who will not have to give up their jobs and upon the local and private enforcing agencies that employ them, which will be spared the cost of recruiting replacements.

Regulatory Flexibility Statement

This amendment will be beneficial to private enforcing agencies, which may or may not be "small businesses" within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., by allowing them to retain current staff and avoid costs due to turnover. Since the amendment will have a favorable impact upon them regardless of size or form of organization, there is no reason for differentiation on those bases.

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

5:23-5.4 Licenses required

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

(g) For the period July 1, 1992 to June 30, 1996, interim rules for elevator subcode officials and inspectors shall be as follows:

1. Except as otherwise provided in (f)2 below, no person shall be appointed to the position of elevator subcode official or appointed as an elevator inspector unless he or she shall have been licensed in accordance with this subchapter.

2. No person serving as an elevator subcode official, or holding employment as an elevator inspector, on June 30, 1992 shall continue to serve in such capacity, or hold such employment, after June 30, 1996, unless he or she shall have been licensed in accordance with this subchapter.

5:23-5.5 General license requirements

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

(c) The following persons shall be exempt from the requirements of this section and shall be issued a license upon submission of an application and payment of the required fee[.]**:**

1.-2. (No change.)

3. Inspectors with civil service status or tenure:

i. A license of the appropriate type and specialty shall be issued to any person holding or receiving, prior to January 1, 1978, tenure or permanent civil service status. [Additionally, those persons certified by the New Jersey Department of Personnel as an elevator inspector prior to July 1, 1991, and currently employed in said certified title, shall be entitled to elevator inspector H.H.S. licensure on a provisional basis pending successful completion of the required course and test within a period not to exceed 24 months from the date of provisional licensure.]

(d) (No change.)

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(a)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding Houses
Appropriate Placement
Proposed Amendment: N.J.A.C. 5:27-3.5

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 55:13B-4.
Proposal Number: PRN 1992-503.

Submit written comments by January 6, 1993 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX Number (609) 633-6729

The agency proposal follows:

Summary

In order to bring the rules governing rooming and boarding houses into conformity with applicable provisions of the Federal Fair Housing Act amendments, the Department proposes to amend N.J.A.C. 5:27-3.5 to eliminate references to rooming houses, since the amendments make clear that rooming houses are governed by the same standards as apartments or other rented living quarters—which may not exclude any person on the basis of handicap. It also makes it clear that people may not be accepted as residents in a boarding house if they are unable to leave the building on their own, rather than because they are not ambulatory. This is a more precise definition that is intended to conform to the requirements of the Fair Housing Act amendments.

Social Impact

By eliminating restrictions that are inconsistent with the Fair Housing Act amendments, the amendment will increase housing opportunities for persons whom that Act is intended to protect.

Economic Impact

There may be a positive economic impact upon some persons who will now be allowed to live in rooming or boarding houses instead of more costly accommodations.

Regulatory Flexibility Statement

These proposed amendments will reduce restrictions that affect owners and operators of rooming and boarding houses, in order to conform to Federal law. Such boarding houses may be considered small businesses, in accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules are being amended to conform to the Federal Fair Housing Act amendments, while preserving restrictions necessary in order to protect residents of all boarding houses, regardless of size or form of ownership. No special provisions for small businesses are therefore either necessary or appropriate.

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

5:27-3.5 Appropriate placement

(a) No licensee shall accept as a resident in a [rooming or] boarding house a person who is not [ambulatory] **capable of self-evacuation** with or without assistive devices, who is not certified by a physician to be free of communicable diseases and not in need of nursing care or who requires services not available in such [rooming or] boarding house. [The foregoing notwithstanding, a person who is not ambulatory but who is capable of moving unassisted from room to room with the aid of an assistive device or a wheelchair may be accepted for residence on the ground floor of a rooming or boarding house that is fully covered by a sprinkler system.]

(b) In the event that a resident ceases to be [ambulatory] **capable of self-evacuation**, acquires a communicable disease or requires nursing care, supervision of self-administration of medication or services not available in the [rooming or] boarding house, it shall be the responsibility of the licensee to so notify the county welfare board forthwith so that the resident may be transferred to a facility suitable to his needs.

(c) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

NEW JERSEY WASTEWATER TREATMENT TRUST

Construction Grants for Wastewater Treatment Facilities

Proposed Amendments: N.J.A.C. 7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11 and 10.12

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy as to N.J.A.C. 7:22-3, 5, 6 and 10; and the New Jersey Wastewater Treatment Trust, Ellis S. Vieser, Chairman, as to N.J.A.C. 7:22-4 and 5.
Authority: Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329); the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181); Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985, c.306); N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 58:11A-1 et seq.; N.J.S.A. 58:10A-1 et seq.; Executive Order No. 215 (1989) and any appropriations to the Department of Environmental Protection and Energy for the purpose of providing financing to eligible projects as to N.J.A.C. 7:22-3, 5, 6 and 10; and New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.) and any appropriations to the New Jersey Wastewater Treatment Trust for the purpose of providing financing to eligible projects as to N.J.A.C. 7:22-4 and 5.
DEPE Docket Number: 51-92-10.
Proposal Number: PRN 1992-504.

A **public hearing** concerning this proposal will be held as follows:
Wednesday, January 6, 1993 at 10:00 A.M.
Large Conference Room
1333 Brunswick Avenue
Trenton, New Jersey

Submit written comments by January 8, 1993 to:
Richard McManus, Administrative Practice Officer
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 7:22 contains the rules of the Department governing the grant/loan application and award procedures, as well as other related requirements, for State assistance to wastewater treatment facilities projects sponsored by local government units. These amendments are being proposed in response to public comments resulting from the recent substantial modification and readoption of N.J.A.C. 7:22. See 23 N.J.R. 3282(a) (November 4, 1991) and 24 N.J.R. 246(a) (January 21, 1992). During the readoption process, several local government units expressed concern that increased project costs due to differing site conditions add substantially to a project's overall cost and that these costs are ultimately passed on to the users of the wastewater system. The proposed amendments to N.J.A.C. 7:22-3, 4 and 5 will modify the existing program structure to permit local government units which received financial assistance for their wastewater treatment facilities' project and which encounter increased costs due to differing site conditions (such as hazardous wastes or cultural resources which were not reasonably anticipated to be found at the project site prior to the start of construction and which were discovered during the building of the project) to recoup

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the increased cost through financial assistance from the Department-administered Fund and/or the New Jersey Wastewater Treatment Trust.

Rule amendments are also being proposed to better clarify the intent of the existing rules, to expand the universe of projects eligible for preaward approval, to amend the manner in which an environmental constraints analysis is applied and to correct errors and misstatements in the existing rules.

In addition to the above, the title of Chapter 22 has been modified from "Construction Grants" to "Financial Assistance" to better describe the rules, since the majority of the chapter deals with loan assistance programs.

Subchapter 3: This subchapter, entitled Fund Procedures and Requirements, establishes the procedures by which the Department provides loans to local government units for the construction of wastewater treatment facilities. It assures that the funds are distributed by the Department according to the laws and policies of the State and in a manner which protects the public interest. Requirements for loan application and repayments are included as well as general terms and conditions of the loan agreements and minimum standards for the construction of wastewater treatment facilities.

The Wastewater Treatment Bond Act of 1985 (P.L. 1985, c.329) and the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) established the authority under which this subchapter was promulgated. The Bond Acts created the Wastewater Treatment Fund, administered by the Department to provide loans to local government units for the construction of wastewater treatment facilities, and the Stormwater Management and Combined Sewer Overflow Abatement Fund, also administered by the Department to provide low-cost financing for the construction of wastewater treatment facilities and stormwater management facilities.

The proposed amendments to N.J.A.C. 7:22-3 are as follows:

N.J.A.C. 7:22-3.4 has been amended to provide new (or modify existing) definitions applicable to other amendments being proposed in subsequent sections of this subchapter. Of particular note, a definition for "differing site conditions" has been included in this section. Differing site conditions include physical conditions that are materially different than those identified in the building contracts (that is, the plans and specifications) and that were not known to the applicant at the time the building contracts were executed.

N.J.A.C. 7:22-3.7 has been modified to indicate the Department's intent to provide priority to projects seeking a post-construction supplemental Fund loan for increased allowable costs due to differing site conditons, consistent with the priority now given to projects seeking a supplemental Fund loan for increased allowable costs due to the low bid building cost. Supplemental loan projects do not appear on the Project Priority List and are given priority over any new project on the Project Priority List seeking their initial Fund loan in a given funding cycle.

N.J.A.C. 7:22-3.8 has been modified to indicate that a project which receives financial assistance from the United States Department of Agriculture's Farmers Home Administration for the same scope of work for which the project receives a Fund loan and will have its Fund loan share reduced by an amount equal to the amount of financial assistance provided by the Farmers Home Administration. If both Fund and Trust loans are received, both loans will be proportionally reduced.

N.J.A.C. 7:22-3.9 has been amended to eliminate the concept of contingency projects to be consistent with the provisions of the existing rules.

Since the inception of the program, applicants have evaluated existing site conditions as a component of their application for a Fund loan. N.J.A.C. 7:22-3.11 has been modified to specifically identify this as a requirement since any conditions encountered during the building of the project which differ from the existing site conditions represented in the building contracts could be classified as "differing". Differing site conditions would be considered eligible under this amended rule. This section also includes two new provisions (subsections (f) and (g)) which identify those activities which the recipient and the Department must complete in order for the Department to process a recipient's supplemental Fund loan application (for increased costs due to low bid or due to differing site conditions). The completion of the activities required of recipients and the Department are designed to ensure that, at the time of supplemental Fund loan award, the loan amount covers all appropriate allowable costs.

N.J.A.C. 7:22-3.17 has been amended to include specific requirements for the construction of wastewater treatment facilities. These requirements have been applicable to Federal construction grant and State-funded projects since their original issuance as a Department guidance document on July 12, 1976. Since these provisions establish appropriate requirements to ensure adequate construction practices, they are being proposed for inclusion in these rules. Specifically, the construction activities addressed in this amendment include requirements regarding meetings, right-of-way and access clearing, photographs or videotapes, inspection coverage, job meetings, visual inspection and testing, environmental restoration and final inspection. The proposed construction requirements do not substantively impact the local government unit's responsibilities with regard to the existing rules, which require construction of the project in conformance with the approved plans and specifications. Rather, these provisions specify the Department's requirements to establish a consistent approach to accomplish this purpose.

N.J.A.C. 7:22-3.17 has also been amended to delete the requirement for recipients to provide a Subcontractor Certification Form to the Department. After further consideration, it was determined that the Form was unnecessary and was redundant with various provisions elsewhere in the rules. The language used in previous years' programs has been reinserted in the rules to require recipients to include in project-related contracts a statement indicating that the State and any of its departments, agencies or employees is not a party to the contract(s).

N.J.A.C. 7:22-3.20 currently provides that the Department may make a supplemental Fund loan if the allowable costs based on the low bid building cost for a project exceed the original Fund loan amount, but only after the passage of an appropriations act providing money for that project. The proposed amendments add a corresponding provision governing circumstances in which additional money is required for a project as a result of differing site conditions.

N.J.A.C. 7:22-3.26 has been amended to specifically state that Fund moneys included in the original Fund loan award which are in excess of the low bid adjusted Fund loan amount are not available to cover a recipient's project related cost increases (including cost increases due to differing site conditions).

N.J.A.C. 7:22-3.27 has been clarified to indicate that the project sign must include the information required by the Department, not the Division, since, as a result of a recent reorganization, the Division of Water Resources no longer exists.

Since certain high priority projects of the Department (that is, projects to address long-term sludge management needs and others) rank between 70 and 100 on the Project Priority List, N.J.A.C. 7:22-3.32 has been amended to allow the top 100 (previously limited to the top 70) projects on the Project Priority List to be considered eligible for preaward approval. Preaward approval allows project sponsors which satisfy the applicable requirements to proceed with construction and maintain the eligibility of costs incurred prior to Fund loan award. This section was also amended to indicate that both the Department and the Trust must make the request to the Legislature to include projects on an appropriations bill.

N.J.A.C. 7:22-3.34 has been modified to indicate that an adjustment in the planning and/or design allowance will not be made for increased building costs to address differing site conditions. No adjustment will be made since the planning and design effort required to address differing site conditions is not as extensive as the effort required to complete the initial planning and design activities for the project. The allowance tables (Tables 1 and 2 in N.J.A.C. 7:22-5) are based on costs to complete the initial planning and design effort.

N.J.A.C. 7:22-3.37 currently provides that the applicant is required to conduct value engineering if the total estimated building cost of the project exceeds $10 million, unless the applicant has received Federal grant assistance for the design of the project. Value engineering is a specialized cost control technique designed to reduce costs without sacrificing the reliability or efficiency of the project. Under the proposed amendments, the applicant will be required to conduct value engineering for all projects with building costs greater than $10 million even if Federal grant assistance has been provided to ensure that value engineering is performed for all projects. However, the Department does not expect this provision to have an adverse impact on applicants, because a value engineering study sufficient to satisfy requirements under a Federal grant would satisfy the requirements under the proposed amendments as well.

Subchapter 4: This subchapter, entitled Wastewater Treatment Trust Procedures and Requirements, establishes the procedures by which the New Jersey Wastewater Treatment Trust provides loans to local government units for the construction of wastewater treatment facilities. It assures that funds are distributed by the Trust according to the laws

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and policies of the State and in a manner which protects the public interest. Requirements for loan application and repayments are included in this subchapter, as well as general terms and conditions of the loan agreements and minimum standards for the construction of wastewater treatment facilities.

The New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), in conjunction with the Wastewater Treatment Bond Act of 1985, established the authority under which this subchapter was promulgated and the framework under which the Wastewater Treatment Financing Program (Program) was created. The Program provides low-cost loans to a project sponsor for the construction of wastewater treatment facilities, through a combination of a loan award from the Trust pursuant to this subchapter and from the Department pursuant to N.J.A.C. 7:22-3.

The proposed amendments to N.J.A.C. 7:22-4 are as follows:

The proposed amendments to N.J.A.C. 7:22-4.4 add the same definition of "differing site conditions" as at proposed N.J.A.C. 7:22-3.4. The proposed amendments also revise the definition of "low bid building costs." This definition currently excludes any costs due to change orders; the revised definition excludes costs necessary to address differing site conditions as well. The proposed amendments also make minor changes to clarify existing definitions as well as to define terms applicable to the construction requirements being added to N.J.A.C. 7:22-4.17.

N.J.A.C. 7:22-4.7 has been modified to indicate the Trust's intent to provide priority to projects seeking a post-construction supplemental Trust loan for increased allowable costs due to differing site conditions, consistent with the priority now given to projects seeking a supplemental Trust loan for increased allowable costs due to the low bid building cost. Supplemental loan projects do not appear on the Project Priority List and are given priority over any new project on the Project Priority List seeking their initial Trust loan in a given funding cycle.

N.J.A.C. 7:22-4.8 has been modified to indicate that a project which receives financial assistance from the United States Department of Agriculture's Farmers Home Administration for the same scope of work for which the project receives a Trust loan will have its Trust loan share reduced by an amount equal to the amount of financial assistance provided by the Farmer's Home Administration. If both Fund and Trust loans are received, both loans will be proportionally reduced.

N.J.A.C. 7:22-4.9 has been amended to eliminate the concept of contingency projects to be consistent with the provisions of the existing rules.

Since the inception of the program, applicants have been required to evaluate existing site conditions as a component of their application for a Trust loan. N.J.A.C. 7:22-4.11 has been modified to specifically identify this as a requirement since any conditions encountered during the building of the project which differ from the existing site conditions represented in the application could be classified as "differing." Differing site conditions are now considered eligible under this amended rule. This section also includes two new provisions (subsections (f) and (g)) which identify those activities which the recipient and the Trust must complete in order for the Trust to process a recipient's supplemental Trust loan application (for increased costs due to low bid or due to differing site conditions). The completion of the activities required of recipients and the Trust are designed to ensure that, at the time of supplemental Trust loan award, the loan amount covers all appropriate allowable costs.

N.J.A.C. 7:22-4.13 has been clarified to indicate that Trust loan applications will be reviewed to determine if the project scope identified in the application is consistent with the Trust's program's, and not the project's objectives. Since planning and design is completed prior to submittal of the application, the loan applicant has already determined whether the approved project scope will satisfy project objectives. The review for consistency with the Trust's program objectives is necessary to determine that the project scope selected is the most cost effective, environmentally sound alternative for wastewater management in the planning area.

N.J.A.C. 7:22-4.17 has been amended to include specific requirements for the construction of wastewater treatment facilities. These requirements have been applicable to Federal construction grant and State-funded projects since their original issuance as a Department guidance document on July 12, 1976. Since these provisions establish appropriate requirements to ensure adequate construction practices, they are being proposed for inclusion in these rules. Specifically, the construction activities addressed in this amendment include requirements regarding meetings, right-of-way and access clearing, photographs or videotapes, inspection coverage, job meetings, visual inspection and testing, environmental restoration and final inspection. The proposed construction requirements do not substantively impact the local government unit's responsibilities with regard to the existing rules, which require construction of the project in conformance with the approved plans and specifications. Rather, these provisions specify the Department's requirements to establish a consistent approach to accomplish this purpose.

N.J.A.C. 7:22-4.17 has also been amended to delete the requirement for recipients to provide a Subcontractor Certification form. After further consideration, it was determined that the form was unnecessary and was redundant with various provisions elsewhere in the rules. The language used in previous years' programs has been reinserted in the rules to require recipients to include in project-related contracts a statement indicating that the Trust, the State and any of its departments, agencies or employees is not a party to the contract(s).

N.J.A.C. 7:22-4.20 currently provides that the Trust may make a supplemental Trust loan if the allowable costs based on the low bid building cost for a project exceed the original Trust loan amount, but only after the passage of a legislative act providing money for that project. The proposed amendments add a corresponding provision governing circumstances in which additional money is required for a project as a result of differing site conditions.

N.J.A.C. 7:22-4.26 has been amended to clarify that increased allowable costs due to differing site conditions may be funded from a recipient's initial or supplemental Trust loan in instances where cost underruns have occurred. Thus, the Trust will not prohibit line item adjustments to cover the costs resulting from differing site conditions encountered during building of the project.

Since certain high priority projects of the Trust (that is, projects to address long-term sludge management needs and others) rank between 70 and 100 on the Project Priority List, N.J.A.C. 7:22-4.32 has been amended to allow the top 100 (previously limited to the top 70) projects on the Project Priority List to be considered eligible for preaward approval. Preaward approval allows project sponsors which satisfy the applicable requirements to proceed with construction and maintain the eligibility of costs incurred prior to Trust loan award. This section was also amended to indicate that both the Department and the Trust must make the request to the Legislature to include projects on an appropriations bill.

This section has also been modified to indicate that all items necessary to satisfy Internal Revenue Service requirements (such as the adoption of a resolution to indicate a local government unit's intent to seek reimbursement for allowable project costs) must be reviewed by the Trust in order to ensure that the Trust will be able to reimburse these costs under current tax law. In order to ensure that Trust approval occurs prior to the start of construction (thus maintaining a local government unit's ability to be refinanced with Trust bond proceeds), local government units must receive authorization to award any contracts for which cost reimbursement is sought not only from the Department but from the Trust as well.

Finally, this section has been amended to indicate that local government units which procure services under the New Jersey Wastewater Treatment Privatization Act are not only required to submit certain application documents to receive preaward approval but are required to have those documents reviewed and approved by the Department and the Trust in order to qualify for preaward approval. A minor change was made to N.J.A.C. 7:22-4.32(b) substituting a reference to "the Trust" for "the Department" for consistency purposes since the entity referenced in this section is the entity whose approval would imply a commitment of Trust moneys.

N.J.A.C. 7:22-4.34 has been modified to indicate that an adjustment in the planning and/or design allowance will not be made for increased building costs to address differing site conditions. No adjustment will be made since the planning and design effort required to address differing site conditions is not as extensive as the effort required to complete the initial planning and design activities for the project. The allowance tables (Tables 1 and 2 in N.J.A.C. 7:22-5) are based on costs to complete the initial planning and design effort.

N.J.A.C. 7:22-4.37 currently provides that the applicant is required to conduct value engineering if the total estimated building cost of the project exceeds $10 million, unless the applicant has received Federal grant assistance for the design of the project. Under the proposed amendments, the applicant will be required to conduct value engineering for all projects with building costs greater than $10 million even if Federal grant assistance has been provided to ensure that value engineering is performed for all projects. However, the Trust does not expect this

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provision to have an adverse impact on applicants, because a value engineering study sufficient to satisfy requirements under a Federal grant would satisfy the requirements under the proposed amendments as well.

N.J.A.C. 7:22-4.46 has been amended by adding the word "Trust" to clarify that the Trust may rely on advice, certifications or opinions of other State governmental units to ensure that an applicant has complied with the New Jersey Wastewater Treatment Trust Rules.

Subchapter 5: This subchapter, entitled Determination of Allowable Costs: Fund and Trust, sets forth policies for determining the allowability of costs for projects which are awarded Fund and Trust loans. It describes the general criteria for, and gives specific examples of, expenditures which, according to State cost accounting principles, are necessary for efficient administration of the loan project. Such allowable costs are differentiated from those expenses required to carry out functions routinely inherent in the operation of a wastewater treatment facility.

The proposed amendments to N.J.A.C. 7:22-5 are as follows:

N.J.A.C. 7:22-5.4 has been modified to provide exemptions to the cap on the allowability of costs due to change orders. Costs incurred by a recipient which are necessary and deemed allowable by the Department or the Trust to address differing site conditions will be considered exempt from the standard cap on loan awards. Project loan awards are generally limited to the allowable costs based on the low bid building cost. In instances where the initial Trust loan amount is greater than the Trust loan amount based on the low bid building cost, and if provided for in the applicable Trust loan agreement, the difference between the two Trust loan amounts may be disbursed to the recipient to cover increased costs due to differing site conditions. The changes to this subsection also allow a project sponsor to receive up to 12 percent of the increased costs due to differing site conditions to cover related construction management activities. The 12 percent limit may be exceeded only through line item adjustments. Line item adjustments allow a recipient to transfer cost savings in one cost category to cost overruns in other cost categories subject to Department or Trust approval.

N.J.A.C. 7:22-5.11 has been amended to allow project sponsors to receive up to one percent of the allowable costs due to differing site conditions for their own administrative expenses associated with the project. The one percent limit may be exceeded only through Department or Trust approval of line item adjustments. Further, since the definition of wastewater at N.J.A.C. 7:22-3.4 and 4.4 includes stormwater runoff and it is the Department's and the Trust's intent to allow financing of pollution control projects from separate stormwater sewer systems, the classification of these costs as unallowable has been deleted from this section.

N.J.A.C. 7:22-5.12 now provides that project sponsors which receive funding for increased allowable building costs due to differing site conditions are not eligible for a corresponding increase in a planning and/or design allowance. No adjustment will be made since the planning and design effort required to address differing site conditions is not as extensive as the effort required to complete the initial planning and design activities for the project. The allowance tables are based on costs to complete the initial planning and design effort.

Subchapter 6: This subchapter, entitled Pinelands Procedures and Requirements, N.J.A.C. 7:22-6, establishes the procedures through which local government units apply for, and are awarded, funds from the Pinelands Infrastructure Trust Fund. It assures that funds are distributed by the Department according to the laws and policies of the State and in a manner which protects the public interest. The Pinelands Infrastructure Trust Bond Act of 1985 established the authority under which this subchapter was initially promulgated.

The proposed amendments to N.J.A.C. 7:22-6 are as follows:

N.J.A.C. 7:22-6.4 has been amended to include several definitions applicable to the construction requirements that have been included in N.J.A.C. 7:22-6.17.

N.J.A.C. 7:22-6.17 has been amended to include specific requirements for the construction of wastewater treatment facilities. These requirements have been applicable to Federal construction grant and State funded projects since their original issuance as a Department guidance document on July 12, 1976. Since these provisions establish appropriate requirements to ensure adequate construction practices, they are being proposed for inclusion in these rules. Specifically, the construction activities addressed in this amendment include requirements regarding meetings, right-of-way and access clearing, photographs or videotapes, inspection coverage, job meetings, visual inspection and testing, environmental restoration and final inspection. The proposed construction requirements do not substantively impact the local government unit's responsibilities with regard to the existing rules, which require construction of the project in conformance with the approved plans and specifications. Rather, these provisions specify the Department's requirements to establish a consistent approach to accomplish this purpose.

N.J.A.C. 7:22-6.17 has also been amended to delete the requirement for recipients to provide a Subcontractor Certification Form to the Department. After further consideration, it was determined that the Form was unnecessary and was redundant with various provisions elsewhere in the rules. The language used in previous years' programs has been reinserted in the rules to require recipients to include in project-related contracts a statement indicating that the State and any of its departments, agencies or employees is not a party to the contract(s).

The proposed amendment to N.J.A.C. 7:22-6.27 replaces the word "Division" (which had been defined to mean the Division of Water Resources, which no longer exists) with the word "Department."

Subchapter 10: N.J.A.C. 7:22-10, Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities, prescribes the requirements for environmental assessment which apply to local government units seeking financial assistance through the Department for the construction of wastewater treatment facilities. The authority for this subchapter is included in the various bond acts or other enabling legislation from which the financing programs were developed, as well as Executive Order No. 215 (1989). Three levels of environmental review for the planning phase of wastewater treatment facilities projects are provided for in this subchapter. Requirements for re-evaluating environmental decision statements, cultural resource impact assessments, environmental coordination and public participation are also set forth. Environmental review requirements and procedures for design and construction phases are included as well.

The proposed amendments to N.J.A.C. 7:22-10 are as follows:

N.J.A.C. 7:22-10.2 has been modified to include species designated as endangered under the Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq., in the definition of endangered species and to further clarify the definition of "planning area."

N.J.A.C. 7:22-10.3 has been clarified to specify those areas which must be included in a project's planning area. The term "planning area" is also defined in N.J.A.C. 7:22-10.2. This section has also been amended to identify the scope of the environmental review for a funded project. The scope of the environmental reviews has been specified to make clear that the intent of this rule is to apply to the entire wastewater treatment facilities project proposed within a planning area, including all its components and work necessary to effect the construction and operation of the facilities, regardless of the unique eligibility of a particular component or construction contract. Otherwise, applicants might seek to circumvent the environmental review process by opting to fund components or contracts outside of the Wastewater Treatment Financing Program. This would be inconsistent with the intent of an effective environmental review program and will not be allowed.

N.J.A.C. 7:22-10.8 has been clarified and modified to provide the correct citation references to applicable State or Federal statutes.

N.J.A.C. 7:22-10.9 has been amended to add the Endangered Plant Species List Act to the listing of Federal and State laws and orders which must be complied with as part of the environmental coordination process.

N.J.A.C. 7:22-10.11 has been modified to clarify the scope of the applicability of the environmental review of the design documents to all components related construction project, consistent with the proposed amendment to N.J.A.C. 7:22-10.3.

N.J.A.C. 7:22-10.12 has been modified simply to reference the Department rather than the program involved to be consistent with the provisions of the existing rules.

Social Impact

Subchapters 3, 4, 5 and 6: The proposed amendments are anticipated to have a positive social impact. The provisions of these subchapters provide the program framework for the award of financial assistance for the construction of wastewater treatment facilities. The construction of these projects maintains and improves water quality and water-quality related activities (that is, swimming, fishing, boating, etc.) throughout the State. By maintaining and improving water quality, recreational activities and tourism within the State will be impacted in a positive manner.

Subchapter 10: A continued positive social impact is expected as a result of the proposed amendments. N.J.A.C. 7:22-10 requires that, during the planning process, potential social impacts that could result from proposed projects be identified. The potentially affected public will be informed of such impacts through public outreach procedures re-

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quired at each level of environmental review. Both the public and other potentially affected agencies will have the opportunity to have meaningful input during the planning phase in the selection of the alternative.

Economic Impact

Subchapters 3, 4, 5 and 6: The proposed amendments to N.J.A.C. 7:22-3, 4, 5 and 6 will have a positive economic impact on the local government units receiving financial assistance under the New Jersey Wastewater Treatment Financing Program and the Pinelands Infrastructure Trust Financing Program. These programs have been established to provide low-cost financing to local government units for the construction of wastewater treatment facilities. The requirement to evaluate existing site conditions prior to or concurrently with the design of the project is nothing more than what a reasonable professional would be expected to do even without a regulatory requirement, and thus should not impose any additional economic impact on applicants. Similarly, the construction requirements proposed in subchapters 3, 4, and 6 establish consistent practices and requirements that funded projects must meet, but that are typical of any construction project and would be expected to be included regardless of funding.

In addition, several allowances and caps limiting the allowability of certain cost categories are proposed in the rules. The application of these allowances and caps is expected to allow the Department and the Trust to more effectively direct the limited available funds to high priority projects while still providing compensation to recipients for activities in those cost categories.

Overall, a favorable public reaction is anticipated to the proposed amendments since they will expand the universe of costs which are allowable for low-cost loans from the Wastewater Treatment Financing Program which will help reduce the financial burden on the users of the system.

Subchapter 10: The project documentation that will be required as a result of the proposed amendments is comparable to that which has typically been required to obtain Federal construction grants. No additional economic burden for development of the required documentation is anticipated. The rules require selection of the most cost effective, environmentally sound and implementable alternative which will address the identified need. As a result of the environmental assessment process, it is possible that the least cost alternative identified to achieve a particular wastewater management objective may be rejected for an alternative which has a higher apparent cost but has a greater environmental acceptability. The purpose of the environmental assessment process is to take into account those factors which are not readily assigned a dollar value when selecting the best overall alternative. Therefore, the selection of a project with an apparent higher project cost is expected to be offset by the value of the environmental resource thereby protected.

Environmental Impact

The construction of new or improved wastewater treatment facilities has been known to have the potential to directly and indirectly impact the environment in both beneficial and adverse ways. Selection of the sites where facilities will be located and the techniques to be used during construction will determine whether a proposed project will result in a significant or insignificant adverse direct impact on the environment. Sizing of facilities and designation of sewer service areas will determine whether a proposed project will have indirect adverse impacts on the environment primarily as the result of induced growth in undesirable amounts or locations.

Environmental assessment procedures have been required since 1969 at the Federal level and since 1973 in New Jersey to encourage the development and evaluation of alternative solutions to identified needs to determine the significance of environmental impacts of various alternatives before selecting a proposed plan. The proposed amended rules clarify the intended scope of the environmental review process, and are expected to increase the effectiveness of the program.

The proposed amendments provide clarification and continue the environmental assessment procedure to be applied to wastewater projects seeking financial assistance. This environmental assessment procedure incorporates the essential elements embodied in Executive Order No. 215 (Kean 1989) and the National Environmental Policy Act's implementing rules (40 CFR Part 6). Construction of wastewater treatment facilities under the financing programs will result in water quality improvement and elimination of public health problems. By conforming to the environmental assessment procedures established in N.J.A.C. 7:22-10, it is expected that these wastewater treatment projects will be selected and constructed in such a way that water quality or public health problems will be addressed without incurring significant adverse direct or indirect environmental impacts.

The proposed construction standards establish specific project management provisions, particularly regarding construction and environmental inspections to ensure that the project is built in conformance with the provisions of the approved plans and specifications. By establishing consistent requirements, it is anticipated that fewer instances of environmental impacts will occur as a result of construction activities.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments to N.J.A.C. 7:22-3, 4, 5, 6 and 10 do not impose reporting, record keeping or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The general purpose of these subchapters is to provide financial assistance to certain local units, none of which is a "small business" under the Act, for the construction of wastewater treatment facilities.

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

CHAPTER 22
[CONSTRUCTION GRANTS] **FINANCIAL ASSISTANCE PROGRAMS** FOR WASTEWATER TREATMENT FACILITIES

SUBCHAPTER 3. FUND PROCEDURES AND REQUIREMENTS

7:22-3.4 Definitions

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

. . .

"Allowance" means a loan amount for planning and design costs based on a percentage of the project's allowable building cost, computed in accordance with N.J.A.C. 7:22-5.12[, and awarded in conjunction with the Fund loan to build the project].

. . .

"Differing site conditions" means conditions at the project site, which:

1. Differ materially from physical conditions (including subsurface and latent conditions) referred to in the plans, specifications and reports submitted under N.J.A.C. 7:22-3.11(d)7; and

2. Were not known to the applicant at the time the building contracts were executed.

. . .

"Low bid building cost" means the total allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). Excluded from this cost is any cost due to change orders **and any costs due to the award of contracts necessary to address differing site conditions.**

. . .

"Qualified inspector" means a person in the building trades or who has construction experience and who is knowledgeable regarding acceptable construction practices and terminology related to pipe installation, concrete placement and mechanical equipment installation.

. . .

"Responsible engineer" means the engineer or engineering firm who is contracted by the recipient to ensure that the construction work is performed in accordance with the approved contract documents.

"Right-of-way" means a strip of land or route acquired by the local government unit in which a conveyance pipe will be installed.

. . .

7:22-3.7 Criteria for project loan priority

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

(e) The Department shall give funding priority **over projects on the Project Priority List** to a project which has previously received a Fund loan **in any previous funding cycle** in instances where the allowable loan amount due to low bid building costs as determined by the Department exceeds the Fund loan amount previously

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awarded **or in instances where the allowable loan amount as determined by the Department has increased due to differing site conditions.**

7:22-3.8 Eligibility for State and Federal funding

(a) (No change.)

(b) Local government units receiving funding through a Federal grant, State matching funds pursuant to N.J.A.C. 7:22-2, the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6, or from the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6 and 7 shall be ineligible for a Fund loan for the same scope of work (planning, design or building) of the wastewater treatment facilities project for which they received a Federal grant, State matching funds, Sewage Infrastructure Improvement Act funding or Pinelands Infrastructure Trust funding. Further, local government units which have executed a loan agreement to receive a Fund loan pursuant to this subchapter shall be ineligible to receive a Federal grant, Pinelands Infrastructure Trust funds, Sewage Infrastructure Improvement Act funding or State matching funds for the same scope of work for the planning, design or building of that wastewater treatment facilities project. **Local government units which receive financial assistance from the United States Department of Agriculture's Farmers Home Administration for the same scope of work as the wastewater treatment facilities project for which they receive a Fund loan shall have their Fund loan share reduced by an amount equal to the amount of financial assistance provided by the Farmers Home Administration for project costs allowable under N.J.A.C. 7:22-5. If both a Fund loan (pursuant to this subchapter) and a Trust loan (pursuant to N.J.A.C. 7:22-4) are received, the Fund and Trust loans will be proportionally reduced.**

7:22-3.9 Project bypassing

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

(c) Written notice of a bypass action shall be forwarded to the local government unit by certified mail. As a result of such an action, the project on the Project Priority List shall become ineligible to receive a Fund loan in the forthcoming State Fiscal Year. This may allow the next highest ranked [contingency] project to fall within the fundable range on the Project Priority List.

(d) (No change.)

7:22-3.11 Application procedures

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

(d) The following must be submitted when applying for a Fund loan, as applicable:

1.-6. (No change.)

7. Department-approvable plans, specifications and technical design report, **including documentation regarding the evaluation of existing site conditions**;

8.-22. (No change.)

(e) (No change.)

(f) The Department shall not accept a recipient's supplemental Fund loan application for increased allowable costs in instances where the low bid building cost is higher than the original Fund loan award unless bids on all project-related contracts have been received.

(g) The Department shall only accept a recipient's post-construction supplemental Fund loan application if all of the following actions have occurred:

1. The Department has approved payment requests whose total equals the allowable project costs based on the low bid building cost, exclusive of payment requests for construction management services related to project start-up and one year project performance certification;

2. The project's building activities are complete;

3. All applicable administrative and legal appeals have been resolved;

4. All costs related to differing site conditions for which cost reimbursement is sought have been incurred; and

5. All documentation for the costs in (g)4 above has been submitted to the Department or submitted concurrently with the post-construction supplemental Fund loan application.

7:22-3.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C 7:22-3.18 through 3.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Fund loan, and conditions to each disbursement under a Fund loan agreement:

1.-5. (No change.)

6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with 40 C.F.R. **Part** 403;

7.-23. (No change.)

24. A goal of not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals shall take precedence over State goals; [and]

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater[.];

26. After the award of a contract and prior to the start of work, a preconstruction meeting shall be scheduled by the recipient. The recipient, the responsible engineer, the environmental and construction inspectors, the contractor and one or more representatives of the Department must be present at the preconstruction meeting;

27. Prior to starting construction, the recipient shall provide photographs or videotapes to the Department in conformance with the provisions of N.J.A.C 7:22-10.11(q);

28. The recipient shall provide inspection coverage of the construction work using qualified personnel on a routine basis as follows:

i. A qualified inspector shall be provided at each construction site. There are times when a qualified individual can cover more than one site; however, this must be governed by on-site conditions which determine rate of progress;

ii. Inspection coverage at a treatment plant site shall be on a full-time basis at all times;

iii. For pipeline construction, full-time construction inspections shall be provided during the following operations:

(1) Preparation of trench bottom for placement of bedding and to determine if bottom will support pipe or if additional support must be provided;

(2) Placing of pipe bedding material where required and in the quantity required in conformance with the approved specifications;

(3) Alignment and joining of pipe sections;

(4) Bedding, placement, and alignment of manholes and other appurtenances; and

(5) Placement and compaction of trench backfill material;

iv. Inspection coverage at pump station and metering station sites shall be sufficient to ensure that the work satisfies specifications. The coverage shall include, but not be limited to, the following:

(1) Excavation and spoils disposal;

(2) Checking of all elevations including footings, piles, slabs and equipment pads;

(3) Installation of all concrete reinforcing bars;

(4) Installation of all electrical conduit, plumbing and piping; and

(5) Installation of all equipment;

v. All concrete shall be checked for truck mix time and temperature prior to placing in forms. Periodic slump tests and test cylinders, per good construction practice, shall be taken. Cold weather and hot weather precautions shall be taken as appropriate. Any additions to the specified concrete mix must be approved by the responsible engineer; and

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vi. During the construction period, the construction inspector shall keep a job diary in which he will keep a record of progress, problems encountered, and corrective action taken to rectify any problems. The job diary shall be made available to the Department upon request;

29. The recipient shall provide environmental inspection coverage and ensure completion of environmental restoration in conformance with the provisions of N.J.A.C. 7:22-10.12;

30. During the construction phase of the projects, job meetings shall be held at frequent intervals to review construction and restoration progress and to resolve difficulties which might delay completion of the work. Attendees at these meetings shall include the recipient, the responsible engineer, the recipient's inspectors (construction and environmental), the contractor, and one or more representatives of the Department;

31. The recipient shall provide notification, information and conduct visual inspections and testing of projects as follows:

i. The recipient shall notify the Department one week prior to all final visual inspections and tests of all sewer lines, force mains, mechanical equipment and treatment plant operation;

ii. Copies of all final visual inspections and test reports shall be forwarded to the Department when requested;

iii. Copies of record drawings shall be forwarded to the Department prior to the start of visual inspection and testing of all pipeline projects; and

iv. All visual inspections and testing shall be done in accordance with the following:

(1) All manholes and pipelines shall be completed and flushed prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and a representative from the Department present. All discrepancies must be noted and a reinspection performed to verify the corrective action;

(2) All manholes and pipelines shall be visually inspected and accepted prior to testing;

(3) Upon acceptance of the visual inspection by the Department, the necessary infiltration, exfiltration, or low pressure air test and deflection tests when applicable shall be performed by the contractor. The test must be witnessed by the recipient and/or the responsible engineer (or representative), the contractor, and a representative from the Department. Upon completion of the test, a copy of the test results must be forwarded to the Department if requested;

(4) Infiltration tests of gravity lines shall be limited to 2000 linear feet per test;

(5) Force mains shall be tested to two times the maximum operating pressure, but not greater than the pipe pressure rating, whichever is less. The length of pipe tested during a force main pressure test is not restricted; however, it is recommended that it be limited for ease in locating leaks if present;

(6) Testing of all mechanical equipment at treatment plants and pump stations must be witnessed by a representative of the Department; and

(7) If required, actual flow tests must be conducted in accordance with parameters established by the Department and performed in the presence of a representative of the Department; and

32. The recipient shall forward a letter to the Department upon completion of all construction and restoration of each contract of a project, stating that the project (or contract) is ready for final inspection. No final inspection will be scheduled until formal notification is received. The final inspection will be a joint inspection with the recipient and/or the responsible engineer, the recipient's inspector(s), the contractor, and one or more representatives of the Department in attendance.

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

(d) [The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.] **Neither the State of New Jersey nor the New Jersey Wastewater Treatment Trust will be a party to any contracts and subcontracts awarded pursuant to this subchapter. All such contracts and subcontracts shall include the following statement:**

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and Energy and the New Jersey Wastewater Treatment Trust. Neither the State of New Jersey, the New Jersey Wastewater Treatment Trust nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the provisions of N.J.A.C. 7:22-3, 4, 5, 9 and 10."

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

7:22-3.20 Fund loan agreements/amendments

(a) (No change.)

(b) In the event that [a project has a need for] additional moneys **are needed** due to the low bid building cost being higher than the original Fund loan amount, the local government unit may request a supplemental Fund loan. The Department may [award] **execute** a supplemental Fund loan **agreement** only after passage of a subsequent legislative appropriations act providing moneys for the specific project of concern [and only with a Fund loan agreement]. The recipient shall be responsible for all other increased costs.

(c) In the event that additional moneys are needed due to differing site conditions, the local government unit may request a post-construction supplemental Fund loan. The Department may execute a post-construction supplemental Fund loan agreement only after passage of a subsequent legislative appropriations act providing moneys for the specific project of concern. The recipient shall be responsible for all other increased costs.

7:22-3.26 Unused funds

Where the total amount disbursed under a Fund loan due to the low bid building cost is less than the initial Fund loan award, and/or where the total amount disbursed under a Fund loan due to the final building cost is less than the Fund loan amount due to the low bid building cost, the Fund loan shall be adjusted, if necessary, and the difference shall be retained by the Fund to be reallocated, pursuant to the provisions of a legislative appropriations act, to other wastewater treatment facilities projects **and shall not be available for increased costs (including increased costs due to differing site conditions).** However, where allowable cost overruns occur, Fund moneys may be used to cover these cost overruns up to the loan amount adjusted due to the low bid building cost. Line item adjustments for allowable project costs may be made at the request of the recipient provided the Fund loan amount in the Fund loan agreement is not exceeded and provided all project related contracts have been awarded. However, the Department shall not allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope.

7:22-3.27 Publicity and signs

(a) (No change.)

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Department shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the [Division] **Department.**

7:22-3.32 Preaward costs

(a) The Department shall not consider allowable those costs incurred for building performed prior to closing the loan for the project, except:

1. Where the local government unit's project is ranked one through [70] **100,** inclusive, on the most currently approved Priority System, Intended Use Plan and Project Priority List or is part of the Department's **and the Trust's** request to the Legislature for inclusion in an appropriations bill providing Fund moneys in the forthcoming fiscal year for that project and of the following conditions has met (a)1i through iii or (a)1iv below:

i.-iv. (No change.)

2. (No change.)

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

7:22-3.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are not allowable for reimbursement from the

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Fund. However, an allowance to assist in defraying the planning and design costs [shall] **will** be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, or the Sewage Infrastructure Improvement Act for costs associated with any portion of the project scope or for costs to address the project need, will not be eligible to receive an allowance for planning and/or design as appropriate in accordance with N.J.A.C. 7:22-5.12. **An allowance for planning and/or design costs will not be provided as part of a post-construction supplemental Fund loan to address differing site conditions.**

7:22-3.37 Value engineering

(a) [If the applicant has not received federal grant assistance for the design of the project, the] **The** applicant shall conduct value engineering if the total estimated building cost exceeds $10 million.

(b) (No change.)

SUBCHAPTER 4. WASTEWATER TREATMENT TRUST PROCEDURES AND REQUIREMENTS

7:22-4.4 Definitions

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

...

"Allowance" means a loan amount for planning and design costs based on a percentage of the project's allowable building cost, computed in accordance with N.J.A.C. 7:22-5.12[, and awarded in conjunction with the Trust loan to build the project.]

...

"Differing site conditions" means conditions at the project site, which:

1. Differ materially from physical conditions (including subsurface and latent conditions) referred to in the plans, specifications and reports submitted under N.J.A.C. 7:22-4.11(d)7; and

2. Were not known to the applicant at the time the building contracts were executed.

...

"Low bid building cost" means the total allowable cost for the project due to the award of all contracts within a project scope to the lowest responsible and responsive bidder(s). Excluded from this cost is any cost due to change orders **and any costs due to the award of all contracts necessary to address differing site conditions.**

...

"Qualified inspector" means a person in the building trades or who has construction experience and who is knowledgeable regarding acceptable construction practices and terminology related to pipe installation, concrete placement and mechanical equipment installation.

...

"Responsible engineer" means the engineer or engineering firm who is contracted by the recipient to ensure that the construction work is performed in accordance with the approved contract documents.

...

"Right-of-way" means a strip of land or route acquired by the local government unit in which a conveyance pipe will be installed.

...

"Trust Fund" means the New Jersey Wastewater Treatment **Trust** Fund created pursuant to the ["]Wastewater Treatment Bond Act[" of 1985 (P.L. 1985, c. 329)].

...

7:22-4.7 Criteria for project loan priority

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

(e) The Trust shall give funding priority over [other] projects on the Project Priority List to a project which has previously received a Trust loan **in any previous funding cycle** in instances where the allowable loan amount due to low bid building costs as determined by the Trust exceeds the Trust loan amount previously awarded or in instances where a project has been certified by the Trust for Trust financial assistance for costs related to reserve capacity under the provisions of N.J.A.C. 7:22-4.36 **or in instances where the allowable loan amount as determined by the Trust has increased due to differing site conditions.**

7:22-4.8 Eligibility for State and Federal funding

(a) (No change.)

(b) Local government units receiving funding through a Federal grant, State matching funds pursuant to N.J.A.C. 7:22-2, the Sewage Infrastructure Improvement Act pursuant to N.J.A.C. 7:22A-6, or from the Pinelands Infrastructure Trust Fund pursuant to N.J.A.C. 7:22-6 and 7:22-7 shall be ineligible for a Trust loan for the same scope of work (planning, design or building) of the wastewater treatment facilities project for which they received a Federal grant, State matching funds, Sewage Infrastructure Improvement Act funding or Pinelands Infrastructure Trust funding. Further, local government units which have executed a loan agreement to receive a Trust loan pursuant to this subchapter shall be ineligible to receive a Federal grant, Pinelands Infrastructure Trust funds, Sewage Infrastructure Improvement Act funding or State matching funds for the same scope of work for the planning, design or building of that wastewater treatment facilities project. **Local government units which receive financial assistance from the United States Department of Agriculture's Farmers Home Administration for the same scope of work as the wastewater treatment facilities project for which they receive a Trust loan shall have their Trust loan share reduced by an amount equal to the amount of financial assistance provided by the Farmers Home Administration for project costs allowable under N.J.A.C. 7:22-5. If both a Trust loan (pursuant to this subchapter) and a Fund loan (pursuant to N.J.A.C. 7:22-3) are received, the Fund and Trust loans will be proportionally reduced.**

7:22-4.9 Project bypassing

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

(c) Written notice of a bypass action shall be forwarded to the local government unit by certified mail. As a result of such an action, the project on the Project Priority List shall become ineligible to receive a Trust loan in the forthcoming State Fiscal Year. This may allow the next highest ranked [contingency] project to fall within the fundable range on the Project Priority List.

(d) (No change.)

7:22-4.11 Application procedures

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

(d) The following must be submitted when applying for a Trust loan, as applicable:

1.-6. (No change.)

7. Department-approvable plans, specifications and technical design report, **including documentation regarding the evaluation of existing site conditions;**

8.-22. (No change.)

(e) (No change.)

(f) The Trust shall not accept a recipient's supplemental Trust loan application for increased allowable costs in instances where the low bid building cost is higher than the original Trust loan award unless bids on all project-related contracts have been received.

(g) The Trust shall only accept a recipient's post-construction supplemental Trust loan application if all of the following actions have occurred:

1. The Trust has approved payment requests whose total equals the Trust loan amount, exclusive of payment requests for construction management services related to project start-up and one-year project performance certification;

2. The project's building activities are complete;

3. All applicable administrative and legal appeals have been resolved;

4. All costs related to differing site conditions for which cost reimbursement is sought have been incurred; and

5. All documentation for the costs in (g)4 above has been submitted to the Trust or submitted concurrently with the post-construction supplemental Trust loan application.

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7:22-4.13 Evaluation of application

(a) Each application will be subject to:

1. (No change.)

2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Trust's [project] **program** objectives;

3.-4. (No change.)

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

7:22-4.17 Loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-4.18 through 4.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Trust loan, and conditions to each disbursement under a Trust loan agreement:

1.-5. (No change.)

6. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 and enforce pretreatment standards which comply with [50] **40** C.F.R. **Part** 403;

7.-23. (No change.)

24. A goal of not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals will take precedence over State goals; [and]

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater[.]**;**

26. After the award of a contract and prior to the start of work, a preconstruction meeting shall be scheduled by the recipient. The recipient, the responsible engineer, the environmental and construction inspectors, the contractor and one or more representatives of the Trust must be present at the preconstruction meeting;

27. Prior to starting construction, the recipient shall provide photographs or videotapes to the Trust in conformance with the provisions of N.J.A.C. 7:22-10.11(q);

28. The recipient shall provide inspection coverage of the construction work using qualified personnel on a routine basis as follows:

i. A qualified inspector shall be provided at each construction site. There are times when a qualified individual can cover more than one site; however, this must be governed by on-site conditions which determine rate of progress;

ii. Inspection coverage at a treatment plant site shall be on a full-time basis at all times;

iii. For pipeline construction, full-time construction inspections shall be provided during the following operations:

(1) Preparation of trench bottom for placement of bedding and to determine if bottom will support pipe or if additional support must be provided;

(2) Placing of pipe bedding material where required and in the quantity required in conformance with the approved specifications;

(3) Alignment and joining of pipe sections;

(4) Bedding, placement, and alignment of manholes and other appurtenances; and

(5) Placement and compaction of trench backfill material;

iv. Inspection coverage at pump station and metering station sites shall be sufficient to ensure that the work satisfies specifications. The coverage shall include, but not be limited to, the following:

(1) Excavation and spoils disposal;

(2) Checking of all elevations including footings, piles, slabs and equipment pads;

(3) Installation of all concrete reinforcing bars;

(4) Installation of all electrical conduit, plumbing and piping; and

(5) Installation of all equipment;

v. All concrete shall be checked for truck mix time and temperature prior to placing in forms. Periodic slump tests and test cylinders, per good construction practice, shall be taken. Cold weather and hot weather precautions shall be taken as appropriate. Any additions to the specified concrete mix must be approved by the responsible engineer; and

vi. During the construction period, the construction inspector shall keep a job diary in which he will keep a record of progress, problems encountered, and corrective action taken to rectify any problems. The job diary shall be made available to the Trust upon request;

29. The recipient shall provide environmental inspection coverage and ensure completion of environmental restoration in conformance with the provisions of N.J.A.C. 7:22-10.12;

30. During the construction phase of the projects, job meetings shall be held at frequent intervals to review construction and restoration progress and to resolve difficulties which might delay completion of the work. Attendees at these meetings shall include the recipient, the responsible engineer, the recipient's inspectors (construction and environmental), the contractor, and one or more representatives of the Trust;

31. The recipient shall provide notification, information and conduct visual inspections and testing of projects as follows:

i. The recipient shall notify the Trust one week prior to all final visual inspections and tests of all sewer lines, force mains, mechanical equipment and treatment plant operation;

ii. Copies of all final visual inspections and test reports shall be forwarded to the Trust when requested;

iii. Copies of record drawings shall be forwarded to the Trust prior to the start of visual inspection and testing of all pipeline projects; and

iv. All visual inspections and testing shall be done in accordance with the following:

(1) All manholes and pipelines shall be completed and flushed prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and a representative from the Trust present. All discrepancies must be noted and a reinspection performed to verify the corrective action;

(2) All manholes and pipelines shall be visually inspected and accepted prior to testing;

(3) Upon acceptance of the visual inspection by the Trust, the necessary infiltration, exfiltration, or low pressure air test and deflection tests when applicable shall be performed by the contractor. The test must be witnessed by the recipient and/or the responsible engineer (or representative), the contractor, and a representative from the Trust. Upon completion of the test, a copy of the test results must be forwarded to the Trust if requested;

(4) Infiltration tests of gravity lines shall be limited to 2000 linear feet per test;

(5) Force mains shall be tested to two times the maximum operating pressure, but not greater than the pipe pressure rating, whichever is less. The length of pipe tested during a force main pressure test is not restricted; however, it is recommended that it be limited for ease in locating leaks if present;

(6) Testing of all mechanical equipment at treatment plants and pump stations must be witnessed by a representative of the Trust; and

(7) If required, actual flow tests must be done in accordance with parameters established by the Trust and performed in the presence of a representative of the Trust; and

32. The recipient shall forward a letter to the Trust upon completion of all construction and restoration of each contract of a project, stating that the project (or contract) is ready for final inspection. No final inspection will be scheduled until formal notification is received. The final inspection will be a joint inspection with the recipient and/or the responsible engineer, the recipient's inspector(s), the contractor, and one or more representatives of the Trust in attendance.

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

(d) [The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.] **Neither the State of New Jersey nor the New Jersey Wastewater Treatment Trust will be a party to any contracts and subcontracts awarded pursuant to this subchapter. All such contracts and subcontracts shall include the following statement:**

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and Energy and the New Jersey Wastewater Treatment Trust. Neither the State of New Jersey, the New Jersey Wastewater Treatment Trust nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the provisions of N.J.A.C. 7:22-3, 4, 5, 9 and 10."

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

7:22-4.20 Trust loan agreements/amendments

(a) (No change.)

(b) In the event that [a project has a need for] additional moneys **are needed** due to the low bid building cost being higher than the original Trust loan amount, the local government unit may request a supplemental Trust loan. The Trust may [award] **execute** a supplemental Trust loan **agreement** only after passage of a subsequent legislative [appropriations] act providing moneys for the specific project of concern [and only with a Trust loan agreement]. The recipient shall be responsible for all other increased costs.

(c) In the event that additional moneys in excess of any existing Trust loan award(s) are needed due to differing site conditions, the local government unit may request a post-construction supplemental Trust loan. The Trust may execute a post-construction supplemental Trust loan agreement only after passage of a subsequent legislative act providing moneys for the specific project of concern. The recipient shall be responsible for all other increased costs.

7:22-4.26 Unused funds

Where the total amount disbursed under a Trust loan due to the low bid building cost is less than the initial Trust loan award, and/or where the total amount disbursed under a Trust loan due to the final building cost is less than the Trust loan amount due to the low bid building cost, the difference shall be retained by the Trust to be used for making a recipient's debt service payments until exhausted or for any other purpose as determined by the Trust in accordance with the applicable Trust loan agreement and Trust bond resolution. **The difference may also be used to cover a recipient's increased costs due to differing site conditions, as approved by the Trust.** Line item adjustments for allowable project costs may be made at the request of the recipient as long as the Trust loan amount in the Trust loan agreement is not exceeded and provided all project related contracts have been awarded. [However, the] **The** Trust [shall not] **may** allow line item adjustments to reallocate funds resulting from cost underruns due to a reduction in project scope **in order to cover costs due to differing site conditions.**

7:22-4.29 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule[d] contained in the Trust loan agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions [included in] **under** this subchapter.

(b)-(f) (No change.)

7:22-4.32 Preaward costs

(a) The Trust shall not consider allowable those costs incurred for building performed prior to closing the loan for the project, except:

1. Where the local government unit's project is ranked one through [seventy] **100**, inclusive, on the most currently approved priority System, Intended Use Plan and Project Priority List or is part of the Department's **and the Trust's** request to the Legislature for inclusion in an appropriations bill providing **to the** Trust [moneys] **authorization to make loans** in the forthcoming fiscal year for that project, and of the following conditions has met (a)1i through [iii] **iv** or (a)1iv **and (a)1v**:

i.-ii. (No change.)

iii. The local government unit has not awarded any contract for which cost reimbursement is being sought without the authorization to award the contracts being given by the Department **and the Trust.**

iv. The local government unit has taken all required actions consistent with applicable Internal Revenue Service laws, rules and rulings, and provided evidence of such actions in a manner acceptable to the Trust.

[iv.]**v.** The local government unit has submitted items required at N.J.A.C. 7:22-4.11(d)3 through 19 to the Department **and has received the Department's and the Trust's written approval thereof** prior to the issuance of a notice to proceed with building the project and has met the provisions of the New Jersey Wastewater Treatment Privatization Act (N.J.S.A. 58:27-1 et seq.).

2. (No change.)

(b) If the [Department] **Trust** approves preliminary building activities, such approval is not an actual or implied commitment of Trust loan moneys and the local government unit proceeds at its own financial risk. The local government unit shall receive cost reimbursement of approved activities only upon receiving legislative approval in the form of an appropriations act and closing a Trust loan for the project.

(c) (No change.)

7:22-4.34 Planning and design

The costs associated with the planning and design of wastewater treatment facilities are not allowable for reimbursement from the Trust. However, an allowance to assist in defraying the planning and design costs will be provided to a project as a percentage of the allowable building cost in accordance with N.J.A.C. 7:22-5.12. Projects which have received financial assistance through a Federal grant, Pinelands Infrastructure Trust funding, or the Sewage Infrastructure Improvement Act for costs associated with any portion of the project scope or for costs to address the project need, will not be eligible to receive an allowance for planning and/or design as appropriate in accordance with N.J.A.C. 7:22-5.12. **An allowance for planning and/or design costs will not be provided as part of a post-construction supplemental Trust loan to address differing site conditions.**

7:22-4.37 Value engineering

(a) [If the applicant has not received federal grant assistance for the design of the project, the] **The** applicant shall conduct value engineering if the total estimated building cost exceeds $10 million.

(b) (No change.)

7:22-4.46 Assistance in the administration of [trust] **Trust** rules

In evaluating whether a project has complied with or satisfied any requirement or criteria under these New Jersey Wastewater Treatment **Trust** Rules, including, but not limited to, N.J.A.C. 7:22-4.11, 4.13, 4.17, 4.29, 4.31, 4.35, 4.36, 4.37, 4.43 or 4.45, or in determining what course of action the Trust may decide upon regarding those sections, the Trust shall be entitled to rely upon any advice, certifications or opinions which may be provided to it by the engineering, professional or legal staff of the Department or of any other State governmental unit [to] **upon** which it may call [upon] for assistance pursuant to N.J.S.A. 58:11B-5(f) [of the Trust Act].

SUBCHAPTER 5. DETERMINATION OF ALLOWABLE COSTS FOR WASTEWATER TREATMENT FUND AND TRUST

7:22-5.4 Costs related to subagreements

(a) Allowable costs related to subagreements include:

1.-4. (No change.)

5. Change orders for increased costs under subagreements as follows:

i. Change orders provided [the costs are]:

(1) [Within] **The costs are within** the scope of the project;

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(2) [Not] **The costs are not** caused by the recipient's mismanagement;

(3) [Not] **The costs are not** caused by the recipient's vicarious liability for the improper action of others; and

(4) The costs [of which], when added to the allowable costs due to the final building cost, [does] **do** not exceed the allowable costs due to the low bid building cost. **This limitation does not apply to increased allowable costs due to differing site conditions and such increased allowable cost may be eligible for reimbursement in accordance with the applicable Trust loan agreement and Trust bond resolution or in instances where a post-construction supplemental Fund or Trust loan is awarded.**

ii.-iii. (No change.)

6.-8. (No change.)

(b) [The] **For projects which received their initial Fund or Trust loan award in State Fiscal Year 1993 or later, the** sum total of the allowable costs in (a)2 through 8 above, **exclusive of building costs,** [will not exceed] **is limited to** 12 percent of the low bid building cost. **If a project receives a post-construction supplemental Fund or Trust loan for costs arising from differing site conditions, the sum total of allowable costs in (a)2 through 8 above, exclusive of building costs, for the portion of the project funded by the post-construction supplemental Fund or Trust loan is limited to 12 percent of the allowable building costs due to differing site conditions. The 12 percent limit may be exceeded only in instances where the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve a greater amount through line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26.**

(c) (No change.)

7:22-5.11 Miscellaneous costs

(a) Allowable miscellaneous costs include:

1. The costs of salaries, benefits and expendable materials the recipient incurs for the project. However, the allowable portion of these administrative costs will be limited to one percent of the low bid building cost. **If a project receives a post-construction supplemental Fund or Trust loan for costs arising from differing site conditions, the allowable administrative costs for the portion of the project funded by the post-construction supplemental Fund or Trust loan is limited to one percent of the allowable building costs due to differing site conditions. The one percent limit may be exceeded only in instances where the Department, in the case of a Fund loan, and the Trust, in the case of a Trust loan, approve a greater amount through line item adjustments in accordance with N.J.A.C. 7:22-3.26 or 4.26;**

2.-4. (No change.)

(b) Unallowable miscellaneous costs include:

1.-9. (No change.)

[10. Costs of wastewater treatment facilities for control of pollutant discharges from a separate stormwater sewer system;]

[11.]**10.** The cost of wastewater treatement facilities that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land [such as wetlands or floodplains] **(See N.J.A.C. 7:22-10.5(b)7);**

[12.]**11.** The costs of preparing a corrective action report required by N.J.A.C. 7:22-3.30(b)(1) or 7:22-4.30(b)(1), as applicable.

7:22-5.12 Allowance for planning and design

(a) (No change.)

(b) The Fund or Trust share of the allowance may be up to 100 percent of the allowance and shall be based upon the percentage of the Fund or Trust share of the [allowable] **low bid** building cost. **An increase in the planning and/or design allowance will not be made for increased building costs to address differing site conditions.**

(c)-(i) (No change.)

SUBCHAPTER 6. PINELANDS PROCEDURES AND REQUIREMENTS

7:22-6.4 Definitions

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

. . .

"Qualified inspector" means a person in the building trades or who has construction experience and who is knowledgeable regarding acceptable construction practices and terminology related to pipe installation, concrete placement and mechanical equipment installation.

"Responsible engineer" means the engineer or engineering firm who is contracted by the recipient to ensure that the construction work is performed in accordance with the approved contract documents.

"Right-of-way" means a strip of land or route acquired by the local government unit in which a conveyance pipe will be installed.

. . .

7:22-6.17 Grant and loan conditions

(a) The following requirements, in addition to N.J.A.C. 7:22-6.18 through 6.30, as well as such statutes, rules, terms and conditions which may be applicable to particular loans, are conditions to each Pinelands grant and loan, and conditions to each disbursement under a Pinelands grant or loan agreement:

1.-23. (No change.)

24. A goal of not less than 10 percent of the total amount of all contracts for building, materials or services for a project shall be awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the Small Business Act (15 U.S.C. 637(a) and 637(d)), and any regulations promulgated pursuant thereto. Where a local government unit has Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals which exceed 10 percent of the total amount of all contracts, the local government unit's goals will take precedence over State goals; [and]

25. The recipient shall pay not less than the prevailing wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determined by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. or the United States Secretary of Labor pursuant to 29 CFR Part 5, whichever is greater[.];

26. After the award of a contract and prior to the start of work, a preconstruction meeting shall be scheduled by the recipient. The recipient, the responsible engineer, the environmental and construction inspectors, the contractor and one or more representatives of the Department must be present at the preconstruction meeting;

27. Prior to starting construction, the recipient shall provide photographs or videotapes to the Department in conformance with the provisions of N.J.A.C. 7:22-10.11(q);

28. The recipient shall provide inspection coverage of the construction work using qualified personnel on a routine basis as follows:

i. A qualified inspector shall be provided at each construction site. There are times when a qualified individual can cover more than one site; however, this must be governed by on-site conditions which determine rate of progress;

ii. Inspection coverage at a treatment plant site shall be on a full-time basis at all times;

iii. For pipeline construction, full-time construction inspections shall be provided during the following operations:

(1) Preparation of trench bottom for placement of bedding and to determine if bottom will support pipe or if additional support must be provided;

(2) Placing of pipe bedding material where required, as necessary, and in the quantity required in conformance with the approved specifications;

(3) Alignment and joining of pipe sections;

(4) Bedding, placement, and alignment of manholes and other appurtenances; and

(5) Placement and compaction of trench backfill material;

iv. Inspection coverage at pump station and metering station sites shall be sufficient to ensure that the work satisfies specifications. The coverage shall include, but not be limited to, the following:

(1) Excavation and spoils disposal;

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(2) Checking of all elevations including footings, piles, slabs and equipment pads;

(3) Installation of all concrete reinforcing bars;

(4) Installation of all electrical conduit, plumbing and piping; and

(5) Installation of all equipment;

v. All concrete shall be checked for truck mix time and temperature prior to placing in forms. Periodic slump tests and test cylinders, per good construction practice, shall be taken. Cold weather and hot weather precautions shall be taken as appropriate. Any additions to the specified concrete mix must be approved by the responsible engineer; and

vi. During the construction period, the construction inspector shall keep a job diary in which he will keep a record of progress, problems encountered, and corrective action taken to rectify any problems. The job diary shall be made available to the Department upon request;

29. The recipient shall provide environmental inspection coverage and ensure completion of environmental restoration in conformance with the provisions of N.J.A.C. 7:22-10.12;

30. During the construction phase of the projects, job meetings shall be held at frequent intervals to review construction and restoration progress and to resolve difficulties which might delay completion of the work. Attendees at these meetings shall include the recipient, the responsible engineer, the recipient's inspectors (construction and environmental), the contractor, and one or more representatives of the Department;

31. The recipient shall provide notification, information and conduct visual inspections and testing of projects as follows:

i. The recipient shall notify the Department one week prior to all final visual inspections and tests of all sewer lines, force mains, mechanical equipment and treatment plant operation;

ii. Copies of all final visual inspections and test reports shall be forwarded to the Department when requested;

iii. Copies of record drawings shall be forwarded to the Department prior to the start of visual inspection and testing of all pipeline projects; and

iv. All visual inspections and testing shall be done in accordance with the following:

(1) All manholes and pipelines shall be completed and flushed prior to the visual inspection. This inspection must be performed with a representative of the recipient and/or the responsible engineer, the contractor and a representative from the Department present. All discrepancies must be noted and a reinspection performed to verify the corrective action;

(2) All manholes and pipelines shall be visually inspected and accepted prior to testing;

(3) Upon acceptance of the visual inspection by the Department, the necessary infiltration, exfiltration, or low pressure air test and deflection tests when applicable shall be performed by the contractor. The test must be witnessed by the recipient and/or the responsible engineer (or representative), the contractor, and a representative from the Department. Upon completion of the test, a copy of the test results must be forwarded to the Department if requested;

(4) Infiltration tests of gravity lines shall be limited to 2000 linear feet per test;

(5) Force mains shall be tested to two times the maximum operating pressure, but not greater than the pipe pressure rating, whichever is less. The length of pipe tested during a force main pressure test is not restricted; however, it is recommended that it be limited for ease in locating leaks if present;

(6) Testing of all mechanical equipment at treatment plants and pump stations must be witnessed by a representative of the Department; and

(7) If required, actual flow tests must be done in accordance with parameters established by the Department and performed in the presence of a representative of the Department; and

32. The recipient shall forward a letter to the Department upon completion of all construction and restoration of each contract of a project, stating that the project (or contract) is ready for final inspection. No final inspection will be scheduled until formal notification is received. The final inspection will be a joint inspection with the recipient and/or the responsible engineer, the recipient's inspector(s), the contractor, and one or more representatives of the Department in attendance.

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

(d) [The recipient shall insert in all contracts or subcontracts awarded pursuant to this subchapter the Department's Subcontractor Certification Form.] **Neither the State of New Jersey nor the Pinelands Commission will be a party to any contracts and subcontracts awarded pursuant to this subchapter. All such contracts and subcontracts shall include the following statement:**

"This contract or subcontract is expected to be funded in part with funds from the New Jersey Department of Environmental Protection and Energy and the Pinelands Commission. Neither the State of New Jersey, the Pinelands Commission nor any of their departments, agencies or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to provisions of N.J.A.C. 7:22-6, 7, 9 and 10."

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

7:22-6.27 Publicity and signs

(a) (No change.)

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Pinelands Commission shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, the amount of financial assistance from the Pinelands Infrastructure Trust Fund, and other information as required by the [Division] **Department.**

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED WASTEWATER TREATMENT FACILITIES

7:22-10.2 Definitions

Unless otherwise specified, the terms used herein will have the same meanings as those terms are defined in N.J.A.C. 7:22-3 and 4. Additional definitions are as follows:

. . .

"Endangered species" means a plant or animal species which has been designated as endangered pursuant to either the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq. [or] , the Federal Endangered Species Act, 16 U.S.C. 1531 et seq. **or the Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq.**

. . .

"Planning area" means that area for which a wastewater management project is proposed, including the proposed service area, as well as the extent of the area which could be impacted, directly or indirectly, by the proposed project, **as determined by the Department.**

. . .

7:22-10.3 Establishing the level **and scope** of environmental review

(a) To initiate the planning process, the local government unit may be required by the Department to attend a preplanning meeting with the Department. When a preplanning meeting is required, the local government unit shall be required to provide a preplanning summary including a brief written description of the proposed planning area, the wastewater management needs, the preliminary wastewater management alternatives to be considered, and a preliminary appraisal of potential beneficial and adverse environmental and cultural resource impacts of the alternatives. A map of the proposed planning areas shall also be included. The planning area [shall be defined as] **must include** the entire area expected to benefit from the proposed project as a whole (that is, at a minimum, the potential service area) without regard to the eligibility of individual project components. The length of the planning period will be 20 years, unless otherwise approved by the Department. On the basis of this information, as well as any other information that may be available to the Department, the Department shall make a preliminary de-

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cision regarding the level of environmental review[,] (Level 1, 2, or 3[,]) that shall be required. **The scope of the environmental review, including environmental information documentation and the Department's evaluation process, shall include the entire planning area and the comprehensive wastewater treatment project(s) proposed within the planning area.**

(b) (No change.)

7:22-10.8 Cultural resource survey requirements

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

(f) The following are the levels of cultural resource survey that the Department may require:

1. The first level of investigation is the Stage IA Documentation Review and Strategy Development Survey which consists of the following:

i. (No change.)

ii. An analysis of the documentation obtained from the State Historic Preservation Officer, the State Archaeologist, State and local libraries and museums, historic and archaeological societies, [and] universities, **professional and avocational experts and other knowledgeable members of the public**;

iii.-iv. (No change.)

v. Recommendations for additional surveys, such as [field testing and verification] **the Site Recognition Survey described in (f)2 below**, that may be required.

2. The next level of investigation is the State IB Site Recognition Survey which consists of the following:

i. Subsurface testing for the identification of previously undocumented archaeological sites. Subsurface tests, placed at [frequencies] **intervals** approved by the Department, must be of sufficient depth to sample all soil strata that may potentially contain evidence of past human activity;

ii.-iii. (No change.)

iv. A clear **analysis and** presentation of the results of the survey; and

v. (No change.)

3. The next level of investigation, the Stage II Site Definition and Evaluation Survey, is required if the potential direct or indirect impacts of the proposed project cannot be reasonably avoided by project modification or when there is insufficient data (extent, depth, significance) about the resource to assess avoidance or preservation alternatives. The Department will determine the need for a Stage II survey based upon an evaluation of the Stage IB survey report in conjunction with planning documentation prepared by the local government unit in support of the project. A Stage II Survey consists of the following:

i. (No change.)

ii. [A draft] **Draft documentation for a request for a** determination of eligibility for nomination to the **New Jersey and** National Registers of Historic Places prepared in accordance with N.J.S.A. 13:1B-[15.129] **15.128 et seq., and the implementing rules at 36 C.F.R. Part 800**;

iii.-iv. (No change.)

(g) Where a Stage II survey has been required, then, upon acceptance by the Department of the Stage II survey documentation, the Department will make one of the following determinations:

1. (No change.)

2. It is not practicable to avoid potential impacts to a Register-listed or eligible resource. In this case, the Department will assess the need to [request] **obtain** a determination of eligibility [from the Keeper of the Register] in accordance with (h) below.

(h) The Department[, after consultation with the appropriate Federal agencies, in accordance with N.J.S.A. 13:1B-15.129] will prepare [the appropriate] documentation [for submittal to the Keeper of the Register for] **supporting** a determination of eligibility **in accordance with N.J.S.A. 13:1B-15.128 et seq. and 36 C.F.R. 800.4.**

(i) After the satisfactory completion of the required cultural resource surveys, the Department, after consultation with the appropriate [Federal] agencies, in accordance with N.J.S.A. 13:1B-[15.129] **15.128 et seq. and 36 C.F.R. Part 800,** will issue one of the following determinations of effect:

1.-2. (No change.)

3. Determination of Adverse Effect: An adverse effect is an alteration to a Register-listed or eligible resource that detracts from those characteristics by which it was determined eligible for inclusion on the Register. Examples of adverse effects include, but are not limited to, partial or total destruction of the resource, alteration of the resource's environment, neglect of the resource resulting in its deterioration, or transfer or sale of the property which contains a resource without adequate conditions regarding preservation, maintenance or use.

i. (No change.)

ii. This documentation, submitted to the Advisory Council on Historic Preservation, will be utilized, through a consultation process, in the preparation of a memorandum of agreement in accordance with N.J.S.A. 13:1B-[15.129] **15.128 et seq. and 36 C.F.R. Part 800.**

iii.-v. (No change.)

(j)-(l) (No change.)

7:22-10.9 Environmental coordination

(a) The local government unit shall consult, coordinate with, or apply to those agencies responsible for issuing permits or which have other jurisdiction regarding environmental concerns with respect to the proposed project and its impacts. Those agencies include, but are not limited to, the agencies responsible for administering the following:

1.-19. (No change.)

20. Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq. as amended; [and]

21. Historic Sites Act, 16 U.S.C. 461 et seq.; **and**

22. Endangered Plant Species List Act, N.J.S.A. 13:1B-15.151 et seq.

(b) (No change.)

7:22-10.11 Design requirements

(a) The local government unit shall [be required to] prepare design plans and specifications which include mitigating measures developed during planning and incorporated in the approved planning documentation. In addition, the design plans and specifications shall conform to the minimum standards for each area of concern which is applicable to the proposed project as set forth below. **All activities which are a part of the comprehensive wastewater treatment project(s) for the planning area must conform to the requirements of this section, regardless of the eligibility of individual components of the project.**

(b)-(g) (No change.)

(h) Where stream crossings are necessary, adverse impacts shall be minimized by including appropriate mitigating measures and restoration techniques in plans and specifications. At a minimum, mitigating measures and techniques shall include the following requirements:

1.-6. (No change.)

7. Construction through stream corridors, wetlands and other surface waters shall be scheduled to minimize damage to fish populations wherever possible. Recommend**ed** periods during which construction is to take place shall be in accordance with N.J.A.C. 7:13-5.6(g) and N.J.A.C. 7:7E; and

8. (No change.)

(i)-(q) (No change.)

7:22-10.12 Construction phase requirements

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

(c) A final inspection shall be required following completion of all construction and restoration work encompassed by each contract. The final inspection shall be conducted as follows:

1. Upon completion of all construction and restoration work of each contract of a project, the loan recipient shall submit a letter to the Department[, Municipal Wastewater Assistance Element, CN-029, Trenton, New Jersey 08625,] stating that the project (or contract) is ready for final inspection. No final inspection can be scheduled until formal notification is received.

2. (No change.)

(d) (No change.)

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(a)

AIR QUALITY REGULATION PROGRAM

Air Pollution Control
Permits, Certificates, Hearings and Confidentiality
Proposed Amendments: N.J.A.C. 7:27-8.1 and 8.3
Proposed New Rule: N.J.A.C. 7:27-8.27

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 26:2C-1 and 13:1D-37 et seq.
DEPE Docket Number: 50-92-10.
Proposal Number: PRN 1992-502.

A **public hearing** concerning this proposal will be held on Monday, January 11, 1993 at 10 A.M., at:

New Jersey Department of Environmental Protection and Energy
Hearing Room, 1st Floor
401 East State Street
Trenton, New Jersey

Submit written comments by January 22, 1993 to:

Ida Engelhardt, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625-0402

The amendments will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection and Energy (the Department) is proposing amendments to N.J.A.C. 7:27-8, Permits and Certificates. This subchapter contains the procedural requirements for New Jersey air pollution control permits to construct and certificates to operate equipment and control apparatus. The new amendments are proposed as part of the Department's effort to improve the overall effectiveness of the preconstruction permit program and to encourage facility-wide permitting under the New Jersey Pollution Prevention Act (N.J.S.A. 13:1D-37).

Air pollution control permits and certificates are the primary administrative instruments used by the Department to carry out its mandate to prevent and control the emission of air contaminants. The overall degree of air quality protection afforded the citizens and the environment of New Jersey depends, in large measure, on the effectiveness of the preconstruction permit and operating certificate process. Certain parts of this process are being amended to allow operational flexibility for applicants who have received an approved facility-wide permit, as defined under the Pollution Prevention Act, from the Department. The intent of these changes is to provide incentives for applicants to implement pollution prevention and decrease the quantities of pollution generated at their sources.

The proposed amendments and new rule classify certain changes made to equipment or control apparatus as an "amendment" rather than an "alteration," if the applicant has a "facility-wide permit" as defined pursuant to the Pollution Prevention Act and meets other criteria discussed below. A facility-wide permit is a single permit, issued by the Department to the owner or operator of an industrial facility, which combines the facility's air, water and hazardous waste permits, along with the facility's Pollution Prevention Plan (which is required to be prepared under the Act). A facility-wide permit is a multi-media permit emphasizing the use of pollution prevention techniques to meet environmental objectives. The proposed amendments and new rule would provide operational flexibility to the applicant because a change which is considered an amendment does not need pre-approval from the Department. Conversely, changes which are classified as alterations can not take place without pre-approval from the Department.

For a change to be considered an amendment under these new provisions, it must not increase the permitted concentration or rate of emission of any air contaminant for the production process or the entire facility. The change also can not cause an increase in the generation of non-product output (as defined in the Pollution Prevention Act) per unit of production or increase the concentration or effluent limitation of any pollutant to waters of the State. Non-product output includes all outputs from a production process or source at a facility which are not intended to be sold as product. It is a new term used by the Act for tracking pollution prevention progress and is measured prior to treatment, out-of-process recycling or release to the environment.

In addition to these requirements, the change must also be incorporated in and be consistent with a Pollution Prevention Plan Modification or a Pollution Prevention Assessment. In preparing a plan modification or assessment, a facility first looks at potential pollution prevention options, before relying on recycling or treatment options. Here, the facility is following the "environmental management hierarchy" established in the Pollution Prevention Act, starting with the most preferable option, pollution prevention, then working its way down the hierarchy to recycling, treatment and finally disposal.

A Pollution Prevention Plan Modification would be prepared by a facility for unexpected changes occurring at the facility after a facility-wide permit has been issued. The plan modification would identify any changes in the inventory of specific hazardous substances that are covered under the Pollution Prevention Act. The plan modification would also evaluate potential pollution prevention options to determine if they are technically and economically feasible for the kinds of changes being made.

The substances covered under the Pollution Prevention Act are defined as any substance on the list established by the USEPA for reporting pursuant to Section 313 42 U.S.C. 11023, more commonly known as the Toxic Release Inventory (TRI list) under the Federal right-to-know program.

A Pollution Prevention Assessment is essentially the same thing as a plan modification, except that the inventory and feasibility analysis covers substances which are not regulated under the Pollution Prevention Act. This would include substances, such as particulates, included in the facility-wide permit which are not on the Federal TRI list and which are regulated by other environmental control requirements. The Department has proposed this separate term in separate regulations under the Pollution Prevention Act to distinguish between the Department's authorities for substances covered by that Act and those covered by other environmental regulations.

In addition to allowing modification of equipment, the amendments and new rule would allow installation of new equipment and control apparatus as an amendment to an existing facility-wide permit, contingent upon meeting the emission and pollution prevention restrictions noted above. The new equipment or control apparatus must be part of an existing production process which is included in the approved facility-wide permit. New equipment or control apparatus for a production process that is not included and approved in the facility-wide permit would continue to require preconstruction review and approval by the Department prior to installation. A production process, as well as the equipment and control apparatus included in it, is defined by the applicant and the Department during the facility-wide permit application and issuance process. Without the proposed amendments, facilities operating under a facility-wide permit would continue to be required to receive an equipment-specific permit for the new equipment or control apparatus.

This exemption from an alteration permit may result in less air pollution control in some cases because the new equipment and control apparatus would not be subject to the N.J.A.C. 7:27-8 requirement for advances in the art of air pollution control. However, the Department expects that the overall environmental benefits of the facility-wide pollution prevention process and the operational flexibility added by these amendments will exceed the equipment-specific air pollution control benefits of the alteration permit process. By statute, the scope of the pollution prevention facility-wide permit process is limited to no more than 18 facilities until 1996; this will allow for verification of this projection and adjustments if necessary.

The proposed amendments and new rule affect subchapter 8 air permit requirements only and do not exempt an applicant from compliance with any other State rule or Federal law. For example, if new equipment is installed without an air permit from the Department, and that equipment is subject to a Federal New Source Performance Standard (NSPS), the source must still comply with the NSPS.

Social Impact

The Department expects the proposed amendments and new rule to have a positive social impact. Applicants who receive a facility-wide permit and are afforded the additional operational flexibility under these proposed subchapter 8 amendments would have added incentive to make

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equipment and process changes which reduce the total amount of waste generated. Reducing the total amount of waste generated, rather than relying on treatment and control, would reduce exposure to unhealthful materials, whether it be by land, air or water, because cross-media transfer of pollutants would be decreased.

Economic Impact

The Department expects the proposed amendments and new rule to have a positive economic impact. The operational flexibility provided by the amendments and rule should provide incentives for applicants to make changes which would increase manufacturing efficiency and productivity.

These amendments to subchapter 8 would impact on no more than 18 facilities operating in New Jersey until February 1996. The Department will be conducting two separate pilot programs to test the facility-wide permitting approach and the implementation of this amendment to subchapter 8. The first program, with three volunteer facilities, is currently under way and is planned to be completed by September 1993. The second pilot program will be implemented pursuant to the Pollution Prevention Act. This second pilot program is planned to be completed by February 1996. This flexibility would apply to any other facility receiving a facility-wide permit after February 1996, if the pilot programs which test this concept are successful and the facility-wide permit concept is expanded. Such an expansion would be based upon a report the Department must give to the Legislature, by February 1996, on the results of the program and the Legislative and public response to it.

For facilities covered under a facility-wide permit, compliance with all existing State and Federal rules remains in effect. Therefore, no additional economic burden or benefits are introduced by a substantive change to air pollution control requirements. However, an economic benefit results from a lower fee (the fee associated with the review of an amendment application is less than an alteration application) and costs saved by preparing a less complex amendment application, rather than an alteration application. Also, economic benefits would result from industry's ability to make certain pollution prevention changes more quickly because preconstruction approval is not required for amendments.

Environmental Impact

The adoption of the proposed amendments and new rule is expected to have a positive environmental impact. Allowing applicants operational flexibility to explore and incorporate equipment changes which reduce pollution at the source is the most effective way to reduce emissions to all environmental media and improve overall environmental quality. This rule provision would encourage the investigation and implementation of pollution prevention techniques.

This revision, applying only to facilities with a facility-wide permit, would initially be relevant for up to 18 facilities, three under a volunteer pre-pilot study currently under way and 15 under a future pilot study authorized by the Pollution Prevention Act. The Department will monitor these trial facility-wide permits to determine if in fact the increased flexibility of this provision does result in overall pollution reduction. The environmental success of these pilot projects will be as a factor in evaluating possible future changes to media specific permit rules and expansion of the facility wide permit program.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments and new rule will not impose additional recordkeeping, reporting or other compliance requirements on small businesses. Since no more than 18 facility-wide permits will be issued prior to June 1995, and most of these will not be small businesses as defined by the Act, the impact of the amendments on small business is expected to be small. However, if any small businesses are affected, that effect will be a reduction in preconstruction permit requirements for changes included in the scope of the amendment.

Those exempt under N.J.A.C. 7:27-8.27(a) from obtaining a permit and certificate are required to report, as an amendment of the facility-wide permit pursuant to the procedures at N.J.A.C. 7:27-8.3(c), the alteration or change of the equipment or control apparatus and the Pollution Prevention Plan Modification or Pollution Prevention Assessment to the Department within 120 days after the occurrence of the alteration or change. The administrative costs of preparing the amendment will be incurred by those reporting; no professional services should be required.

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

7:27-8.1 Definitions

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

. . .

"Co-product" means an incidental result of a production process that is not a primary product of the production process and that is sold in trade in the channels of commerce to the general public in the same form as it is produced, for any purpose except the purpose of energy recovery. A co-product is not considered nonproduct output. Increases in quantities of co-products do not count towards use reduction or nonproduct output reduction goals.

. . .

"Effluent limitation" means any restriction on quantities, quality, discharge rates, concentration of chemical, physical, thermal, biological, or other constituents of a pollutant as defined in N.J.A.C. 7:14A-1.9.

. . .

"Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42.

. . .

"Intermediate product" means a desired result of a production process that is made into a product in a subsequent processing step at the same industrial facility, without the need for treatment prior to its being made into a product. An intermediate product is not considered nonproduct output. Increases in quantities of intermediate products do not count towards use reduction or nonproduct output reduction goals.

. . .

"Nonproduct output" or "NPO" means all hazardous substances or hazardous wastes that are generated prior to storage, out-of-process recycling, treatment, control or disposal, and that are not intended for use as a product. NPO includes fugitive releases.

. . .

"Pollution Prevention Assessment" means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5.

"Pollution Prevention Plan" means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41, N.J.A.C. 7:1K-3 and N.J.A.C. 7:1K-4.

. . .

"Product" means a desired result of a production process that is used as a commodity in trade in the channels of commerce by the general public in the same form as it is produced. Products include intermediate products transferred to a separate industrial facility owned or operated by the same owner or operator.

"Production process" means a process, line, method, activity or technique, or a series or combination of processes, lines, methods or techniques, used to produce a product or reach a planned result.

. . .

7:27-8.3 General provisions

(a) No person shall construct, install, or alter any equipment or control apparatus without first having obtained a [permit] **Permit to Construct, Install or Alter Control Apparatus or Equipment, except as provided at N.J.A.C. 7:27-8.27.**

(b) No person shall use or cause to be used:

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1. Any new or altered equipment or control apparatus without first having obtained [a] **an operating** certificate **or a temporary operating certificate, except as provided at N.J.A.C. 7:27-8.27;** or

2. (No change.)

(c)-(j) (No change.)

7:27-8.27 Exemption for pollution prevention alterations at facilities subject to N.J.S.A. 13:1D-37

(a) A person is not required to obtain a permit or a certificate for an alteration of equipment or control apparatus, or installation of new equipment or control apparatus, if:

1. The equipment or control apparatus, and the production process using the equipment or control apparatus, are identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D-37;

2. The alteration or installation is either:

i. Allowed under the facility-wide permit; or

ii. Documented in a modification to a Pollution Prevention Plan, which satisfies the requirements of N.J.A.C. 7:1K-3 and 4, or in a Pollution Prevention Assessment as defined in N.J.A.C. 7:1K-1.5; and

3. The alteration or installation does not cause any of the following:

i. An increase in the generation of nonproduct output per unit of production manufactured by the equipment or production process;

ii. An exceedance of the maximum allowable concentration or rate of emission of any air contaminant for the production process or the entire facility, whichever is more stringent;

iii. An exceedance of the maximum allowable concentration or effluent limitation of any discharge to waters of the State; or

iv. The addition of a new production process.

(b) Any person who is exempted pursuant to (a) above from obtaining a permit and certificate shall report the alteration or change and the Pollution Prevention Plan Modification or Pollution Prevention Assessment to the Department within 120 days after the occurrence of the alteration or change, as an amendment of the facility-wide permit pursuant to the procedures for amendment at N.J.A.C. 7:27-8.3(c).

(c) For equipment or control apparatus subject to (a) above, the facility-wide permit shall constitute the operating certificate required by this chapter.

HEALTH

(a)

BIRTH CERTIFICATES

Creation of Birth Record

Proposed Repeal and New Rules: N.J.A.C. 8:2

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 26:8-23.

Proposal Number: PRN 1992-514.

Submit comments by January 6, 1993 to:
Charles A. Karkut, State Registrar
Bureau of Vital Statistics and Registration
New Jersey Department of Health
CN 370
Trenton, New Jersey 08625-0370
609-292-4589

The agency proposal follows:

Summary

The proposed new rules establish a policy creating a birth record. The existing rules on this subject are now obsolete, and are therefore being repealed in their totality. The policies contained in the new rules delineate procedures for creating an original birth certificate with respect to the choice of the child's given and surname.

Two Federal court decisions, as well as changes in society, dictate that the previous rules be replaced. The court found that the interest of the parents in naming their child to be more important than the interest of any State in naming a child. (See *O'Brien v. Tilson* 523 *F. Supp.* 494 (E.D.N.C.) 1981 and *Jech v. Burch* 466 *F. Supp.* 714 (D. Haw. 1979.) Specifically, the new rules provide the latitude to allow parents to name the child with virtually no restraints, except for obscenities and numerical characters. The rules clarify who shall act as informant, and how the names of the parents should appear on the certificate. The new rules also delineate the fees associated with searching for birth records and copying them and how refunds of fees are made.

N.J.A.C. 8:2-1.1 provides the purpose and scope of the rules, and N.J.A.C. 8:2-1.2 sets forth chapter definitions.

N.J.A.C. 8:2-1.3 details the naming of the child on the original birth certificate.

N.J.A.C. 8:2-1.4 provides guidance on the recording of parent's names on the birth certificate.

N.J.A.C. 8:2-1.5 provides for miscellaneous policies, including who shall act as informant, and who must sign the certificate.

N.J.A.C. 8:2-2.1 specifies the fees charged for searching for birth certificates and copying birth records and explains the refund of fees when excess payment is received, referencing the statute for specific amounts.

Social Impact

The proposed new rules will have a positive social impact upon the citizens of New Jersey. The rules clarify the Department's policy regarding the naming of a child and expand the options open to a parent in the naming of the child and clarifies who the informant of the birth information should be.

Economic Impact

There will be no economic impact to the individuals affected by the proposed new rules. The Department of Health conducts on-going training of local registrars and hospital personnel who are, at a very minimal cost to the State, responsible for collecting and completing birth record information. The fees charged are set by statute.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since the proposed new rules will only affect the natural parents of a newborn in choosing both the given and surname for the child.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:2.

Full text of the proposed new rules follows:

CHAPTER 2
BIRTH CERTIFICATES

SUBCHAPTER 1. CREATION OF BIRTH RECORD

8:2-1.1 Purpose and scope

These rules create the birth record and permit the parents, at the time of birth, to choose any name for their child without restrictions, except for names which contain obscenities or numerical characters. The rules set forth the options open to a parent in the naming of the child, and clarify who the informant of the birth information should be.

8:2-1.2 Definitions

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

"Commissioner" means the State Commissioner of Health.

"Department" means the New Jersey State Department of Health.

"Informant" means the name of the individual providing the personal particulars for the preparation of the birth certificate.

"State Registrar" means the New Jersey State Registrar of Vital Statistics.

"Surname" means the last complete name on a birth certificate without a hyphen, or the last full name preceeding the hyphen.

8:2-1.3 Designation of child's name

(a) The designation of a child's name including the surname is the right of the child's parent(s). The child may be given any chosen name(s) or surname, except that the State Registrar may reject a

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name that contains an obscenity, numerals, or combination of letters and numerals or a name that is illegible. The chosen name shall be printed on the back of the birth record and the birth record shall be signed by one or both parents. The hospital official who witnesses the signing shall also sign the birth record.

1. In cases where the parents are not married, or divorced or where either parent is unavailable for any reason, the choice of the child's name(s) rests with the parent who has custody of the newborn child. That parent shall state the reason for the absence of the other parent in the space for the parents' signature and thereafter shall be the sole informant for the purpose of compliance with N.J.S.A. 26:8-36 and this subchapter.

2. In cases where the parents have joint custody and the father is not available, the choice of the child's name rests with the child's mother who shall state in writing on the back of the birth record that the father is not available. In cases where the parents have joint custody of the child, are both available, and disagree on the selection of a surname, the surname selected by the father and the surname selected by the mother shall both be entered on the certificate, separated by a hyphen, with the selected names entered in alphabetic order.

(b) The parents or custodian of the child shall have five days from the child's birth to decide the child's surname. If no designation is made within that time, and no surname has been registered pursuant to (a)2 above, or if the chosen surname is rejected by the State Registrar, for the reasons specified in (a) above, the child's surname shall be recorded as the mother's surname and the father's surname in alphabetic order, separated by a hyphen. If the mother and father disagree on the selection of a given name, or if the State Registrar rejects the given name chosen by the parents or parent, for the reasons specified in (a) above, a dash (—) shall be entered in the space allotted for a given name on the certificate. After five days, any surname assigned by the registrar, a surname registered pursuant to (a)2 above, or the dash designation may only be changed through the procedures set out in N.J.S.A. 26:8-48 and 2A:52-4.

8:2-1.4 Names of parents

(a) The name of the father should be entered on the birth record. If the mother is married at the time of birth, the mother's husband is presumed to be the child's natural father and his name shall be listed as the child's father. If the mother is not married at the time of the birth, the name of the father shall only be listed on the birth record if the named father agrees and signs the back of the birth record. The recorded name of the father may be changed by an appropriate court order establishing paternity or by a denial of paternity on the back of the birth record by the named father and agreed by the mother.

(b) The name of the child's mother shall be recorded as that of the woman giving birth, unless another woman is found by a court of competent jurisdiction to be the child's mother.

8:2-1.5 Informant

The custodial parent(s) of a child shall act as informant and provide the necessary information to complete the original birth certificate. The informant shall certify on forms provided by the State Registrar that the information provided is accurate and true to the best of the informant's knowledge.

SUBCHAPTER 2. FEES

8:2-2.1 Fees; Refund of fees; excess payment

(a) Fees for birth record searches, copies of birth records or changes to birth records are specified in N.J.S.A. 26:8-40.1; 26:8-62; 26:8-63; 26:8-64; and 2A:52-4 (Vital Statistics).

(b) In the instance of individuals forwarding funds in excess of those fees specified in N.J.S.A. 26:8-40.1, 26:8-61, 26:8-62, 26:8-64 and 2A:52-4 (Vital Statistics), the New Jersey State Department of Health will not make refunds of $1.00 or less.

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

State Psychiatric Hospitals; Pre-Placement Program

Proposed New Rules: N.J.A.C. 10:38A

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

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

Proposal Number: PRN 1992-464.

Submit comments by January 6, 1993 to:

Raymond Deeney, Esq.
Administrative Practice Officer
Division of Mental Health and Hospitals
Capital Center, 3rd floor
CN 727
Trenton, NJ 08625

The agency proposal follows:

Summary

These proposed new rules, N.J.A.C. 10:38A, create a program which provides eligible State psychiatric facility patients with opportunities to explore the suitability of certain available community placements and to demonstrate their ability to adjust to those potential placements while providing community service providers with authorization to ensure payment for their services to these patients. The program is designed to allow patients an opportunity to "test out" a possible community setting for up to 14 calendar days and to serve those patients whose psychiatric history and hospital behavior threaten their ability to succeed at these placements unless it is financially and programmatically supported. Thus, the Department of Human Services believes that the effect of these proposed new rules will be to promote additional community placements for currently hospitalized patients.

Any hospital patient or interested party on behalf of a hospital patient may request that a patient's Interdisciplinary Treatment Team determine whether he or she is eligible for the Pre-Placement Program. If the Pre-Placement visit is unsuccessful, the patient returns to the hospital and a new discharge plan is formulated. Patients who have completed the Pre-Placement Program and whose subsequent behavior indicates that they require psychiatric hospitalization must be screened in accordance with the procedures and standards contained in the Mental Health Screening Law (N.J.S.A. 30:4-27.1 et seq.) If the Pre-Placement visit is successful after the 14 days, the patient remains with the provider and a placement is then financed by another program, most typically Supplemental Security Income.

A similar purpose had previously been served by a Trial Placement Program, previously N.J.A.C. 10:38-5, as a feature of the Interim Assistance Program, N.J.A.C. 10:38. However, the Trial Placement Program was repealed effective August 6, 1990 (see 22 N.J.R. 2306(a)) based upon concerns that the repeal of statutory provisions permitting the rehospitalization of patients up to 60 days after placement in Trial Placement without rescreening or recommitment rendered the program ineffective and legally questionable. These proposed new rules address this concern by limiting the program to 14 days rather than 60 days and establish a payment mechanism for community providers from State funds.

This Pre-Placement Program is similar to the Interim Assistance Program in addressing the placement and funding needs of eligible State psychiatric facility patients but different in that it provides pre-placement opportunities to patients not yet discharged from those facilities. Consistent with this relationship, these proposed new rules have been codified as N.J.A.C. 10:38A.

Social Impact

The Department of Human Services believes that these proposed new rules will have a positive impact on many State psychiatric facility patients and community congregate living providers. These providers would now be more willing to extend placement opportunities to many hospitalized patients whose interest in a specific community setting or prognosis for successful adjustment to their residences is unclear. The absence of such a program unintentionally denies patients an opportunity to evaluate the appropriateness of a placement setting and makes it less risky for

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providers to deny admission to their residences for such patients than to provide them with an opportunity. The Department anticipates a generally positive reaction to these rules from patients, their advocates and community providers. Additionally, the State public policy and Departmental mandate to provide mental health services in the least restrictive setting appropriate for each patient would be promoted by this program.

Economic Impact

The Department of Human Services believes that these proposed new rules will have a positive economic impact on many eligible patients and community providers by facilitating and by funding these pre-placement opportunities, many of which will result in final placements. Additional social and monetary savings, especially savings in the cost of publicly funded hospital care, would also result from the program's anticipated shortening of many unnecessary hospital stays, a benefit to taxpayers. No fiscal impact in the form of additional administrative or operational costs is anticipated upon either the Department or providers since this program can be operated adequately by the current personnel.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; therefore, a regulatory flexibility analysis is not required. The proposed new rules provide eligibility requirements and program standards for State psychiatric facility patients and hospital staff.

Full text of the proposed new rules follows.

CHAPTER 38A
PRE-PLACEMENT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

10:38A-1.1 Scope and Purpose

(a) The Pre-Placement Program shall be available to all eligible patients at each of the State psychiatric facilities operated by the Division. Community providers eligible to receive Pre-Placement Program payments from the State psychiatric facility for the cost of pre-placement care shall include, but not be limited to, licensed boarding homes and residential health care facilities.

(b) Certain patients at State psychiatric facilities have received the maximum available benefit from their inpatient psychiatric hospitalization in the judgement of their treatment team but have not had an opportunity to explore the suitability of or to demonstrate their ability to adjust to certain alternative available community placements. The purpose of the Pre-Placement Program is to provide such patients with the opportunity to test out a possible community setting and to serve those patients whose psychiatric history and hospital behavior threaten their ability to succeed at these placements unless it is financially and programmatically supported. Additionally, community service providers would receive authorization to ensure payment for their services prior to the client's receipt of either Interim Assistance or Supplemental Security Income benefits.

10:38A-1.2 Definitions

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

"CEO" means the Chief Executive Officer of a State psychiatric facility.

"Conditional Extension Pending Placement" means a patient legal status so determined by Court Order.

"Department" shall mean the New Jersey Department of Human Services.

"Division" shall mean the New Jersey Division of Mental Health and Hospitals.

"Interdisciplinary Treatment Team" means a group of persons who are responsible for evaluating a client's treatment and service needs, monitoring the client's progress and assessing his or her readiness for discharge. The team is composed of hospital staff and community service representatives.

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS

10:38A-2.1 Program eligibility

(a) To be eligible for the Pre-Placement Program, including the supporting payments to community providers, the patient must:

1. Be an inpatient at a State psychiatric facility who is not judicially restrained from discharge;

2. Be 18 years of age or older;

3. Have been evaluated by their Interdisciplinary Treatment Team as:

i. Not likely to constitute a danger to self, others, or property, if residing at the community program;

ii. Having received the maximum available benefit from their inpatient psychiatric hospitalization; and

iii. Possessing the capacity for successful adjustment at a specific, available community placement which is appropriate for pre-placement payments;

4. Be likely to meet the income and medical eligibility standards for Supplemental Security Income; and

5. Indicate his or her willingness to apply for both Interim Assistance and Supplemental Security Income, when appropriate.

SUBCHAPTER 3. PROGRAM STANDARDS

10:38A-3.1 Program standards and requirements

(a) Each eligible patient may participate in the Pre-Placement Program up to a maximum of 14 calendar days.

(b) Any hospital patient or any interested party on behalf of a hospital patient may initiate a Pre-Placement Program request to the patient's Interdisciplinary Treatment Team.

(c) Each patient approved as appropriate for the Pre-Placement Program by the Interdisciplinary Treatment Team shall be referred to the Discharge/Financial Coordinator for Interim Assistance eligibility determination.

(d) Each Chief Executive Officer (CEO) shall designate which facility staff are responsible to monitor the patient's adjustment at the community service provider and act as a liaison to that provider for assistance regarding adjustment issues.

(e) A patient may be returned to the facility when his or her Interdisciplinary Treatment Team has concluded that he or she and the provider have inadequately adjusted to each other so that conditions supporting the likelihood of a successful discharge and placement to the provider are not well-established.

(f) Each participating patient and provider shall receive a fact sheet from facility staff which summarizes the significant aspects of the program. The provider shall demonstrate its willingness to adhere to the program's policies and procedures as delineated in this chapter by signing an agreement to that effect with the referring facility.

(g) Patients adjudicated as Conditional Extension Pending Placement may participate in the program but facility staff need to be careful that patient participation in the program and possible return to hospitalization due to unsuccessful adjustment involve notice to the court and be in accordance with court directives. Patients who are involuntarily committed may also participate in the program unless a court order directs otherwise.

(h) State psychiatric facility staff shall adhere to appropriate internal directives regarding financial and administrative recordkeeping and payment methodology.

(i) Whenever a patient successfully completes a Pre-Placement for 14 days with a provider, he or she shall be removed from that program status and no longer subject to return to the facility according to the standard contained in these rules (see (e) above). Patients who have completed the Pre-Placement Program and whose subsequent behavior indicates that they require psychiatric hospitalization must be screened in accordance with the procedures and standards contained in the Mental Health Screening Law (N.J.S.A. 30:4-27.1 et seq.).

(j) Whenever a patient successfully completes a Pre-Placement for 14 days with a provider, an alternative financial source, such as Supplemental Security Income, for any continued cost of community

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care must be secured by the patient, with assistance from hospital staff, as needed, in order to maintain ongoing placement with that provider.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual PAAD Prescription Copayment

Proposed Amendments: N.J.A.C. 10:69A-2.1, 4.1, 4.2, 4.3, 4.4, 5.3 and 5.4

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

Authority: N.J.S.A. 30:4D-22, 30:4D-25, 30:4D-34, P.L.1992, c.40.

Agency Control Number: 92-P-16.

Proposal Number: PRN 1992-506.

Submit comments by January 6, 1993 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The State Fiscal Year 1993 Appropriations Act, P.L.1992, c.40, has mandated changes to the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program. The PAAD program is a program of the State of New Jersey and is fully State-funded.

The Division of Medical Assistance and Health Services (Division) is amending the PAAD Eligibility Manual (N.J.A.C. 10:69A) to revise the copayment amount. Effective July 1, 1992, the copayment for prescriptions dispensed through the PAAD program was changed from $2.00 to $5.00 pursuant to the State law. With the exception of N.J.A.C. 10:69A-5.3, the New Jersey Administrative Code sections cited above are amended to set forth the amount of the copayment for PAAD prescriptions in the revised amount of $5.00.

The second change to the PAAD program is the elimination of the eligibility notification letter sent to program beneficiaries biennially. PAAD beneficiaries will still receive their PAAD eligibility cards two and one half months prior to the expiration of their old cards. The reference to the biennial eligibility notification can be found in N.J.A.C. 10:69A-5.3.

All PAAD beneficiaries are required to complete a renewal form at least once every two years. When the beneficiary completes the renewal form and returns it to the PAAD Bureau, the data is evaluated to determine continued eligibility. If there was a determination that the beneficiary was ineligible, a denial notice would be issued to the beneficiary at that time.

Social Impact

The proposed amendments will impact upon PAAD beneficiaries by requiring them to pay $5.00 toward the cost of each prescription which they receive from the program, which may impose difficulty upon some individuals. Beneficiaries will no longer receive the Notification of Eligibility letters, but they will continue to receive their PAAD eligibility cards two and one-half months prior to expiration of their old cards. Beneficiaries who receive renewal forms are required to complete them and return them to the PAAD Bureau for processing.

The impact on pharmacies is more economic than social because they will be responsible for obtaining the increased copayment from program beneficiaries.

Economic Impact

Program beneficiaries will experience the economic impact of the increased cost of prescriptions. The current copayment is $2.00 per prescription dispensed to a beneficiary; the new amount is $5.00 per prescription. Pharmacy providers will need to obtain the higher copayment from the PAAD beneficiaries for each prescription they dispense through the PAAD program. The overall reimbursement for PAAD prescriptions is not being changed at this time.

Increasing the pharmacy copayment will constitute a total savings to the Division of $17,570,000, which is made up of a savings of $6,350,000 in the State General Funds and of $11,220,000 in the Casino Revenue Funds.

Elimination of the biennial eligibility notification will constitute an annual savings in postage alone of approximately $30,000.

Regulatory Flexibility Statement

Beneficiaries of the PAAD Program are impacted by the increased copayment, but they are not small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No reporting, recordkeeping or other compliance requirements are imposed on small businesses by the proposed amendments. Therefore, a regulatory flexibility analysis is not required.

In respect to the proposed amendment, the pharmacies which dispense prescriptions through the PAAD Program are considered to be small businesses.

The proposed amendments impose no new recordkeeping requirements on small businesses because the pharmacies are already required to keep records of medications dispensed through the PAAD program. Although the pharmacies which dispense prescriptions through the PAAD Program are considered to be small businesses, the recordkeeping requirements and any costs of complying with those requirements are already imposed by the present rules of the PAAD Program. In order to maintain required records, pharmacies may elect to use professional services or to establish a computerized record system, but they are not required to do so by the PAAD Program. There are no capital costs to the provider for compliance with program recordkeeping requirements. The Division does not anticipate that the proposed amendments will necessitate any compliance costs. Because prescribed medications impact directly on the patient receiving the prescription, small or independent pharmacies cannot be exempted from any facet of the recordkeeping requirements.

Pharmacies will not be affected by the elimination of the eligibility notification because they never received the notification.

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

10:69A-2.1 Definitions

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

. . .

"PAAD Co-pay" means the amount of [$2.00] **$5.00** which must be paid by each PAAD beneficiary to the pharmacy toward the cost for each prescription for a legend drug and/or insulin, insulin syringes, and insulin needles and certain diabetic testing materials. The co-pay is not reimbursable by the PAAD Program. The [$2.00] **$5.00** co-payment shall be paid in full by each eligible person to the pharmacist at the time of each purchase of prescription drugs, and shall not be waived, discounted or [related] **rebated** in whole or in part.

. . .

10:69A-4.1 Statutory limitations

By statute, the Pharmaceutical Assistance to the Aged and Disabled Program is limited to payment or reimbursement to pharmacies for the reasonable cost of prescription drugs, insulin, insulin syringes, insulin needles, and certain diabetic testing materials for eligible persons which exceeds a [$2.00] **$5.00** co-payment per prescription, which is to be paid by each PAAD beneficiary.

10:69A-4.2 Principles of reimbursement to participating pharmacies

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

(c) Reimbursement on behalf of PAAD beneficiaries will be made directly to the participating pharmacies and will be for the reasonable cost of prescription drugs of beneficiaries as determined by the Commissioner, Department of Human Services, which exceeds the [$2.00] **$5.00** co-payment per prescription.

10:69A-4.3 Interchangeable drug products

(a) Whenever any interchangeable drug product contained in the latest list approved and published by the Drug Utilization Review Council is available for the prescription written, the PAAD program

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shall reimburse only for the reasonable cost of the interchangeable product, less the [$2.00] **$5.00** co-pay, unless the prescriber specifies that substitution is not permitted.

(b) If the prescriber does not specify to the contrary, the PAAD beneficiary has two options:

1. To purchase an interchangeable drug product which is equal to or less than the maximum allowable cost, at the [$2.00] **$5.00** co-payment; or

2. To purchase the prescribed drug product which is higher in cost than the maximum [allowance] **allowable** cost and pay the difference between the two, in addition to the [$2.00] **$5.00** co-payment.

(c) If the prescriber specifies on the prescription that substitution is not permitted, the PAAD program will reimburse for the reasonable cost of the prescribed product, less the [$2.00] **$5.00** co-pay. In this instance, the beneficiary may purchase the prescribed product at the [$2.00] **$5.00** co-payment.

10:69A-4.4 Beneficiary co-payment

(a) No direct payment to beneficiaries will be made under the PAAD program except as noted in (b) below. The beneficiary must pay the pharmacy a non-refundable [$2.00] **$5.00** co-payment per prescription or per purchase of insulin, insulin syringes, insulin needles or diabetic testing materials.

(b) (No change.)

10:69A-5.3 Eligibility effective date

(a) (No change.)

(b) [The Division shall conduct periodic renewals of PAAD beneficiaries to determine continued eligibility.] **The Division shall conduct periodic redeterminations of the eligibility of PAAD beneficiaries.** Generally, renewals **of eligibility** shall be conducted every two years. Renewals will be conducted annually in those instances when the PAAD [beneficiaries'] **beneficiary's** income approaches the eligibility limits for a single person or married couple as defined in N.J.A.C. 10:69A-6.2. [Approximately four months prior to his or her eligibility expiration date, PAAD will advise the beneficiary if he or she is eligible for biennial eligibility, or if he or she will be required to complete a renewal form].

1.-3. (No change.)

10:69A-5.4 Exceptions from normal standards

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

(c) In the event that mailing of the eligibility card is delayed, the PAAD Bureau will reimburse the PAAD beneficiary directly for the cost (minus a [$2.00] **$5.00** co-payment per prescription) of all prescription drugs purchased by the person on or after the 30th day after his/her properly completed application was received by the PAAD Bureau, subject to the following conditions:

1.-3. (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Requests for Fair Hearings; Direct Reimbursement for Prescriptions; Recovery of Incorrectly Paid Benefits

Proposed Amendments: N.J.A.C. 10:69A-5.4, 5.6 and 7.2

Proposed New Rules: N.J.A.C. 10:69-5.8, 10:69A-6.12 and 10:69B-4.13

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

Authority: N.J.S.A. 30:4D-20, 22, 24, 36 through 42; N.J.S.A. 48:2-29.15, 16, 17; N.J.S.A. 48:2-29.31, 32.

Agency Control Number: 91-P-36.

Proposal Number: PRN 1992-515.

Submit comments by January 6, 1993 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

Amendments and new rules are proposed in the following three chapters for State-funded programs: Hearing Aid Assistance for the Aged and Disabled (HAAAD), N.J.A.C. 10:69; Pharmaceutical Assistance to the Aged and Disabled (PAAD), N.J.A.C. 10:69A; and the Lifeline Credit Program/Tenants' Lifeline Assistance Program (Lifeline), N.J.A.C. 10:69B. All three programs are administered by the Division of Medical Assistance and Health Services (the Division).

All three chapters are being amended in order to set forth the right to request a fair hearing for any applicant who has been notified that he or she is ineligible for HAAAD, PAAD and/or Lifeline. The Division is now codifying an existing administrative practice. In each of the respective chapters, the denied applicant is provided with an address for submitting a written request for a fair hearing within 20 calendar days from the mailing date of the notice of ineligibility. The document must include a clear statement of the basis for the request for the fair hearing. The new rules also define the role of the Office of Administrative Law (OAL) in scheduling the hearing and places the burden of proof with the petitioner. The definition of the process to request the fair hearing applies to all three State-funded programs.

There are proposed amendments with additional provisions which relate only to the PAAD Program.

When mailing of the PAAD eligibility card is delayed, the PAAD Bureau reimburses the beneficiary directly for the cost of prescriptions purchased during the period of pending eligibility, whether for a new applicant or for a person whose eligibility is being renewed. At N.J.A.C. 10:69A-5.4, the proposed amendment modifies provisions of the PAAD manual in specifying that the prescription claim form be completed by a participating New Jersey pharmacy, or a licensed mail order pharmacy service program where the prescription is delivered to a New Jersey address. The PAAD Program continues its policy of excluding direct reimbursement for prescriptions purchased out-of-State: the PAAD Program will not reimburse beneficiaries for prescriptions filled in out-of-State pharmacies. Prescriptions purchased through mail order pharmacy services and delivered to out-of-State addresses are also excluded from reimbursement by the PAAD Program.

The intent of the proposed amendment is to reimburse the patients for expenditures they have made for prescription drugs while their PAAD eligibility was pending. Reimbursement will be made only in those situations where the card is late, whether for a new applicant or for renewed coverage. The experience of the PAAD Program has been that direct reimbursement to beneficiaries occurs in two percent of the prescriptions dispensed through the PAAD Program. This provision pertains to the New Jersey Pharmaceutical Assistance to the Aged and Disabled, and has no bearing on the Title XIX Federally funded programs.

When a beneficiary's income has exceeded the eligibility limit in a prior year, and when a beneficiary has had benefits incorrectly paid on his or her behalf, he or she is responsible to repay the State for the incorrectly paid benefits. If the beneficiary cannot repay the bill in full, a monthly repayment schedule will be established by the Program, but future benefits may be suspended if the beneficiary fails to fulfill the repayment agreement.

The PAAD Bureau also notifies the New Jersey Division of Taxation of the beneficiary's failure to repay. The Division of Taxation may withhold any rebates or refunds which may be due the beneficiary. The type of rebates/refunds which might be affected are the beneficiary's Homestead Rebate check or New Jersey State Income Tax refund.

The word "on" is being deleted from N.J.A.C. 10:69-5.4(c)3 for clarification. The Division wants the rule to clearly indicate that there will be no direct reimbursement for drugs purchased after the date the beneficiary receives his or her eligibility identification card.

Social Impact

The proposed new rules codify the fact that applicants for all three programs (PAAD, HAAAD and Lifeline) have the right to due process. The Office of Administrative Law will conduct the hearing.

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The proposed amendments will impact on beneficiaries of the PAAD Program, in that they will not be reimbursed for prescriptions dispensed by pharmacies outside New Jersey except for licensed mail order pharmacy service programs where the prescription is delivered to a New Jersey address.

There is no social impact on out-of-State pharmacies because they have never participated in the New Jersey PAAD Program and the Division has not reimbursed a pharmacy outside of New Jersey for a PAAD prescription.

The proposed amendments will affect PAAD beneficiaries because a beneficiary who has received PAAD benefits during a period when he or she was ineligible for the program will be required to repay the PAAD Program.

The proposed amendments and new rules also impact upon the Office of Administrative Law (OAL) because if a PAAD, HAAAD, or a Lifeline beneficiary files a request for hearing with the Division, a determination is made (by the Division) if the case is contested pursuant to rules promulgated by the Office of Administrative Law (OAL), N.J.A.C. 1:1-2.1, Definitions. If a determination is made that the case is contested, it is forwarded to OAL who then proceeds to conduct an administrative hearing.

Economic Impact

The proposed amendments and new rules will have no economic impact on out-of-State pharmacies because there have been no instances when such pharmacies were paid for PAAD prescriptions. Although there might be an economic impact on beneficiaries who receive erroneous benefits, the recovery procedure described in the amendments in connection with incorrectly paid benefits is not a new provision, so the impact is not due to the proposed amendments and new rules.

The New Jersey PAAD Program will experience no savings, because the Program does not presently pay for prescriptions dispensed in out-of-State pharmacies.

Regulatory Flexibility Statement

The proposed amendments and new rules comprise three provisions: hearings for persons denied eligibility for the three State-funded programs, reimbursement to PAAD beneficiaries for prescriptions dispensed while their eligibility was pending, and recovery procedures when PAAD benefits have been incorrectly paid. The persons affected are applicants and/or beneficiaries of the three programs. A regulatory flexibility analysis is not required because the persons affected by these amendments are not small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. With respect to out-of-State pharmacies, they are not participating providers in the New Jersey PAAD program, and therefore cannot be reimbursed or regulated by the New Jersey PAAD program.

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

10:69-5.8 Appeal process

(a) When the Bureau of PAAD determines that an applicant is ineligible for Hearing Aid Assistance for the Aged and Disabled benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Bureau of Pharmaceutical Assistance to the Aged and Disabled, Division of Medical Assistance and Health Services, New Jersey Department of Human Services, CN 715, Trenton, New Jersey 08625-0715, within 20 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) The Bureau of PAAD will forward the hearing request to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location.

(c) The petitioner will have the burden of demonstrating that the Bureau of PAAD's determination deviates from the requirements and standards of the regulations and statute.

10:69A-5.4 Exception from normal standards

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

(c) In the event that mailing of the eligibility card is delayed, the PAAD Bureau will reimburse the PAAD beneficiary directly for the cost (minus a $2.00 co-payment per prescription) of all prescription drugs purchased by the person on or after the 30th day after his/her properly completed application was received by the PAAD Bureau, subject to the following conditions:

1. (No change.)

2. The PAAD beneficiary must submit a [completed] prescription claim form **and proof of purchase** for each eligible prescription to the PAAD Bureau. **The claim form must be completed by a participating New Jersey pharmacy, or by a licensed mail order pharmacy service program where the prescription is delivered to a New Jersey address.**

3. No direct reimbursement will be made for any drugs purchased [on or] after the date when the beneficiary receives his eligibility identification **card.**

10:69A-5.6 Responsibilities in the application **renewal** process

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

(d) The beneficiary has the responsibility to:

1.-2. (No change.)

3. Repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his[/] **or** her behalf. **Failure to fully repay the State for incorrectly paid benefits could cause the suspension of his or her PAAD benefits in the future, as well as possible withholding of all or some of his or her rebates or refunds which may be due him or her from the Division of Taxation.**

10:69A-6.12 Appeal process

(a) When the Bureau of PAAD determines that an applicant is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Bureau of Pharmaceutical Assistance to the Aged and Disabled, Division of Medical Assistance and Health Services, New Jersey Department of Human Services, CN 715, Trenton, New Jersey 08625-0715, within 20 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) The Bureau of PAAD will forward the hearing request to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location.

(c) The petitioner will have the burden of demonstrating that the Bureau of PAAD's determination deviates from the requirements and standards of the regulations and statute.

10:69A-7.2 Recoveries for benefits incorrectly paid

(a) As provided in N.J.S.A. 30:4D-1 et seq., the Division may take all necessary action to recover the cost of benefits incorrectly paid on behalf of a beneficiary. **If it is determined that an applicant's income exceeded the eligibility limit in a prior year, a new PAAD card will not be issued until the beneficiary and/or his or her spouse agrees to repay the benefits received incorrectly. If the beneficiary cannot repay the bill in full, a monthly repayment schedule will be established by the Program, but if the beneficiary fails to fulfill the requirements of the repayment agreement, future PAAD benefits may be suspended until the bill is paid in full.**

1. (No change.)

(b) (No change.)

10:69B-4.13 Appeal process

(a) When the Bureau of Lifeline Programs determines that an applicant is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Bureau of Lifeline Programs, Division of Medical Assistance and Health Services, New Jersey Department of Human Services, CN 714, Trenton, New Jersey 08625-0714, within 20 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) The Bureau of Lifeline Programs will forward the hearing request to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location.

(c) The petitioner will have the burden of demonstrating that the Bureau of Lifeline Programs' determination deviates from the requirements and standards of the regulations and statute.

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INSURANCE

(a)

SURPLUS LINES EXAMINING OFFICE

Exportable List

Proposed New Rules: N.J.A.C. 11:1-34

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.40 et seq., 17B:17-1 et seq., and 17:29AA-1 et seq.

Proposal Number: PRN 1992-511.

A **public hearing** on this proposal will be held on Tuesday, December 22, 1992 at 10 A.M. at:

Mary Roebling Building
2nd Floor Room No. 218
20 West State Street
Trenton, New Jersey

Submit written comments by January 6, 1993 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

N.J.S.A. 17:22-6.43 provides that the Commissioner of Insurance ("Commissioner") may declare generally eligible for export any class or classes of insurance coverage or risk for which, after a hearing, he or she determines that there exists no reasonable or adequate market among authorized carriers in New Jersey. This list of risks, lines or classes of insurance is known as the exportable list.

Among other things, inclusion on the exportable list allows surplus lines insurers writing commercial coverages to be exempt from the rate and form filing requirements of N.J.S.A. 17:29AA-1 et seq., and relieves insurance producers of the burden of filing affidavits of declinations which would otherwise be required pursuant to N.J.S.A. 17:22-6.43(a) and (b), in cases where it can be acknowledged that an adequate and reasonable market does not exist. The list also enables admitted insurers to write certain coverages without regard to form and rate filings which may otherwise be applicable to such insurers.

The Department of Insurance ("Department") proposes these new rules in order to clarify, publicize and formalize the hearing procedures concerning the exportable list, and to provide for the promulgation of the exportable list, after a hearing, as a rule pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The Department of Insurance has scheduled a hearing on the exportable list for December 22, 1992. The hearing shall address the merits of maintaining all items currently on the list.

Pursuant to N.J.S.A. 17:22-6.40, life insurance companies which sell life insurance, health and accident insurance and annuities are not able to become eligible surplus lines insurers. To the extent that eligible surplus lines insurers may sell health and accident insurance ("health insurance" as defined at N.J.S.A. 17B:17-4) or annuities (N.J.S.A. 17B:17-5), these proposed rules specifically prohibit the export of these coverages, since they are procurable from authorized or admitted insurers in this State.

A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 11:1-34.1 provides the purpose and scope of these proposed new rules.

N.J.A.C. 11:1-34.2 provides definition for the terms used in this subchapter.

N.J.A.C. 11:1-34.3 establishes the procedures for an exportable list hearing.

N.J.A.C. 11:1-34.4 sets forth the contents of the exportable list hearing record.

N.J.A.C. 11:1-34.5 provides for the promulgation and modification of the exportable list.

N.J.A.C. 11:1-34.6 sets forth the class or classes of coverage or risks proposed by these rules to constitute the exportable list.

Appendix A provides a listing of unauthorized insurers which qualify as eligible surplus lines insurers in New Jersey. This list has been a part of Title 11 as an addendum for a number of years.

Social Impact

The proposed new rules will ensure that all interested persons are apprised of the exportable list hearing and related procedures and are able to participate fully in the creation of an exportable list. These interested persons are likely to include licensed surplus lines producers, eligible surplus lines insurers, insurance producers and authorized property and casualty insurers.

Economic Impact

The proposed new rules codify existing Department procedure and thus will not require additional staff, nor require that present staff assume new duties.

The proposed new rules will have no economic impact on insurers, insurance producers or the general public since they merely codify existing hearing procedures pursuant to N.J.S.A. 17:22-6.43 and do not create or establish substantive rights or obligations.

Regulatory Flexibility Analysis

These proposed new rules do not impose reporting or recordkeeping requirements. The only compliance requirement imposed outside of the Department is that those desiring to testify at the public hearing on the exportable list must so advise the Department beforehand and provide a brief summary of the subject matter of their testimony. Beyond the minor administrative cost of providing such notice and summary, no other costs are imposed nor professional services required. While some of those desiring to testify may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., no differentiation in this requirement is provided due to the need for effective administration of the hearings.

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

SUBCHAPTER 34. SURPLUS LINES: EXPORTABLE LIST

11:1-34.1 Purpose and scope

(a) The purpose of this subchapter is to identify the procedures concerning the creation and modification of an exportable list of certain classes of insurance coverages or risks and to promulgate the list as a rule, in implementation of N.J.S.A. 17:22-6.43.

(b) This subchapter shall apply to all surplus lines insurers and producers. Pursuant to N.J.S.A. 17:22-6.40, this subchapter shall not apply to life insurance companies, which may not become eligible surplus lines insurers.

11:1-34.2 Definitions

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

"Annuity" means a contract not coming within the definition of life insurance as set forth in N.J.S.A. 17B:17-3, or health insurance as set forth in N.J.S.A. 17B:17-4, under which an insurer obligates itself to make periodic payments for a specified period of time, such as for a number of years, or until the happening of an event, or for life, or for a period of time determined by any combination thereof. Such a contract which includes extra benefits of the kinds set forth in N.J.S.A. 17B:17-3 or 17B:17-4 shall nevertheless be deemed to be an annuity if such extra benefits constitute a subsidiary or incidental part of the entire contract.

"Authorized insurer" means a domestic or foreign insurer duly authorized by a Certificate of Authority issued by the Commission to transact the business of insurance in this State.

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

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

"Exportable list" means a list of any class or classes of insurance coverages or risks declared and promulgated by the Commissioner for which there is no reasonable or adequate market among authorized insurers in this State.

"Health insurance" means a contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value

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with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being, or because of any expense relating thereto, or because of any expense incurred in prevention of sickness, and includes every risk pertaining to any of the enumerated risks. Health insurance does not include workers' compensation coverages.

"Life insurance" means a policy or contract whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the cessation of human life. Life insurance includes also the granting of endowment benefits and optional modes of settlement of proceeds of life insurance as well as provisions for additional benefits in event of death by accident or accidental means or in event of dismemberment or loss of sight, or safeguarding such insurance against lapse or giving a special surrender value or special benefit or an annuity in the event that the insured shall become totally and permanently disabled, whether such provisions are incorporated in a policy or contract of life insurance or in a policy or contract supplemental thereto. Life insurance does not include workers' compensation coverages.

"State" means the State of New Jersey.

"Surplus lines insurer" means an eligible, unauthorized insurer with which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq. (see Appendix A to this subchapter, incorporated herein by reference).

11:1-34.3 Exportable list hearing

(a) In the month of November or December of each year, the Department shall hold a hearing, pursuant to N.J.S.A. 17:22-6.43, for the purpose of determining the extent of the existence of a reasonable or adequate market among authorized insurers for certain classes of insurance coverages and risks.

1. This hearing shall be preceded by a notice of hearing published in the New Jersey Register at least 15 days prior to the date of the hearing, which notice shall include information concerning the date by which, and the person to whom, written public comment may be made. Notice shall also be provided to persons who have previously requested receipt of such notice.

2. The notice published in the New Jersey Register and as otherwise provided pursuant to (a)1 above shall also request that persons who wish to testify at the hearing provide the Department with timely notice of this intention, including a brief summary of the subject matter of their testimony.

3. The notice shall indicate whether the hearing shall address the merits of maintaining all items currently on the list, or whether the hearing will consider only specific additions, deletions or clarifications regarding the list.

(b) The hearing shall be conducted by a hearing officer designated by the Commissioner. The length of testimony permitted at the hearing and the receipt of questions from the floor shall be within the discretion of the hearing officer.

(c) Interested parties may present evidence to the Commissioner that the conditions of non-procurability have changed. Evidence of non-procurability should demonstrate that there exists no reasonable or adequate market among authorized insurers.

(d) A transcript of the hearing shall be made and a copy thereof shall be made available to any interested person upon request and payment of an appropriate fee.

11:1-34.4 Exportable list hearing record

(a) The record of the hearing shall include the following:

1. Timely-received written public comments;

2. The transcript of the hearing; and

3. Any other information which the hearing officer may deem relevant.

11:1-34.5 Promulgation and modification of exportable list

(a) Upon review of the exportable list hearing record, the Commissioner shall, by rule, declare eligible for export generally, and notwithstanding the provisions of N.J.S.A. 17:22-6.43(a), (b) and (c), any class or classes of insurance coverage or risk for which he or she finds there exists no reasonable or adequate market among authorized insurers; provided, however, that if adequate documentary evidence has been presented which satifies the Commissioner that a reasonable or adequate market does exist among authorized insurers, he or she may, by rule, strike any class or classes of insurance coverage or risks from the exportable list.

(b) The Commissioner may, by rule amending this subchapter, specifically declare ineligible for export any class or classes of insurance coverage or risk which he or she determines to be generally procurable through diligent effort among authorized insurers pursuant to N.J.S.A. 17:22-6.43(a).

(c) When, during the term of a duly promulgated exportable list, the Commissioner determines that changed conditions require a modification of the exportable list, he or she may, after a hearing, by rule, amend the list.

1. Notice of the Commissioner's action shall be provided to all surplus lines agents, eligible surplus lines insurers, authorized insurers and others who have previously requested receipt of such information.

11:1-34.6 Exportable list

(a) The exportable list is as follows:

1. Amusement Devices, Parks and Carnivals;

2. Animal Mortality;

3. Armored Cars;

4. Auto Racing and Race Tracks;

5. Day Care Center Liability;

6. Environmental Impairment Liability Insurance;

7. Excess and Buffer Liability;

8. Excess Loss and Excess Aggregate for Self-Insurers; Public Liability and Workers' Compensation;

9. Golf Driving Range;

10. First Loss and Excess of First Loss Insurance;

11. House Movers and Building Demolition;

12. Kidnapping, Ransom and Extortion Insurance;

13. Manufacturers and Contractors Liability for Floor Waxers, Building Maintenance People, Window Washers and Exterminators;

14. "Large Risks" which means any insured:

i. Which procures insurance for any property casualty risk by use of the services of either an employee who is a full-time insurance manager or buyer, or a regularly and continuously retained qualified insurance consultant; and

ii. Whose aggregate commercial premiums for insurance (excluding, Life, Health and Accident, Annuities and Workers' Compensation insurance) total at least $500,000;

15. The following kinds of motor vehicle coverage are eligible for export:

i. Physical Damage Coverage for Limousines; and

ii. Physical Damage Coverage for Trucks, including trailers and trailer interchange (over 10,000 pounds) for Non-Fleet (one to five) risks, and commercial fleet (over five) risks irrespective of gross vehicle weight;

16. Mortgage Impairment;

17. Pony Rides/Riding Academies;

18. Physical Damage Coverage for Private Passenger and Commercial Vehicles with a cost new of $40,000 or above;

19. Product Liability Products or Recall Coverage;

20. The following kinds of Professional Liability insurance are eligible for export:

i. Errors and Omissions; and

ii. Professional Liability except:

(1) Legal malpractice liability;

(2) Medical malpractice liability

(A) Hospitals Professional Liability

(B) Physicians and Surgeons Professional Liability

(C) Dentist Professional Liability

(D) Employees Professional Liability

(E) Nurses Professional Liability

(F) Optometrists Professional Liability

(G) Physiotherapists Professional Liability

(H) Chiropodists Professional Liability

21. Short Term Events;

22. Skating Rinks (Roller and Ice) and Skate Board Parks;

23. Swim Clubs/Swim Pools;

24. Vacant and Unoccupied Building;

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25. Warehouseman's Legal Liability;

26. Automobile Personal Injury Protection (PIP) coverage in excess of $250,000.

(b) The following kinds of insurance, if sold by eligible surplus lines insurers, are specifically not eligible for export, since the Department has determined that they are procurable from authorized or admitted insurers after a diligent effort:

1. Health insurance, including specific excess or aggregate excess purchased by self-funded health benefit plans, as defined by N.J.S.A. 17B:17-4; and

2. Annuities including Funding Agreements or Guaranteed Investment Contracts (GIC's) as defined by N.J.S.A. 17B:17-5.

(c) Life insurance is specifically not eligible for export pursuant to N.J.S.A. 17:22-6.40 et seq.

Agency Note: The following List of Unauthorized Insurers which Qualify as Eligible Surplus Lines Insurers replaces that List which currently appears as an addendum to Title 11, at pages B-1 through B-3 of the Code.

APPENDIX A

LIST OF UNAUTHORIZED INSURERS WHICH QUALIFY AS ELIGIBLE SURPLUS LINES INSURERS

The following is a list of unauthorized insurers which qualify as eligible surplus lines insurers in New Jersey.

Companies of Other States	Domicile
Agricultural Excess and Surplus Insurance Co.	Wilmington, DE
Allianz Underwriters Insurance Co.	Los Angeles, CA
American Empire Surplus Lines Insurance Co.	Wilmington, DE
Appalachian Insurance Co.	Johnston, RI
Associated International Insurance Co.	Los Angeles, CA
California Union Insurance Co.	Los Angeles, CA
Columbia Casualty Insurance Co.	Chicago, IL
Evanston Insurance Co.	Evanston, IL
First Specialty Insurance Co.	Jefferson City, MO
First State Insurance Co.	Wilmington, DE
General Agents Insurance Co.	Oklahoma City, OK
General Star Indemnity Co.	Stamford, CT
Gibraltar Casualty Co.	Dover, DE
Great Central Insurance Co.	Peoria, IL
The Home Insurance Co. of Illinois	Chicago, IL
International Surplus Lines Insurance Co.	Chicago, IL
Interstate Fire and Casualty Co.	Chicago, IL
Investors Special Risk Insurance Co.	Phoenix, AZ
Lexington Insurance Co.	Wilmington, DE
Lincoln Insurance Co.	Dover, DE
Monticello Insurance Co.	Wilmington, DE
Mt. Hawley Insurance Co.	Peoria, IL
Mt. Vernon Fire Insurance Co.	King of Prussia, PA
National Indemnity Co.	Omaha, NE
Nautilus Insurance Co.	Scottsdale, AZ
New York Marine and General Insurance Co.	New York, NY
Pacific Insurance Co.	Los Angeles, CA
Penn-America Insurance Co.	Hatboro, PA
Preferred Physicians Insurance Co.	Omaha, NE
Royal Surplus Lines Insurance Co.	Glastonbury, CT
Savers Property-Casualty Insurance Co.	Overland Park, KS
Scottsdale Insurance Co.	Wilmington, DE
St. Paul Surplus Lines Insurance Co.	St. Paul, MN
T.H.E. Insurance Co.	Metairie, LA
Tudor Insurance Co.	Keene, NH
United Capital Insurance Co.	Stevens Point, WI
United National Insurance Co.	Phila., PA
Western Alliance Insurance Co.	Austin, TX
Western World Insurance Co.	Keene, NH
Companies of other countries	
Aegon Insurance Co. (U.K.) Ltd.	London, England
Anglo-American Insurance Co., Ltd.	London, England
Associated Electric and Gas Insurance Services, Ltd.	Hamilton, Bermuda
English & American Insurance Co., Ltd.	London, England
Lloyds of London	London, England
Riunione Adriatica Di Sicurta, s.p.a.	Trieste, Italy
Sphere Drake Insurance Co., p.l.c.	London, England
Terra Nova Insurance Co., Ltd.	London, England

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

THE COMMISSIONER

Waiver of Executive Order No. 66(1978)

Certification of Women-Owned and Minority-Owned Businesses

N.J.A.C. 12A:11

Take notice that the rules concerning the certification of women-owned and minority-owned businesses, N.J.A.C. 12A:11, expired September 21, 1992, pursuant to Executive Order No. 66(1978). The Department of Commerce and Economic Development intends to readopt this chapter with technical amendments, but such could not be accomplished by September 21, 1992.

The standards and requirements that are set forth in these rules help to establish a unified procedure for the certification of women-owned and minority-owned businesses. These rules apply to every women-owned and minority-owned firm that wishes to do business with any department or agency of the State of New Jersey which has specific programs that require the certifcation of authenticity of ownership for women-owned and minority-owned businesses and for firms wishing to do business with casino licensees. Under these rules, these businesses will be certified by one agency, thereby eliminating the duplication of efforts and associated costs of being certified by numerous State agencies.

Due to the important purposes served by the standards defined in this chapter, and it being imperative that no lapse in the rules occur, Governor Florio, on November 4, 1992, directed that the five-year sunset provision of Executive Order No. 66(1978) is waived for N.J.A.C. 12A:11, and that the expiration date for this chapter is extended from September 21, 1992, to and including April 30, 1993.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Notice of Extension of Comment Period

Standards for Motor Vehicles with Modified Chassis Height

Proposed Amendments: N.J.A.C. 13:20-37

Take notice that the Division of Motor Vehicles is extending the public comment period until December 18, 1992 for the above-referenced proposal published in the October 19, 1992 New Jersey Register at 24 N.J.R. 3662(a).

Submit written comments by December 18, 1992 to:

Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
225 East State Street
CN 162
Trenton, New Jersey 08666

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(a)

BOARD OF MEDICAL EXAMINERS

Physician Assistant License Fees

Proposed Amendment: N.J.A.C. 13:35-6.13

Authorized By: Board of Medical Examiners, Charles Janousek, Executive Director.

Authority: P.L. 1992, c.102, section 14 (N.J.S.A. 45:9-27.28).

Proposal Number: PRN 1992-512.

Submit written comments by January 6, 1993 to:
Marianne Kehoe, Executive Director
Physician Assistant Advisory Committee
Post Office Box 45031
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Physician Assistant Licensing Act, P.L. 1991, c.378, as amended by P.L. 1992, c.102 (N.J.S.A. 45:9-27.10 et seq., the "Act"), established the Physician Assistant Advisory Committee within the State Board of Medical Examiners (the "Board"). The Act requires the Board to prescribe charges for licenses, license renewals and other services provided by the Board or the Committee pursuant to the Act (see N.J.S.A. 45:9-27.28). Accordingly, the Board is amending its fee schedule, N.J.A.C. 13:35-6.13, to establish physician assistant licensing fees. Detailed regulations outlining physician assistant qualification, education and examination requirements are currently being developed and will be proposed in a forthcoming issue of the New Jersey Register.

The Act requires the Board to establish fees to the extent necessary to defray all proper Committee expenses and requires the fees to be fixed at a level estimated not to exceed the amount required to fund Committee operations (see N.J.S.A. 45:9-27.28(b)). The proposed fee schedule implements these statutory requirements. In the unlikely event excess funds are raised during any biennial licensing period, they will be carried over to the next biennial period for the benefit of the Committee.

Social Impact

The proposed fee schedule will provide the Board and the Committee with the minimum financial resources necessary to discharge their responsibilities under the Act. These responsibilities include establishing practice standards, evaluating candidates for licensure, establishing standards for and approving educational and continuing education programs and instituting disciplinary actions.

The establishment of physician assistant professional practice standards will serve to protect the public health and welfare. In addition, physician assistant licensure will benefit the public by providing increased access to needed services in medically underserved areas.

Economic Impact

A direct economic impact is imposed on physician assistants, who will be required to pay a $125.00 application fee and the initial and renewal licensing fee of $190.00. An examination fee is not included in the fee schedule, as applicants will be required to pay this fee directly to the testing service. Licensees who do not pay the biennial renewal fee by the date specified in the renewal notice will be assessed a $100.00 late fee. Other fees have been established to cover license reinstatement and Board administrative expenses for issuing duplicate licenses and wall certificates. While the Board and the Committee are aware of the financial hardships faced by many individuals during the current economic recession, as stated above, Committee operations are not funded by the State but rather its expenses must be met through licensing and other fees. The Board has endeavored to keep the proposed fees at the minimum level necessary to cover estimated expenses. The overall economic impact of the licensing of physician assistants is expected to be salutary in that it should assist in containing health care costs, a major concern in New Jersey today. Patients of physicians employing physician assistants may benefit economically to the extent that the physician's fee for his or her own time may be reduced, and physicians who utilize physician assistants may realize the economic benefits associated with having more time in which to render other professional services.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed amendment will apply. If, for the purposes of the Regulatory Flexibility Act, individual practicing physician assistants are deemed to be "small businesses," the following analysis applies.

The Board estimates that initially approximately 300 individuals will apply for licensure as physician assistants. The proposed amendment does not involve any reporting or recordkeeping, nor does it necessitate the retention of professional services for compliance. The only compliance requirement is completing the application form and paying the licensing fee in a timely manner. Since the fees have been set at the lowest amount that will cover Committee operating costs, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1.-9. (No change.)

10. Physician Assistant (license)

i. Application fee	**$125.00**
ii. Initial license fee	
(1) If paid during the first year of a biennial renewal period	**190.00**
(2) If paid during the second year of a biennial renewal period	**95.00**
iii. License renewal fee, biennial	**190.00**
iv. Late renewal fee	**100.00**
v. Reinstatement fee	**175.00**
vi. Duplicate license fee	**40.00**
vii. Duplicate wall certificate	**50.00**

[10.]**11.** (No change in text.)

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Route N.J. 138 in Monmouth County (Redesignation from Route N.J. 38)

Proposed New Rule: N.J.A.C. 16:28A-1.112

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:6-1, 27:7-1 et seq., 39:4-138.1 and 39:4-198.

Proposal Number: PRN 1992-501.

Submit comments by January 6, 1993 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule will establish a "restricted parking and stopping" zone along Route N.J. 138 in Wall Township, Monmouth County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

On January 8, 1976, the Department proposed N.J.A.C. 16:28A-1.27 effecting "no parking" zones along Route 38 in Wall Township, Monmouth County. Said notice appeared at 8 N.J.R. 49(a) and was adopted at 8 N.J.R. 207(b) effective February 20, 1976. Appropriate signs were posted advising the motoring public of the parking restriction. The section of highway which was designated as Route 38 in Wall Township,

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Monmouth County, was redesignated Route 138 on July 29, 1988, as evidenced in the New Jersey State Highway Straight Line Diagrams 1990. The parking restrictions remain in effect.

In view of the redesignation, the Department therefore proposes a new rule at N.J.A.C. 16:28A-1.112. Further action was taken to delete the parking restriction pertaining to Wall Township along Route 38, at 24 N.J.R. 3492(b) (October 5, 1992).

Social Impact

The proposed new rule will establish a "restricted parking and stopping" zone along Route 138 in Wall Township, Monmouth County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The rule was originally proposed as N.J.A.C. 16:28A-1.27 at 8 N.J.R. 49(a), January 8, 1976 as Route 38 and was redesignated Route 138 on July 29, 1988. Appropriate signs were erected to advise the motoring public.

Economic Impact

There will be no economic impact realized by the general public, since the rule being proposed is a continuation of the traffic rule originally proposed at N.J.A.C. 16:28A-1.27 (Route 38, now redesignated Route 138). However, motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

Full text of the proposed new rule follows:

16:28A-1.112 Route 138

(a) The certain parts of State highway Route 138 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing along both sides for the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedures Act and N.J.A.C. 1:30, in the following municipalities in Monmouth County:

i. In Wall Township.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax

Home Improvement Exemption: One and Two Unit Residences and Multiple Dwellings

Proposed Repeals: N.J.A.C. 18:12-6 and 6A

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

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1992-499.

Submit comments by January 6, 1993 to:
Nicholas Catalano
Chief, Tax Services Branch
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646

The agency proposal follows:

Summary

P.L. 1991, c.441, signed by Governor Jim Florio on January 18, 1992, repealed P.L. 1975, c.104 (N.J.S.A. 54:4-3.72 et seq.); P.L. 1977, c.12 (N.J.S.A. 54:4-3.95 et seq.); P.L. 1977, c.284 (N.J.S.A. 54:4-3.79a and b); and P.L. 1979, c.233 (N.J.S.A. 54:4-3.121 et seq.). N.J.A.C. 18:12-6 and 6A were adopted under these statutes. P.L. 1991, c.441 established standards for determining whether areas are in need of rehabilitation, and whether properties in those areas are eligible for tax exemptions and abatements, that do not require reference to any standards established by the Division of Taxation, although areas designated in the past using such standards continue to be so designated. Since the rules under N.J.A.C. 18:12-6 and 6A are no longer necessary, their repeal is proposed.

Social Impact

The proposed repeals should have a positive social impact by eliminating conflicts between the rules and applicable statutes. The repeals should help to prevent confusion with regard to applicable rules on tax exemptions and abatements for rehabilitated buildings.

Economic Impact

The proposed repeals should have negligible economic impact, since the rules to be repealed have been superseded by new legislation. Costs of administration may be reduced by reducing confusion over which standards and rules are applicable for tax exemptions and abatements for rehabilitated properties. The new law was intended to permit municipalities flexibility to address problems of deterioration, while preserving the salient features of the existing tax exemption and abatement programs.

Regulatory Flexibility Analysis

The proposed repeals do not impose reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. Existing rules for which the authorizing legislation has been repealed are, in turn, repealed.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 18:12-6 and 6A.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Applications

License and Registration Requirements

Employee Licenses

Employee License Credentials; Display; Temporary Credentials; Obligation to Obtain Renewed Credentials

Proposed Amendment: N.J.A.C. 19:41-1.3

Proposed New Rule: N.J.A.C. 19:41-1.4

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(c) and (j).

Proposal Number: PRN 1992-508.

Submit comments by January 6, 1993 to:
Seth Briliant, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

N.J.A.C. 19:41-1.3(d) and (e) require casino and casino key employees to wear their license credentials at all times while employed in a casino area. On occasion, employees forget to bring their license credentials to work, and must obtain temporary license credentials from their casino's security department in order to work on the casino floor or in other restricted areas. Such temporary license credentials had to be countersigned by a Commission inspector before the employee could work. However, requiring a Commission inspector to "sign off" on the temporary credential proved to be an awkward and cumbersome procedure for all concerned, and sometimes caused a delay in the use of the temporary credential.

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N.J.A.C. 19:41-1.3(g) currently provides that employees may obtain temporary permission to work in a casino area if their license credentials have been "lost or destroyed." The present regulation does not expressly cover the situation where license credentials have been forgotten, but are not actually lost. This proposal would revise and recodify N.J.A.C. 19:41-1.3 by moving the procedures for temporary license credentials to a separate new section, N.J.A.C. 19:41-1.4, for clarity and ease of reference.

A new subsection N.J.A.C. 19:41-1.4(e), would specifically provide for the "forgotten credentials" situation, and includes a streamlined procedure for issuing temporary license credentials which would eliminate the need for a Commission inspector to be present before a temporary credential is issued. Proposed N.J.A.C. 19:41-1.4(e)5 would permit the casino security department to issue a temporary license credential, on notice to the Commission inspection booth, enabling the credential to be issued promptly; a Commission inspector can review and follow up on the temporary credential if necessary. To prevent possible abuse of this procedure, no more than three temporary license credentials could be issued to an employee in any 12-month period as a substitute for forgotten license credentials. See N.J.A.C. 19:41-1.4(g).

In a related matter, N.J.A.C. 19:41-1.3(d) and (e) now permit the Chairman of the Commission to exempt certain employees from the requirement that license credentials be worn (usually undercover surveillance personnel and certain casino executives, for example). The proposed amendment and new rule would streamline that process by permitting the delegation of that authority to the Director of the License Division, who has historically processed such matters. See N.J.A.C. 19:41-1.4(c).

Social Impact

By permitting temporary license credentials to be issued upon notice to the Commission inspection booth, inspectors are removed from the issuance process, and will be able to perform other essential duties on the casino floor, thus permitting more efficient use of their time. The proposed amendment and new rule should not have any other social impact upon casino licensees, their employees, or the public.

Economic Impact

The proposed amendment and new rule would permit casino and casino key employees who have forgotten their license credentials to enter and work on the casino floor or in other restricted areas with temporary license credentials when they might otherwise not be permitted to do so. This should have a favorable economic impact upon casino licensees and their employees.

The portion of the new rule which permits the Chairman to delegate authority to the Director of the License Division to exempt certain employees from wearing license credentials should result in a more efficient, streamlined procedure, which should in turn produce some monetary savings for the Commission and casino licensees.

Regulatory Flexibility Statement

The proposed amendment and new rule affects casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Casino and casino key employees could also be affected by the amendment and new rule. Like casino licensees, these individuals are not covered by the Regulatory Flexibility Act, so that no regulatory flexibility analysis is required.

However, it should be noted that the amendment and new rule are designed to provide regulatory flexibility, by creating a streamlined procedure for the situation where license credentials are forgotten.

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

19:41-1.3 Employee licenses

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

[(d) Every casino key employee and casino employee, except those approved by the Chairman, shall wear in a conspicuous manner their license credential issued by the Commission at all times while employed in the casino area which includes without limitation, the casino floor, cashier's cage, countrooms, eye-in-the-sky and closed circuit television monitoring.

(e) No casino licensee shall permit any casino key employee or casino employee, except those approved by the Chairman, to work in the casino area without the wearing of their license credential as required herein.

(f) Each casino licensee shall provide each such employee with a holder for the Commission license credential which shall contain the name of the casino hotel complex and shall permit the prominent display of the information contained on the license credential. Thirty days prior to the use of any such holder, a casino licensee shall submit a prototype to the Commission along with a narrative description of the proposed manner in which employees will be required to wear such holder.

(g) In those situations where a license credential is lost or destroyed, a casino key employee or casino employee may be authorized to enter the casino area to perform employment duties so long as:

1. The loss or destruction of the license is promptly reported in writing to the Commission;

2. The employee applies for a new license credential; and

3. Permission is received from a duly authorized Commission representative to do so.

(h) The Commission shall notify an applicant for renewal of an employee license in writing when a renewal application is granted and the applicant shall appear in person at the Commission's Casino Employee License Information Unit in Atlantic City within 30 days of the notice to obtain his or her new license credential. Should the applicant fail to appear as required by this subsection, the Commission shall notify casino licensees that the applicant can no longer be employed in the licensed position after the expiration date of the applicant's current license credential until the applicant appears as required and receives his or her new license credential.]

19:41-1.4 Employee license credentials; display; temporary credentials; obligation to obtain renewed credentials

(a) Each casino key employee and casino employee shall wear in a conspicuous manner his or her employee license credential issued by the Commission at all times while employed in the casino room or a restricted casino area including, without limitation, the casino floor, the cashiers' cage, the count rooms, the catwalk areas and the surveillance room.

(b) No casino licensee shall permit any casino key employee or casino employee to work in the casino room or a restricted casino area unless the employee is wearing his or her license credential as required by this section.

(c) Notwithstanding (a) and (b) above, the Chairman may, upon written request by a casino licensee and a showing of good cause, exempt certain position titles or persons from the requirements of this section. The Chairman may delegate the authority to make such determinations to the Director of the Division of Licensing.

(d) Each casino licensee shall provide each casino key employee and casino employee required to wear a Commission license credential pursuant to this section with a license holder, which shall contain the name of the casino hotel facility and shall permit the prominent display of the information contained on the license credential. Thirty days prior to the use of any such license holder, a casino licensee shall submit a prototype to the Commission along with a narrative description of the proposed manner in which employees will be required to wear such holder.

(e) A temporary license credential may be issued by the casino security department of a casino licensee to a casino key employee or casino employee who does not have the license credential on his or her person, or whose license credential has been lost or destroyed, to enable the employee to enter the casino room or a restricted casino area to perform employment duties, if the casino security department:

1. Verifies that the employee is listed in the casino licensee's current employee status report;

2. Verifies that the employee holds a valid license with appropriate endorsements to perform the job requirements of the position title in which the employee will be working;

3. Confirms the above employment and licensure information with the supervisor of the employee;

4. Verifies that fewer than three temporary license credentials have been issued to the particular employee in the past 12 months; and

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5. Immediately notifies the Commission inspection booth in writing that a temporary license credential has been issued, which notice shall include:

i. The name, license number and position title of the employee to whom the temporary credential was issued;

ii. The date and time that the temporary credential was issued; and

iii. The name and license number of the casino security department employee issuing the temporary credential.

(f) A temporary license credential issued pursuant to (e) above shall:

1. Contain the following information:

i. The name and license number of the employee to whom it was issued;

ii. The position title for which it was issued and the applicable position endorsements, if any;

iii. The date and time it was issued; and

iv. The name and license number of the casino security department employee who issued it;

2. Indicate on its face in a conspicuous manner that the temporary credential is void 24 hours after the time of its issuance; and

3. Be returned to the casino security department by the employee to whom it was issued no later than the end of the work shift of the employee.

(g) No more than three temporary license credentials shall be issued to an employee in a 12-month period.

(h) Any holder of a Commission license credential shall promptly report the loss or destruction of a Commission license credential to the License Division of the Commission, and shall apply for a replacement license credential as soon as possible.

(i) The Commission shall notify an applicant for renewal of an employee license in writing when a renewal application is granted and the applicant shall appear in person at the Commission's Casino Employee License Information Unit in Atlantic City within 30 days of the notice to obtain his or her new license credential. Should the applicant fail to appear as required by this subsection, the Commission shall notify casino licensees that the applicant can no longer be employed in the licensed position after the expiration date of the applicant's current license credential until the applicant appears as required and receives his or her new license credential.

(a)

CASINO CONTROL COMMISSION

Applications
Fees

Proposed Amendments: N.J.A.C. 19:41-9.8, 9.9, 9.9A, 9.10, 9.11, 9.14, 9.15, 9.16 and 9.17

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(e), 70(e), 139 and 141.

Proposal Number: PRN 1992-509.

Submit written comments by January 6, 1993 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendments result from a comprehensive review of the licensing fee structure, initiated by the Commission in February 1992. One aspect of regulatory review focused on fees assessed upon casino employee license applicants and casino service industry ("CSI") license applicants. Despite rising costs and the effects of inflation, employee and CSI licensing fees have remained static for a number of years. CSI license fees have not increased since 1984, and casino employee license fees since 1982. The initial application fee for casino key employee licensure has not changed since a 1984 increase in the hourly fee rate, while key renewal fees were last amended in 1988. The fees for hotel employee registration and labor organization registration have not been amended since their initial adoption, in 1982 and 1978, respectively.

The Commission's long-standing policy has been that the considerable costs of investigating and processing individual employee and CSI applications could not, in all fairness, be entirely borne by such applicants. As a result, unrecovered costs in both areas have been substantial, as high as 97 percent for investigation and licensing of gaming-related casino service industries. Since the casino industry benefits directly or indirectly from all aspects of the regulatory process, such unrecouped costs are annually apportioned among all casino licensees. Previous regulatory changes, modifying the hourly rates billed to casino licensees, enabled the Commission to reduced the year-end assessment to casino licensees by $8.4 million.

The amendments proposed herein would increase the fee for initial and renewal non-gaming related CSI licensure from $1,500 to $2,000. Notably, the actual costs of investigation and licensing in this area average $12,260 per applicant. A new three-tier system would be implemented for gaming-related casino service industries. A minimum fee of $5,000 would initially be paid by all applicants. A second tier of fees would be triggered whenever investigative and processing hours billed to the applicant exceed 1,000 hours, whereupon the applicant would pay an additional $5,000 fee. Hours billed in excess of 2,000 hours would result in the applicant being assessed the final fee tier, the maximum filing fee of $15,000. Gaming-related CSI applicants would also be responsible for all out-of-pocket expenses incurred during their investigation. Significantly, an estimated 53 percent of all gaming related CSI applicants would pay only the $5,000 base fee.

A Commission cost study indicated that only 39 percent of the costs of licensing junket enterprises are unrecovered through fee assessments. The Commission has therefore not found it necessary to propose any increase in these fees.

Labor organization registration fees would be set at $250.00. An average of more than 11 hours of investigation and processing is expended by the regulatory agencies for each such registration, more than justifying the fee increase. Moreover, the current $100.00 fee has remained static since its initial adoption in 1978.

Proposed amendments to N.J.A.C. 19:41-9.8(d), 9.9(d) and 9.9A(d) provide that any applicant for a service industry license or a junket enterprise license may request an installment plan for payment of the application fee. A one-time processing fee of $50.00 would be added to the first installment paid by any casino service industry license applicant or junket enterprise license applicant utilizing an installment payment plan. Additionally, a $15.00 fee would be assessed for any check returned due to insufficient funds. These nominal fees would recoup only a portion of the actual costs incurred by the Commission in processing such transactions.

Applicants for initial casino key employee licensure are assessed at an hourly fee rate. The new rules would increase the requisite down payment toward that amount from $500.00 to $750.00, and increase the maximum fee from $3,000 to $4,000. The new structure will enable less frequent billing and thus reduce administrative costs. It is also anticipated that the Commission will increase the hourly fee rate for employee licensees to $68.00, consistent with recent changes to the hourly rate charged to casinos. Key employee licensees would pay a fee of $750.00 for renewal. It should be noted that this increase is still much less than the $913.00 figure that results if the current $500.00 fee is adjusted for the Consumer Price Index.

The fee for initial casino gaming-related employee licensure would be increased from $275.00 to $350.00. Non-gaming related employee applicants would pay $250.00 for initial licensure and $200.00 for renewal, increases of $55.00 and $20.00, respectively. The fee for adding a position endorsement would be $75.00. Again, this $15.00 increase is below the $88.00 figure that represents an adjustment for the Consumer Price Index.

The Commission was particularly cognizant of the need to minimize, to the extent possible, the potential burden of fee increases upon individual license applicants. As a result, nearly 40 percent of the costs associated with licensing gaming-related applicants, and 56 percent of the costs of licensing non-gaming related applicants, will not be assessed as fees. Further, since the Commission's cost study revealed that costs of gaming-related employee license renewals did not significantly exceed revenues from fees, there is no proposed increase in this renewal fee.

In addition, in response to requests from many employee license applicants, the Commission is proposing a payment plan which would give such applicant the option of deferring a specified portion of the

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fee until such time as the license is issued, with a $10.00 processing charge. This payment plan will alleviate some of the burden by deferring the increased cost until such time as the applicant can be employed.

Finally, applicants for casino hotel employee registration would pay a $60.00 fee under the proposed amendments. As a result of the Commission's policy of attempting to minimize the burden upon hotel registrants, an estimated 97 percent of actual costs is currently unrecovered through fee assessments. Moreover, the one-time fee covers a "lifetime" registration which remains in effect unless revoked, suspended or otherwise restricted by the commission. N.J.S.A. 5:12-94(d).

The proposal also includes some other minor modifications which clarify and update the rules so as to conform to recent legislative amendments to the Casino Control Act. The proposal updates subchapter 9 to conform with the legislative amendments to the Casino Control Act. N.J.A.C. 19:41-9.8(a) is amended to include enterprises offering goods and services relating to simulcast wagering, in accordance with N.J.S.A. 5:12-92(a). N.J.A.C. 19:41-9.8(a) is amended to provide that service industry licenses are renewable annually for the first two renewal periods, and biennially thereafter, in accordance with N.J.S.A. 5:12-94.

Social Impact

In enacting the Casino Control Act, the Legislature evidenced its intent to finance the Casino Control Commission and Division of Gaming Enforcement exclusively through fees assessed upon licensees and applicants, who benefit from the existence of the regulatory process. N.J.S.A. 5:12-139. Nonetheless, the actual costs incurred far exceed the amount that, in the Commission's judgement, can reasonably be assessed upon employee and casino service industry applicants. The proposed fee structure reflects the Commission's intent that, to the extent fairly possible, each applicant should pay the investigatory and regulatory costs attributable to that applicant. N.J.A.C. 19:41-9.1(c).

The proposed fee structure will also reduce the assessment made to casinos for uncollected expenditures. The assessment, which is levied against casinos each year to make up for all shortfalls in revenues, was an estimated $12.9 million for fiscal year 1992. These proposed changes would reduce that assessment by approximately $1.4 million. These changes, along with another change at N.J.A.C. 19:41-9.4(e) that authorized the Director of Financial Evaluation to set hourly rates (see 24 N.J.R. 2295(a)), will make it easier for casinos to plan their budgets and will help ensure that regulatory costs are more fairly allocated. N.J.A.C. 19:41-9.1(c).

Economic Impact

A detailed and comprehensive process of regulatory review has enabled the Commission to thus far reduce the year-end assessment to casino licensees by an estimated $8.4 million for the fiscal year beginning on July 1, 1992. The revised fee structure proposed herein would further reduce that assessment by an estimated $1.4 million.

The proposed amendments will increase the fee assessments upon casino employee licensees and applicants, hotel employee registrants, labor organization registrants and casino service industry licensees and applicants. However, the revised fee structure represents a fair reevaluation of the costs of investigation and processing to be charged to such licensees, and applicants, while minimizing, to the extent possible, the potential burden of any such fee increases.

Regulatory Flexibility Analysis

Certain of the casino service industry applicants affected by these proposed amendments may qualify as small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-17. The proposed fee increases provide a reasonable compromise between the need to fairly apportion the investigative and regulatory costs attributable to these licensees and applicants, and the recognition that actual costs far exceed the amount which can reasonably be assessed upon such businesses. However, the Commission has always recognized that the investigatory and regulatory costs attributable to service industry licensees and applicants far exceeds the amount that such licensees may fairly be required to pay as fees. The proposed fee increases thus attempt to minimize the adverse impact on small businesses by assessing only a portion of the actual costs incurred.

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

19:41-9.8 [Casino] **Gaming related casino** service industry **enterprise** license [fees; gaming related] **fee**

(a) In accordance with [Sections 92(a) and (b)] **subsections 92a and b** of the Act, all casino service [industries] **industry enterprises** offering goods and services [on a regular basis] which directly relate to casino**, simulcast wagering** or gaming activity, including gaming equipment manufacturers, suppliers and repairers, schools teaching gaming and [either playing or] dealing techniques, and casino security services, shall meet the [high] standards established for casino key employees in order to be licensed. Such a license shall be issued for one year and shall be renewable annually **for the first two renewal periods succeeding the issuance of the initial license and biennially thereafter.**

(b) In order to recover the cost of the [thorough] investigation and consideration of license applications by [those sensitive] **enterprises engaged in these** industries, the initial license application and issuance fee for [these industries] **a subsection 92a casino service industry enterprise license** shall be [$3,000] **assessed as follows:**

1. A minimum application charge of $5,000;

2. An additional application charge of $5,000 if the efforts of the Commission and the Division on matters directly related to the applicant require more than 1,000 hours but less than 2,000 hours of time attributable to processing and investigation of the application, or $10,000 if such efforts require 2,000 or more such hours; and

3. Payment for all unusual or out of pocket expenses incurred by the Commission or the Division for matters directly related to the processing and investigation of the application.

(c) In order to recover costs for monitoring compliance with the Act and the regulations and for assuring the continued fitness of [these sensitive] **enterprises engaged in gaming related casino** service industries, the application and issuance fee for the [annual] renewal of [the] **a subsection 92a casino service industry enterprise** license [required for these industries] shall be [$3,000] **assessed in accordance with (b) above.**

(d) Any enterprise required to apply for the issuance or renewal of a subsection 92a casino service industry enterprise license may request an installment plan for payment of the application fee. Upon filing of the application, the applicant shall submit the initial installment payment required by the Commission and an additional fee of $50.00 for the cost of processing such payment plan.

19:41-9.9 [Casino] **Non-gaming related casino** service industry license [fees; non-gaming related] **fee**

(a) In accordance with [Section 92(c)] **subsection 92c** of the Act, all casino service [industries] **industry enterprises** offering [to a casino hotel facilities,] goods and services not directly related to gaming operations **to casino licensees or applicants on a regular or continuing basis** shall be licensed to the standards established by the Commission. Under [Section 94(d)] **subsection 94d** of the Act, such license shall be issued for a three year period and shall be renewable for additional three year periods.

(b) The initial application and issuance fee for a three year non-gaming related casino service industry **enterprise** license shall be [$1,500] **$2,000.**

(c) The application and issuance fee for the renewal of a three year non-gaming related casino service industry **enterprise** license shall be [$1,500] **$2,000.**

(d) Any enterprise required to apply for the issuance or renewal of a subsection 92c casino service industry enterprise license may request an installment plan for payment of the application fee. Upon filing of the application, the applicant shall submit the initial installment payment required by the Commission and an additional fee of $50.00 for the cost of processing such payment plan.

19:41-9.9A Junket enterprise license fees

(a) In accordance with subsection 102[(c)]**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 subsection 94[(d)]**d** of the Act, a junket enterprise license shall be issued for a three year period and shall be renewable for additional three year periods.

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

(d) Any enterprise required to apply for the issuance or renewal of a junket enterprise license may request an installment plan for payment of the application fee. Upon filing of the application, the applicant shall submit the initial installment payment required by the Commission and an additional fee of $50.00 for the cost of processing such payment plan.

19:41-9.10 Labor organization registration fee

Under [Section] **section** 93 of the Act, each labor organization seeking to represent employees [listed] **licensed or registered** under the Act and employed by a casino hotel or a casino licensee shall register with the Commission annually. The fee for each annual registration of a labor organization shall be [$100.00] **$250.00.**

19:41-9.11 Casino key employee license fees

(a) Under [Section] **section** 89 of the Act, no person may be employed as a casino key employee unless such person is the holder of a valid casino key employee license.

(b) The fee for the issuance of a casino key employee license shall be as follows:

1. A minimum application charge of [$500.00] **$750.00**, which shall be credited to the total fee; and

2. (No change.)

3. Payment for all unusual or out of pocket expenses incurred by the Commission and the Division on matters directly related to the applicant or licensee; provided, however, that the amount of the issuance [of renewal] fee shall not exceed [$3,000] **$4,000.**

(c) The fee for the renewal of a casino key employee license shall be [$500.00] **$750.00.**

19:41-9.14 Casino employee license fees

(a) Under [Section] **section** 90 of the Act, no person may be employed as a casino hotel employee unless such person is the holder of a valid casino employee license. The Act creates a distinction between casino employees whose functions are directly related to gaming activity and those whose functions are not so related. The fee schedule established herein for casino employees recognizes that distinction and the difference in effort generally required to investigate, consider and monitor the two classes of casino employees.

(b) Under [Section 94(d)] **subsection 94d** of the Act, a casino employee license for a person whose position is directly related to gaming activity shall be issued for three years and be renewable for three year periods thereafter. The issuance fee for such a three year license shall be [$275.00] **$350.00**. The renewal fee for such a three year license shall be $225.00.

(c) Under [Section 94(d)] **subsection 94d** of the Act, a casino employee license for a person whose position is not directly related to gaming activity shall be issued for three years and be renewable for three years periods thereafter. The issuance fee for such a three year license shall be [$195.00] **$250.00**. The renewal fee for such a three year license shall be [$180.00] **$200.00**.

(d) Any person who applies for the issuance of a casino employee license pursuant to (b) or (c) above may pay the appropriate application fee in accordance with the following schedule upon payment of an additional fee of $10.00 to cover the cost of processing the payment plan:

1. An applicant for the issuance of a casino employee license for a position directly related to gaming may submit an initial payment of $275.00 upon filing of the application and a subsequent payment of $85.00 upon issuance of the plenary license.

2. An applicant for the issuance of a casino employee license for a position not directly related to gaming may submit an initial payment of $195.00 upon filing of the application and a subsequent payment of $65.00 upon issuance of the plenary license.

19:41-9.15 Casino hotel employee registration fees

(a) Under [Section] **section** 91 of the Act, no person may be employed as a casino hotel employee unless such person is registered with the Commission. Under [Section 94(d)] **subsection 94d** of the Act, a casino hotel employee shall be registered with the Commission. A casino hotel employee registration shall remain in effect unless revoked, suspended, limited, or otherwise restricted by the Commission in accordance with the provisions of [P.L.1977, c.110 (N.J.S.A. 5:12-1.1 et seq.)] **the Act.** The one time registration fee for a casino hotel employee shall be [$30.00] **$60.00.**

19:41-9.16 Employee license position additions and deletions

(a) Under [Sections 89(c), 90(a) and 90(d)] **subsections 89c, 90a and 90d** of the Act, casino key employee licenses and casino employee licenses shall have endorsed upon them the particular position which the licensee is qualified to hold. In addition to any other fee or charge imposed by the Act and this subchapter, a request to endorse any additional authorized position upon a license shall require payment of [$60.00] **$75.00** for each such additional position. Where an additional position would change the license from a gaming school employee to a casino employee gaming related, the applicant shall pay an added [$55.00] **$130.00**. Where an additional position would change the license from casino employee non-gaming related to casino employee gaming-related, the applicant shall pay an added [$80.00] **$155.00**; provided, however, that if such request is made in the period before licensure, the applicant shall only be required to pay the additional [$80.00] **$155.00** fee for the first position which is added to the license.

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

(d) Any license upon which two or more positions have been endorsed shall expire when the term for any position endorsed thereon first expires in accordance with [Section 94(d)] **subsection 94d** of the Act.

(e) (No change.)

19:41-9.17 Miscellaneous administrative fees

(a) Lost licenses shall be replaced for a fee of [$4.00] **$6.00.**

(b) Requests to change a name or address on a license shall require a fee of [$4.00] **$6.00.**

[(c) A copy of the Casino Control Act shall be provided upon payment of $3.00 plus postage.

(d) A copy of the Rules of the game shall be provided upon payment of $2.00 plus postage.]

(c) A processing fee of $15.00 shall be imposed upon any applicant for a casino service industry enterprise license or junket enterprise license which submits a check in payment of an application fee which is dishonored and returned by a bank after deposit.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Dice; Receipt, Storage, Inspections and Removal from Use Cards; Receipt, Storage, Inspections and Removal from Use

Proposed Amendments: N.J.A.C. 19:46-1.16 and 1.18

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a) and (c), 99(a) and 100(b).

Proposal Number: PRN 1992-510.

Submit comments by January 6, 1993 to:
Barbara A. Mattie, Chief Analyst
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:46-1.16 and 1.18 would provide casino licensees more flexibility in selecting the location of primary storage areas for cards and dice. In addition, the proposed amendments would provide casino licensees the option of collecting used cards and dice and cards and dice held in reserve at least once during the gaming day at a time approved by the Commission, as opposed to the present requirement which calls for the collection of cards and dice at the conclusion of each gaming day.

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Social Impact

The proposed amendments to N.J.A.C. 19:46-1.16 and 1.18 are not anticipated to have any social impact.

Economic Impact

Since the proposed amendments provide the industry with increased flexibility, they may have a positive economic benefit in that a casino may make use of an existing area off the casino floor for the storage of cards and dice and can more effectively utilize personnel by scheduling the collection of used cards and dice at a more convenient time of the gaming day.

The proposed amendments will not impose any additional costs upon the casino industry, Casino Control Commission, Division of Gaming Enforcement or the public.

Regulatory Flexibility Statement

These proposed amendments will affect only the operations of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:46-1.16 Dice; receipt; storage; inspections and removal from use

(a) When dice for use in the casino are received from the manufacturer or distributor thereof, they shall, immediately following receipt, be inspected by a member of the casino security department and a casino supervisor to assure that the seals on each box are intact, unbroken and free from tampering. Boxes that do not satisfy these criteria shall be inspected at this time to assure that the dice conform to Commission standards and are completely in a condition to assure fair play. Boxes satisfying these criteria, together with boxes having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet in the cashiers' cage or within a primary or secondary storage area. Dice which are to be distributed to gaming pits or tables for use in gaming shall be distributed from a locked cabinet in the cashiers' cage or from another secure primary storage area [in or immediately adjacent to the casino floor], the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus dice. Dice maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the dice have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

(b)-(h) (No change.)

(i) At the end of each gaming day or, **in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and** at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers of used dice and any dice in dice reserve that are to be destroyed or cancelled and shall transport them to the casino security department for cancellation or destruction. The casino security officer shall also collect all triplicate copies of Dice Discrepancy Reports, if any. No dice that have been placed in a cup for use in gaming shall remain on a table for more than 24 hours.

(j) At the end of each gaming day or, **in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and** at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra dice in dice reserve.

1.-2. (No change.)

(k)-(l) (No change.)

19:46-1.18 Cards; receipt, storage, inspections and removal from use

(a) When decks of cards are received for use in the casino from the manufacturer or distributor thereof, they shall be placed for storage in a locked cabinet in the cashiers' cage or within a primary or secondary storage area by at least two individuals, one of whom shall be from the casino department and the other from the casino security department. The cabinet or primary storage area shall be located in the cashiers' cage or in another secure place [in or immediately adjacent to the casino floor], the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus cards. Cards maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the cards have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

(b)-(h) (No change.)

(i) At the end of each gaming day **or, in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission,** and at such other times as may be necessary, a casino supervisor shall collect all used cards.

1.-2. (No change.)

(j)-(k) (No change.)

(l) At the end of each gaming day or, **in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and** at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers with damaged cards, cards used during the gaming day, and all extra decks in card reserve with broken seals and shall return the envelopes or containers to the casino security department.

(m) At the end of each gaming day or, **in the alternative, at least once each gaming day at the same time each day, as designated by the casino licensee and approved by the Commission, and** at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra decks in card reserve. If collected, all sealed decks shall either be cancelled or destroyed or returned to the storage area.

(n)-(p) (No change.)

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RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Applications and Objections: Capital

Adopted Amendments: N.J.A.C. 3:1-2.9, 2.18 and 2.21

Adopted Repeals: N.J.A.C. 3:1-2.1 to 2.6 and 3:1-2.8

Adopted Recodification and Amendment: N.J.A.C. 3:1-2.7 to 2.8

Adopted New Rules: N.J.A.C. 3:1-2.1 through 2.7, and 2.20

Proposed: September 8, 1992 at 24 N.J.R. 3034(a).

Adopted: October 30, 1992 by Jeff Connor, Commissioner, Department of Banking.

Filed: November 4, 1992 as R.1992 d.483, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:9A-10, 17:12B-17, 17:12B-24, 17:12B-226 and 17:16J-1 et seq.

Effective Date: December 7, 1992.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

1. Samuel J. Damiano, President, New Jersey Council of Savings Institutions; and

2. John R. MacKay, Esq.

Summaries of all comments, and the Department's responses, follow:

COMMENT: The proposal suggests a lowering of the capital requirements for de novo charter applications from $7 million to $6 million. Some question whether this is an appropriate time to lower capital requirements for financial institutions. As a matter of policy, the Council (The New Jersey Council of Savings Institutions) has always advocated higher capital requirements for insured depository institutions.

RESPONSE: The Department in this proposal for the first time has implemented by regulation an initial capital amount above the statutorily mandated amount. Based on this comment and experience the Department acquires after this rule is effective, the Department will consider raising the initial capital amount to $7 million.

COMMENT: Mr. MacKay suggests that the requirement of $4 million of stated capital for a trust company that does not have authority to take deposits is too high. The imposition of such an unrealistically high capitalization, he asserts, will discourage businesses or others from organizing non-bank banks in New Jersey.

RESPONSE: The experience of the Department is that most persons with the experience and desire to engage in trust activities will not be prevented from doing so because of the $4 million capital requirement. This level of capital has been required for several years. Further, the Department views it to be imperative that corporations desiring to act in this fiduciary capacity have this minimum capital.

COMMENT: The term "depository" should be changed to avoid confusion. Whereas the term is typically used to mean a deposit taking institution, it is defined in the regulation to include trust companies which do not have the authority to take deposits. Perhaps another term should be substituted, such as "banking institution" or "financial institution."

RESPONSE: Depository is defined to mean a bank, savings bank or savings and loan association. The definition of the term "bank" has been amended to clarify that it includes a limited purpose trust company, which comports with the statutory definition at N.J.S.A. 17:9A-1. For purposes of these rules the term "bank" is used in the definition of "depository" and is intended to include trust companies.

COMMENT: N.J.A.C. 3:1-2.2 should be amended to limit the requirement of submitting a filed copy of an FDIC application to institutions that propose to take deposits.

RESPONSE: The Department agrees, and has made this minor substantive change upon adoption.

COMMENT: The heading of N.J.A.C. 3:1-2.3 should read "branch applications," not "bank applications."

RESPONSE: The heading was inadvertently changed by the printer from "branch" to "bank" applications. A technical amendment has been made on adoption to remedy this misprint.

COMMENT: Why was the 14-day period for objections to branch applications and requests for oral presentations reduced to 10 days?

RESPONSE: The Department made this change to bring the rules into accord with the time limits set forth in N.J.S.A. 17:12B-24.

Full text of the adoption follows (additions to proposal are indicated in boldface with asterisks ***thus***; deletions from proposal are indicated in brackets with asterisks *[thus]*):

3:1-2.1 Definitions

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

. . .

"Bank" shall mean a New Jersey chartered bank, as defined in section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1)***, and shall include a limited purpose trust company***.

. . .

"Banking institution" shall mean a depository, or a similar institution chartered by the Federal government or another state.

"Branch application" shall mean an application by a depository to establish a full branch or a minibranch office, or to relocate a principal office, full branch office or minibranch office, or to interchange a principal office and full branch office.

"Commissioner" shall mean the Commissioner of the New Jersey Department of Banking.

"Company" means any corporation, partnership, business trust, association or any other person except an individual.

"Controlling interest" means ownership or control of a majority of the issued and outstanding capital stock or securities of a corporation, having voting rights.

"Department" shall mean the New Jersey Department of Banking.

"Depository" shall mean a bank, savings bank or savings and loan association.

"Individual" shall mean a natural person.

"Savings and loan association" shall mean a New Jersey chartered savings and loan association, and shall include a capital stock association and a mutual association.

"Savings bank" shall mean a New Jersey chartered savings bank, and shall include a capital stock savings bank and a mutual savings bank.

3:1-2.2 Charter applications

(a) Every applicant for a depository charter is required to file with the Department the following data in addition to the statutorily required certificate of incorporation and affidavits (see N.J.S.A. 17:9A-9, 17:12B-14 and 17:12B-246):

1. An economic feasibility study delineating the proposed trade area to be served by the applicant, as well as yearly deposit estimates for the first five years of operation;

2. A pro forma balance sheet and profit and loss statement which shall project the financial condition and net income or loss of the depository on an annual basis for a period of five years and shall indicate the anticipated break-even date, and a business plan for the depository;

3. Departmental forms completed by each incorporator and prospective officer and director containing biographical and financial information, and authorizations by such persons for background checks;

4. The required non-refundable application filing fee;

5. An indicia of title for the proposed site;

6. *[A]* ***If the applicant has applied for a charter which includes the authority to accept deposits, a*** filed copy of an application to the Federal Deposit Insurance Corporation for deposit insurance;

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7. The proposed directors' code of conduct governing activities both inside and outside the bank;

8. If the site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2; and

9. All other information required of a specific applicant by the Commissioner.

(b) The Commissioner may return to the applicant any charter application which does not comply with (a) above.

(c) The Commissioner shall accept or reject a charter application within one year after the applicant submits the application. The failure of the applicant to provide all necessary information within one year shall constitute sufficient grounds to reject the application. The Commissioner may extend the one-year limitation when the applicant is not substantially at fault for the delay.

3:1-2.3 *[Bank]* ***Branch*** applications

(a) An application by a depository to establish a branch office or a minibranch office shall contain the following before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and the location of the applied for branch or minibranch office;

2. The required application filing fee;

3. An original certification of a copy of the resolution authorizing the application;

4. A map of the trade area of the branch with all State and Federally chartered depositories marked thereon;

5. A copy of the depository's latest Consolidated Reports of Condition and Income as filed with the FDIC or Federal Reserve Board if a bank or a savings bank, or its latest OTS Thrift Financial Report statement of condition if a savings and loan association;

6. If the proposed transaction involves the acquisition of deposits from another banking institution:

i. Pro forma balance sheet projections reflecting the acquiring depository before and after the acquisition; and

ii. Projections of the ratio of Tier 1 capital to total assets of the depository before and after the acquisition;

7. An executed indicia of title to the proposed site, an agreement to purchase or a lease;

8. If the branch site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2;

9. A copy of the depository's most recent Community Reinvestment Act Statement;

10. If a savings and loan association, proof of newspaper publication as required by N.J.S.A. 17:12B-24(B); and

11. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(b) An application by a depository to relocate a principal office, full branch office or minibranch office shall contain the following before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and both locations involved in the applied for relocation;

2. The required application filing fee;

3. An original certification of a copy of the resolution authorizing the application; and

4. A map of the trade area where the principal office, branch office or minibranch office will be located with all State and Federally chartered depositories marked thereon;

5. An executed indicia of title to the proposed site, an agreement to purchase or a lease;

6. If the branch site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2;

7. If a savings and loan association, proof of newspaper publication as required by N.J.S.A. 17:12B-27.1; and

8. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(c) An application by a depository to interchange a branch office and a principal office shall contain the following before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and the location of each office involved in the applied for interchange;

2. The required application filing fee;

3. An original certification of a copy of the resolution authorizing the application; and

4. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(d) The Commissioner may return to the applicant any branch application which does not comply with (a), (b) or (c) above.

(e) The Commissioner shall accept or reject a branch application within one year after the applicant submits the application. The failure of the applicant to provide all necessary information within one year shall constitute sufficient grounds to reject the application. The Commissioner may extend the one-year limitation when the applicant is not substantially at fault for the delay.

3:1-2.4 Charter applications; notice and publication

(a) When a charter application is complete, the Department shall send written notice to the applicant setting forth a hearing date. In addition, the Department shall send written notice to the New Jersey Bankers Association, the New Jersey Council of Savings Institutions and the New Jersey Savings League for publication in their weekly bulletins.

(b) Within 10 calendar days after notification of the formal hearing date for any charter application, the applicant shall publish notice of the application once a week for four successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said charter is proposed to be established, or if there be no such newspaper, then in a newspaper of general circulation in the municipality.

(c) The notice shall contain the following:

1. The names of the incorporators;

2. The name and mailing address of the applicant;

3. The proposed location of the principal office;

4. The amount of capital stock and surplus, or the amount of capital deposits, whichever is applicable; and

5. The hearing dates.

(d) The incorporators shall cause a copy of the notice in the form prescribed in (b) above to be forwarded to the chief executive officer of every banking institution having an office within five miles of the proposed location, and to such other offices as the Commissioner shall designate, not more than 10 calendar days after formal notification of the formal hearing date and at least three weeks before the scheduled hearing. Regarding applications of savings and loan associations, the incorporators shall also cause a copy of the notice in the form prescribed by (b) above to be forwarded to the chief executive officer of every banking association having an office within the county where the principal office of the State association is to be located, if not within five miles.

3:1-2.5 Branch applications; notice and publication

(a) When a branch application is accepted, the Department shall send written notice to the applicant and to the New Jersey Bankers Association, the New Jersey Council of Savings Institutions and the New Jersey Savings League for publication. Each notice shall contain the following:

1. The name and mailing address of the applicant;

2. A brief statement of the nature of the application;

3. The precise location of the site involved in the particular application; and

4. The date the Department accepted the application.

(b) Notice prescribed by (a) above shall be published in the weekly bulletins of the New Jersey Bankers Association, the New Jersey Council of Savings Institutions, and the New Jersey Savings League in the week following acceptance thereof. The publication of notice shall also include the following statement:

"You are hereby advised that an individual, bank, savings bank or savings and loan association may object to any full branch or relocation application, and may request that an oral presentation be conducted if so requested in writing and if filed within 10 calendar

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days of the date of this bulletin. Individuals or financial institutions interested in perfecting an objection or request for oral presentation should immediately consult the Department's procedural rules for guidance."

(c) Within 15 days after receiving notification from the Department that the application was accepted, the applying depository shall publish notice if the application in a newspaper published within the municipality in which it proposes to locate the branch office if there is one, and if there is no such newspaper, in a newspaper published in the county and having a substantial circulation in the municipality. The notice shall contain the name and address of the applying depository, the proposed location and the statement contained in (b) above.

3:1-2.6 Charter applications; objections and oral presentations

(a) An objection to a new charter application of a depository must be filed in the Department of Banking within five business days of the last day of publication or notice of application, or within 10 business days after receiving mailed notice from the applicant as provided in these rules, whichever is later.

(b) To be considered by the Commissioner, an objection shall be in writing and contain:

1. A summary of the reasons for protest;

2. Facts supporting the protest, including relevant economic or financial data;

3. Any adverse effects on the objector which may result from the approval of the application;

4. An indication as to whether the objector will object at the charter hearing. A fee of $750.00 shall accompany a notice of intent to appear at a charter hearing; and

5. Proof that the objection and a request for a copy of the application were mailed to the applicant.

(c) Upon receipt of notice that an objection has been filed, an applicant shall within five calendar days forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Commissioner proof of delivery to and receipt by the objector of this data. Within seven days after receiving this data, the objector may then file additional comments with the Department regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) The Commissioner may dismiss the objection of any objector not complying with this section, and may consider noncompliance by an applicant when considering the charter application.

(e) The Commissioner may extend any time period set forth in this section to allow for an objection and/or for consideration of an objection by the applicant or the Department.

(f) A formal hearing, pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., shall be held on all charter applications. Only those objectors which comply with this section shall be permitted to appear at the hearing.

3:1-2.7 Branch applications; objections and oral presentations

(a) An objection to a branch application must be filed with the Department within 10 days of the last day of publication of notice, or 30 days after that day if an extension is requested in writing within the 10-day period. An objection to a minibranch application must be filed within 20 days after publication.

(b) An objection shall be in writing and contain:

1. A summary of the reasons for protest;

2. Facts supporting the protest, including relevant economic or financial data;

3. Any adverse effects on the objector which may result from approval of the application;

4. An indication as to whether the objector applies to have a branch hearing. A fee of $750.00 shall accompany an application for a branch hearing. If it is later determined that an oral presentation will not be held, the fee will be returned to each of the objectors requesting an oral presentation; and

5. Proof that the objection and a request for a copy of the application were mailed to the applicant.

(c) Upon receiving notice from the objector that an objection has been filed, an applicant shall within seven calendar days forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Department proof of delivery to and receipt by the objector of this data. Within 14 calendar days after receiving data from the applicant, the objector may file additional comments with the Commissioner regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) Within 10 days after receiving final comments from an objector, the Commissioner shall notify the objector and the applicant as to whether the objection is substantial and will therefore be considered. An objection is substantial only if:

1. It is in writing and filed on time;

2. It contains a summary of the reasons for protest, a statement of the specific matters in the application to which the protestant objects and the reason for the objection, facts supporting the protest including relevant economic or financial data, and a summary of any adverse effects on the objector which may result from the approval of the application; and

3. It pertains to at least one of the criteria for approval.

(e) The applying depository may file an answer to any substantial objection until 15 days after receipt of written notice from the Commissioner that such protest is considered substantial by furnishing four copies of the answer to the Commissioner.

(f) The Department may grant a request for oral presentation on applications for branch application only if:

1. The objector requesting the oral presentation has filed and perfected an objection and oral presentation request; and

2. The objector requesting the oral presentation has presented sufficient reasons indicating that it is necessary and warranted and that the matter cannot be resolved on the papers.

(g) Notwithstanding (f) above, the Department may schedule a hearing or oral presentation on any application if deemed necessary or warranted under the circumstances.

(h) There shall ordinarly be no oral presentations on minibranch, communication terminal branch, auxiliary or limited facility branch office applications.

3:1-2.8 Insufficiency of data in support of application; hearing

(a) In any matter where the Department shall find that the applicant or objector has not filed sufficient data, information or material in support of or in opposition to a branch application or a charter application, the applicant or objector may be required to file supplementary data, information or material, or be subject to dismissal of the application or objection.

(b) and (c) (No change.)

3:1-2.9 Oral presentations

(a) If there is to be oral presentation, the Department shall notify the applicant and objector, if any, of the date, time, place and nature of the proceeding.

(a) through (d) recodified as (b) through (e). (No change in text.)

3:1-2.18 Officially recognized data sources

(a) The Department will take official notice of one or more of the following data sources when testing the accuracy of data submitted in conjunction with applications and objections, when resolving factual discrepancies and when weighing accuracy, reasonableness and applicability of documentary and oral evidence before it:

1. to 21. (No change.)

22. Various County Planning Board Reports, for example, population studies and projections, employment trends, industrial-commercial development studies, and so forth; and

23. New Jersey Department of Banking, Annual Report.

(b) and (c) (No change.)

3:1-2.20 Charter applications; conditions for approval

(a) The Commissioner shall condition approval of a charter application by a depository on the following:

1. If the depository is authorized to take deposits, on the depository becoming a member of the Federal Deposit Insurance Corporation;

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2. The depository will not merge, consolidate or sell, either directly or indirectly, with or to any other institution or holding company for five years after issuance of the certificate of authority unless the Commissioner, upon application and as a result of unusual circumstances, deems it advisable;

3. The depository will issue and sell shares of its authorized capital stock in sufficient amount to raise its capital base before commencement of operations to at least the minimum amount set forth in N.J.A.C. 3:1-2.21, and will obtain prior approval from the Department for any person purchasing more than five percent of the authorized capital stock;

4. The depository shall not make loans to directors of the depository, corporations in which a director has a controlling interest or in which a director together with one or more other directors has a controlling interest, partnerships in which a director is a general or limited partner, and persons owning over five percent of the depository or its holding company, for the first three years after issuance of the certificate of authority;

5. The depository for the first three years after issuance of the certificate of authority shall not offer deposits which yield more than 50 basis points above the highest rate offered by a depository in its trade area;

6. For the first three years after issuance of the certificate of authority, the depository shall obtain prior approval from the Commissioner before installing any person on the board of directors or employing any person with the depository in an executive officer position as defined in N.J.A.C. 3:6-3.1; and

7. Such other conditions for a specific applicant as the Commissioner deems appropriate.

3:1-2.21 Mininum and maximum stock subscriptions

(a) Each charter application for a depository shall provide for stated capital of at least $6,000,000, or such other amount as required by the Commissioner; except that an application for a charter for a trust company, which does not have authority to take deposits, may provide for stated capital of $4,000,000 or more; and except that an application for a charter incident to the purchase of a failed institution or a branch or branches of a failed institution, may provide for stated capital of $4,000,000 or more, or six percent of deposits acquired, whichever is greater, so long as the depository agrees to raise additional capital to reach $6,000,000 within one year following issuance of the Certificate of Authority while also satisfying the capital requirements set forth in N.J.A.C. 3:4.

(b) The incorporators of a depository shall subscribe to all stock listed as issued on the certificate of incorporation, which shall be at least 25 percent of the total capital required by (a) above.

(c) The balance of the capital stock, if any, shall be offered to the general public in the area to be served by the depository if and when the application is approved and under such terms and conditions as set forth in the Commissioner's Decision and Order.

(d) No individual shall subscribe for stock in excess of 24.9 percent of the total capital required by (a) above.

(e) No company may subscribe for stock in excess of 24.9 percent of the total capital required by (a) above, except a holding company that has registered in accordance with state and Federal law and regulations if required.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Aministrative Correction

Uniform Construction Code

Licensure of Code Enforcement Officials

General License Requirements

N.J.A.C. 5:23-5.5

Take notice that the Department of Community Affairs has discovered an error in the text of N.J.A.C. 5:23-5.5(c). The second sentence in subparagraph (c)1i is mislocated; it was proposed and adopted as the second sentence in N.J.A.C. 5:23-5.5(c)3i (see 23 N.J.R. 805(a) and 2046(a)). Through this notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7, this mislocation is corrected.

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

5:23-5.5 General license requirements

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

(c) The following persons shall be exempt from the requirements of this section and shall be issued a license upon submission of an application and payment of the required fee.

1. Licensed plumbing inspectors:

i. A license of the appropriate type and specialty shall be issued to any person holding or receiving, prior to January 1, 1978, tenure or permanent civil service status. [Additionally, those persons certified by the New Jersey Department of Personnel as an elevator inspector prior to July 1, 1991, and currently employed in said certified title, shall be entitled to elevator inspector H.H.S. licensure on a provisional basis pending successful completion of the required course and test within a period not to exceed 24 months from the date of provisional licensure.]

ii. (No change.)

2. (No change.)

3. Inspectors with civil service status or tenure:

i. A license of the appropriate type and specialty shall be issued to any person holding or receiving, prior to January 1, 1978, tenure or permanent civil service status. **Additionally, those persons certified by the New Jersey Department of Personnel as an elevator inspector prior to July 1, 1991, and currently employed in said certified title, shall be entitled to elevator inspector H.H.S. licensure on a provisional basis pending successful completion of the required course and test within a period not to exceed 24 months from the date of provisional licensure.**

(d) (No change.)

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural Rules

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

Proposed: August 3, 1992 at 24 N.J.R. 2671(a).

Adopted: November 4, 1992 by the New Jersey Council on Affordable Housing, Kevin Quince, Acting Chairman.

Filed: November 10, 1992 as R.1992 d.491, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: December 7, 1992.

Expiration Date: December 7, 1997.

Summary of Public Comments and Agency Responses:

The following individuals submitted written and/or verbal comments, which are on file at the office of the Council on Affordable Housing, and may be reviewed by contacting Art Bernard, of that office.

Robert Bzik, PP, AICP
Planning Director
Somerset County Planning Board

Creigh Rahenkamp
John Rahenkamp Consultants

Peter Buchsbaum, Esq.
Greenbaum, Rowe, Smith, Ravin & Davis

Barbara Walsh, Senior Planner
County of Bergen
Department of Planning & Economic Development

Glenn S. Patterson, Director
City of New Brunswick
Department of Policy, Planning & Economic Development

Robert H. Karen, President
New Jersey Builders Association

Ollie B. Dancy

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Secondary Notices Utilized

Newspapers: Trenton Times, Asbury Park Press, Camden Courier Post, Star Ledger, and Home News

Additionally, a notice of the proposal was sent to:

All New Jersey municipalities; and individuals on the Council on Affordable Housing Agenda mailing list and the Rules Task Force mailing list.

The proposed procedural rules of the Council were published in the New Jersey Register on August 3, 1992. A public hearing on the rules was held on September 13, 1992 from 9:30 A.M. to 1:00 P.M., before several members of the Council and the Council's staff. At that hearing, several individuals commented on the proposed procedural rules and written comments were also received. The members of the Council and the staff received the comments and recommended that the COAH staff prepare responses. These comments and responses follow. The following commented in writing upon the proposed procedural rules: Peter A. Buchsbaum, Esq. and Jeffrey L. Kantowitz, Esq., Greenbaum, Rowe, Smith, Ravin & Davis; Barbara A. Walsh, Senior Planner, Department of Planning and Economic Development, County of Bergen; Glenn S. Patterson, Director, Department of Policy Planning and Economic Development, City of New Brunswick; Robert Bzik, P.P., Somerset County Planning Board; Creigh Rahenkamp, John Rahenkamp Consultants, Inc.; Robert H. Karen, President, New Jersey Builders Association; and Ollie B. Dancy, of Deptford, New Jersey. Following is a summary of the comments received along with proposed responses to those comments:

COMMENT: It is recommended that the definition of "Judgement of Repose" be included in N.J.A.C. 5:91-1.2.

RESPONSE: This definition is included in the Council's substantive rules, at N.J.A.C. 5:92-1.3.

COMMENT: The amendment process found at N.J.A.C. 5:91-13.1 should be expanded to encourage a more comprehensive, coordinated approach to address the first and second fair share allocations and to allow the municipalities the opportunity to address and respond to market changes. The rules should specify whether those municipalities which did not participate in the process for the initial round should submit one housing element addressing both allocation rounds. With regard to municipalities which have received substantive certification, it appears they would be required to file an entirely separate plan. It is recommended that an expeditious, comprehensive approach to addressing housing need beyond 1993 be facilitated for those municipalities which previously received certification by permitting amendments to current plans to incorporate the second fair share allocation. This would enable an evaluation of the approach taken by the original plan in creating units, and would be a more effective, coordinated, comprehensive, and less complicated approach to meeting both the first and second fair share allocations.

RESPONSE: The Council's substantive rules will deal in a comprehensive fashion with the relationship between a municipality's prior actions regarding the provision of low and moderate income housing and the municipality's obligation for achieving low and moderate income housing in the Council's next cycle. Therefore, this commenter's concerns will be addressed in the substantive rules.

COMMENT: It is recommended that N.J.A.C. 5:91-2.1 include information about when a municipality should enter the process. Municipalities that have received judgments of repose or substantive certification for their housing elements which address need through 1992 should be advised when to submit their housing elements regarding the second allocation within a specified time frame prior to expiration of their six year terms. Likewise, when should municipalities which are currently in various stages of the process of getting certified or recertified for their first housing element submit the second one? What about municipalities who do not participate in the process thus far?

RESPONSE: The Fair Housing Act does not compel municipal participation in the Council's process. Therefore, the Council cannot tell a municipality when to enter the process. However, in order to voluntarily enter COAH's process, a municipality should file a housing element and fair share plan and then petition the Council for substantive certification within two years of such filing (see N.J.S.A. 52:27D-313).

COMMENT: In the proposed rules, COAH has established time requirements for actions by virtually all parties participating in the COAH process other than for COAH itself. To fully facilitate and expedite the process, COAH should also be required to operate within established time frames.

RESPONSE: A major goal of the new procedural rules is to expedite the COAH process. For that reason, the rules generally specify time periods within which municipalities and objectors must act. The Council is committed to meeting its responsibilities in a timely and expeditious manner within the limits of its resources. Therefore, the Council decided it was not necessary to impose time limits upon itself.

COMMENT: It would be helpful to county planning boards if the Council in N.J.A.C. 5:91-2.2(a)1 provided that the notice of filing of a housing element and fair share plan be made to county planning boards in all instances. Despite the provision of the Municipal Land Use Law at N.J.S.A. 40:55D-13(3) that a housing element be filed with county planning board, municipalities fail to fulfill this requirement. This change in rule will provide a county with information that it needs to complete its Federal CHAS and State CHAS and will foster intergovernmental coordination, a goal of the State Development and Development and Redevelopment Plan.

RESPONSE: The Council believes that this request is outside the scope of the Council's rules. If municipal filing with the county planning boards is already required by statute, that is, the Municipal Land Use Law (MLUL), regulation by the Council can do little to change the lack of compliance with the statute. Moreover, although the Council is willing to cooperate in all reasonable ways with the county planning boards, it cannot regulate municipal filings with the county boards.

COMMENT: In N.J.A.C. 5:91-3.6(a), an extraordinary situation that would lead to the granting of site specific relief to an objector is defined to include only "the lack of alternative sites in the municipalities." This is too broad a presumption in favor of the municipality. There is no question that the sites included in the compliance plan filed with the Council should receive significant deference; however, the wording of the rule suggests that a municipality may willfully submit inappropriate sites as part of its petition and, when finally brought under Council review by a land owner's action, substitute otherwise appropriate sites that do not have an active development interest. N.J.A.C. 5:91-6.3(a) supports the contention that the wording of this section should be revised to allow extraordinary relief based upon "the lack of acceptable sites in the filed housing element and fair share plan of the municipality."

RESPONSE: This rule was previously codified at N.J.A.C. 5:91-4.5(a) and is unchanged in the new rules. It should be read together with N.J.A.C. 5:91-6.2 of the new rules, not in connection with N.J.A.C. 5:91-6.3 as the commenter suggests. This is because N.J.A.C. 5:91-6.3 refers to municipalities that petition for substantive certification more than two years after filing a housing element and fair share plan, while N.J.A.C. 5:91-6.2 refers to municipalities that have petitioned for substantive certification within two years of filing the housing element and fair share plan. When read in connection with N.J.A.C. 5:91-6.2, the commenter's fear that a municipality would willfully submit unsuitable sites should be somewhat abated because the procedure outlined at N.J.A.C. 5:91-6.2 would hopefully eliminate inappropriate sites during the COAH review period. Also, the procedure allows COAH to dismiss the housing element and fair share plan if after the second municipal submission of the plan the Council determines that the plan continues to be unsuitable.

COMMENT: N.J.A.C. 5:91-3.6(b) and (c) are not clear as to whether "relief" awarded to a developer is equivalent to the builders remedy that is contemplated by *Mt. Laurel II.* Further, the rules fail to clarify when and on what basis this "relief" is awarded. It would appear that subsection (c), which presumptively requires a municipality to include a contested site as a component of its compliance plan, represents the functional equivalent of the builders remedy. Consequently, the rule should be clarified.

RESPONSE: N.J.A.C. 5:91-3.6(b) must be read in conjunction with N.J.A.C. 5:91-6.3 and N.J.A.C. 5:91-3.6(c) should be read in conjunction with N.J.A.C. 5:91-6.4. The commenter is correct in the contention that subsection (c) does represent the functional equivalent of the builder's remedy, as contemplated by *Mt. Laurel II.* The relief awarded under subsection (b) may or may not be equivalent to the builder's remedy, depending upon the particulars of the case as it develops before the Council and the quality of the housing element and fair share plan filed by the municipality with the Council.

COMMENT: N.J.A.C. 5:91-4.1(a) is not clear as to whether expert reports are necessary in order to gain objector status.

RESPONSE: Expert reports are not required from objectors. They would introduce a prohibitive expense for objectors and might thereby discourage participation. However, an expert report would certainly strengthen any objection filed, and expert reports are required by N.J.A.C. 5:91-8.1, in appropriate circumstances, to establish the necessity to refer a matter to the Office of Administrative Law for a hearing.

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COMMENT: The remedy of dismissal provided at N.J.A.C. 5:91-5.4 appears harsh. However, it greatly strengthens COAH's power and creates an incentive for towns to act voluntarily and institute the process.

RESPONSE: Dismissal is a harsh remedy and the Council would not use such a remedy unless it is compelled to do so by municipal action or inaction. Reference to the charts in the Appendix, particularly Charts 1, 2, and 3, and the rules to which the charts refer, demonstrate where in its procedures COAH would utilize the dismissal option.

COMMENT: N.J.A.C. 5:91-6.2(c) fails to explain what standard will be applied to "determine if problems exist" with municipal submissions so as require designation of additional sites.

RESPONSE: It is impossible to be comprehensive in a procedural rule with regard to the substantive problems that may exist in a municipal housing element or fair share plan. However, a municipal housing element and fair share plan must clearly comport with the Council's substantive regulations, the Fair Housing Act, the Municipal Land Use Law and generally recognized planning principles in order to be acceptable to the Council and not require the designation of additional sites.

COMMENT: In the restructuring of its procedural rules, it appears that COAH at N.J.A.C. 5:91-6.2(f), 6.3(b) and 6.4(d) is attempting to ensure that time and effort are not expended on the mediation process when a municipality's submitted housing element and fair share plan is inadequate. Because participation in the mediation process is so costly and time consuming, the commenter appreciates what COAH is attempting to accomplish. However, there are several concerns. Upon receipt of the petition, COAH will prepare a compliance report which would be circulated to the municipality and objectors for comment. Upon review of the responses and comments, COAH will determine if changes are required in the municipal submission to designate additional sites, change sites, etc. If so, COAH will direct the municipality to amend its submission and refile it. Upon refiling, the above described process is more or less repeated. Once COAH determines that no major problems exist, COAH will initiate the mediation process. While the commenter does not wish to engage in the mediation process over totally unacceptable plans, the commenter is concerned that the process, as now established by COAH, would result in plans fairly well set in concrete before the mediation process is initiated. If the mediation process is to have any value and benefit to the participants, the plan submitted to mediation must still have some flexibility, so that concerns expressed by the objectors can be accommodated. If COAH has, in effect, found a plan approvable before mediation, then what can mediation accomplish?

RESPONSE: The commenter is correct that COAH is attempting, in these procedural rules, to "tighten up" the mediation process. The Council views mediation as a means to an end and not an end in itself. The Council believes that one of the reasons mediation has become so time-consuming and costly for the participants is that municipal housing elements and fair share plans have been insufficiently developed prior to mediation. Therefore, the Council believes that these new rules, in which mediation does not begin until a municipal submission is more fully thought out, will result in better housing elements and fair share plans being adopted that are more responsive to sound planning considerations and more conducive to the provision of low and moderate income housing. By placing this emphasis on sound planning, the plans that receive substantive certification should be less vulnerable to charges of spot zoning and other infirmities that could be challenged in prerogative writ suits under *Alexanders v. Paramus,* 125 *N.J.* 100 (1991). This would be to the advantage of all parties to mediation.

COMMENT: It is not clear from N.J.A.C. 5:91-6.3(b) whether the Council's determination that there "are problems" with a municipal submission automatically equates with the presumptive inclusion of an objector's site.

RESPONSE: If the Council under N.J.A.C. 5:91-6.3(b) determines that there are problems with the municipal submission, then the Council will direct the municipality to amend its submission and "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." See N.J.A.C. 5:91-6.3(c).

COMMENT: N.J.A.C. 5:91-6.3(f) is silent as to which party carries the burden before the Office of Administrative Law to demonstrate a site's suitability. Whose burden is it?

RESPONSE: For purposes of N.J.A.C. 5:91-6.3(f), the burden at the Office of Administrative Law to demonstrate the suitability of a site can either be with the municipality or an objector, depending on the circumstances that required the referral to the Office of Administrative Law. The Council will either state in the referral to the Office of Administrative Law who has the burden to demonstrate suitability or will leave the assignment of the burden to the Administrative Law Judge, depending upon the particulars of each individual situation.

COMMENT: N.J.A.C. 5:91-6.4(e) places the burden to show that a site is not suitable upon the municipality. It appears from the language of this section that the presumption of inclusion is equivalent to the award of a builder's remedy. If so, what shall be the topic of mediation if an objector is entitled to site-specific relief?

RESPONSE: There are numerous issues that may need to be mediated in such a situation. After all, no objector is absolutely entitled to a builder's remedy. The suitability of a site must always be established, and other issues such as the density of development, design standards to be applied, buffers and other particulars may be the topics of mediation in a particular circumstance.

COMMENT: There seems to be little or no difference between the meaning and import of paragraphs 1 and 2 of N.J.A.C. 5:91-6.5(a).

RESPONSE: The language of this rule is derived from N.J.S.A. 52:27D-314a. The provisions are not identical; N.J.A.C. 5:91-(a)1 requires compliance with both N.J.A.C. 5:91 and N.J.A.C. 5:92, while N.J.A.C.(a)2 requires that the housing element and fair share plan be consistent with the overall Mt. Laurel obligations of the region, which are developed in accordance with both the procedural and substantive rules.

COMMENT: N.J.A.C. 5:91-6.5(c) fails to detail the procedure for COAH's meeting with the municipality and objectors to its plan. May COAH meet with only the municipality, or only an objector? The procedure for these meetings should be made more explicit.

RESPONSE: This rule derives form N.J.S.A. 52:27D-314(b), which states "In conducting its review, the council may meet with the municipality ...". Therefore, COAH may meet solely with the municipality or with an objector. Such meetings, however, would be informal. Therefore, no explicit procedure is needed.

COMMENT: To whom does N.J.A.C. 5:91-7.2(f) refer when stating that COAH may allow "any person" to participate in mediation?

RESPONSE: "Any person" would be any individual whose presence would further the mediation. For example, representatives of local sewer authorities and representatives of the Department of Environmental Protection and Energy have been invited to participate in mediation, where the participation of representatives of these agencies was helpful to the mediation.

COMMENT: N.J.A.C. 5:91-7.1(b) states that payment of a mediator's compensation shall be shared equally by the municipality and the objectors. Does this mean that each pays pro-rata or that the municipality pays half and the objectors share the other half? In addition, owners of property included in a plan who are deemed to be objectors pursuant to N.J.A.C. 5:91-7.2(a) should not have to pay compensation unless they actively participate in the mediation by seeking some changes in the plan.

RESPONSE: This provision has previously been codified at N.J.A.C. 5:91-7.1(b), but to date has not been utilized by the Council. The Council does not plan to require payment of a mediator's compensation by either the municipality or the objectors at the current time. However, the rule has been included so that, if it becomes necessary, because of State or agency budgetary considerations, to impose the cost of mediation upon the parties to mediation, the parties are informed of COAH's intentions. If this occurs, the Council will impose the cost of mediation on all parties equally. However, a party can request a waiver of the payment provision for good cause, in accordance with N.J.A.C. 5:91-1.3 and this chapter.

COMMENT: N.J.A.C. 5:91-7.2(h) provides that COAH "shall have the widest possible discretion" as to the manner by which mediation is conducted. This language practically affords COAH a blank check in this area. Is this rule consistent with procedural due process?

RESPONSE: The Council has no intention of exercising its discretion beyond the parameters of procedural due process or in such a way that the parties' constitutional rights would be affected.

COMMENT: In N.J.A.C. 5:91-7.4(a), a municipality is allowed to publish a notice of a housing element and fair share plan altered as a result of mediation in either a daily or weekly newspaper in general circulation within the municipality and the county. However, in N.J.A.C. 5:91-3.3 and 13.4 a municipality must publish notification of petition and amended petition, respectively, in a newspaper of general circulation. This commenter believes that all publications required by the Council should be in a newspaper of general circulation within the county and the municipality and it should not be available to a municipality to publish in a weekly newspaper.

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RESPONSE: The Council understands that in some municipalities the only newspaper of general circulation within that municipality is a weekly newspaper. Therefore, the Council does not believe it is possible to require municipalities to publish in daily newspapers if the only available newspaper of general circulation within the municipality is a weekly newspaper. In any event, the publication requirements of N.J.A.C. 5:91-3.3, 7.4 and 13.4 are intended to be read uniformly to require publication in newspapers of general circulation within the county and the municipality, whether the newspaper publishes on a weekly basis or a daily basis.

COMMENT: What constitutes a "substantial" amendment to a housing element so as to require a new publication of notice of the housing element and fair share plan pursuant to N.J.A.C. 5:91-7.4?

RESPONSE: A substantial change would be one that requires the designation of additional inclusionary sites, a change in inclusionary sites or a fundamental change in approach. This language is uniformly found at N.J.A.C. 5:91-5.2(c), 6.2(c), 6.3(b) and 6.4(b).

COMMENT: The commenter approves of COAH's decision at N.J.A.C. 5:91-8.1 to require certain kinds of real evidence in the form of affidavits before a matter is transferred to the OAL. If applied consistently, these requirements should prevent unsupported objectors from obtaining OAL transfers which can seriously delay a final action on substantive certification. The commenter believes, however, that such affidavits should be routinely required prior to the OAL transfer. The proposed limitation of such an obligation to "appropriate circumstances" gives no clear guidance and may even suggest that such affidavits will not normally be required.

RESPONSE: It is the intention of the Council to generally require such affidavits. However, the limitation to "appropriate instances" is prudent because there may be circumstances in which the reason for transfer or the circumstances requiring transfer are so clear or so well known to the Council that the affidavit procedure would be unnecessary and burdensome. Therefore, the "appropriate instances" language is necessary to allow COAH the flexibility it needs to properly administer this rule.

COMMENT: The accelerated denial provided at N.J.A.C. 5:91-10.2 should not be employed based upon COAH's sole determination without the municipality against whom it may issue being heard.

RESPONSE: The rule provides that accelerated denial of substantive certification will only be issued after "a hearing and opportunity to be heard." Therefore, a municipality would always be given an opportunity to contest the issuance of accelerated denial by the Council.

COMMENT: N.J.A.C. 5:91-10.3 provides that COAH "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." Does this provision authorize COAH to issue administrative orders that apply even to municipalities that are not before it and under its jurisdiction?

RESPONSE: No, it does not. This rule, as do all other rules promulgated by the Council, assumes that the municipality is participating in the Council's process.

COMMENT: The Council should not dismiss pursuant to N.J.A.C. 5:91-10.3 upon an administrative order. An order to show cause to the municipality as to why its petition for substantive certification should not be dismissed should be used in all cases.

RESPONSE: The Council's rule provides for dismissal when the Council determines that a municipality has twice failed to develop an acceptable housing element and fair share plan. In every case, such a determination shall only be made after a municipality has had a chance to respond to a compliance report. Therefore, a municipality will always have two opportunities to be heard before the Council orders dismissal.

COMMENT: At N.J.A.C. 5:91-4.1(a)5, an objector seeking relief on a specific site that is not a designated center in Planning Areas 3, 4 or 5 as defined by the State Development and Redevelopment Plan (SDRP) must provide a statement addressing the appropriateness of identifying the areas surrounding the objector's site for center designation. This is an extremely narrow and restrictive reading of the SDRP.

RESPONSE: This procedural rule is meant to be read in conjunction with the Council's new substantive rules which have not yet been published. The substantive rules will contain a more comprehensive explanation of the relationship between the Council's methodology and the requirements of the State Development and Redevelopment Plan. Therefore, the commenter, who has provided the Council with extensive comments on this point, is asked to await the publication of the substantive rules before commenting.

COMMENT: What purpose is served by N.J.A.C. 5:91-11.2, Statements of intent?

RESPONSE: This section is required by N.J.S.A. 52:27D-312(e) and it is helpful to potential Regional Contribution Agreement (RCA) sending municipalities so that they may be informed of the existence of potential receiving municipalities.

COMMENT: N.J.A.C. 5:91-11.1(e) states that COAH should set a reasonable number of units, not to exceed 100, that a receiver may state it wishes to receive. This rule is not needed and, to my knowledge, has not been used by COAH.

RESPONSE: This procedure is required by N.J.S.A. 52:27D-312(e).

COMMENT: The rules should specify at what point in the process a proposed RCA should be submitted to COAH.

RESPONSE: N.J.A.C. 5:91-11.1(a) requires that a contractual agreement be submitted to the Council by the sending municipality. Therefore, the Council shall not review an RCA until it is a written contract signed by both parties.

COMMENT: The proposed rules delete the requirement for a Memorandum Of Agreement (MOA) for RCA's. This does streamline the process, but it removes an important protection for receiving towns. Under current COAH rules, a sender is not permitted to negotiate with a second receiving town once the sender has entered into an MOA with a receiver. This rule protects a receiver from being used as a wedge against a second receiver. The commenter's municipality has been caught in a situation where a potential sending municipality was negotiating with it, while also starting negotiations with a second potential receiver municipality. This undercut the commenter's municipality's unit price. As an alternative to an MOA, the commenter suggests a jointly signed letter from the mayors of the sender and receiver, addressed to COAH, stating their intention to negotiate an RCA. Once this letter is submitted, the sender would be prohibited from negotiating with other receivers.

RESPONSE: No Regional Contribution Agreement shall be reviewed by the Council until the sending municipality submits a contractual agreement signed by the sending and receiving municipalities. Once that agreement is signed, the Council shall not entertain another regional contribution agreement in its place.

COMMENT: At N.J.A.C. 5:91-11.3, COAH or the Agency is permitted to set time limits for submitting information about RCAs. Any time limits imposed on submissions should be clarified, so that the parties know what deadlines they face. It is most frustrating to have rules made up as you go along.

RESPONSE: These rules cannot set time limits upon the Agency for its review of RCAs. Any time limits imposed by the Council shall be in concert with the review of a municipal housing element. Since every municipal review is different, the Council does not believe it is prudent to set forth a table of deadlines.

COMMENT: County, COAH and Agency review of the RCA should be coordinated. For example, the rules should specify that the proposed RCA and the summary of the proposed project plan be submitted to the county prior to preparation and submission of a complete project plan to the agency so that money and time is not wasted if it is determined not to be in accordance with local, county and State plans.

RESPONSE: The Council does not believe that such rules are necessary. COAH, the counties and the Agency have been reviewing RCAs for the past six years without such rules and the procedure has worked so far. Therefore, such rules are not necessary.

COMMENT: N.J.A.C. 5:91-11.4(b) appears to authorize COAH to preempt the authority of a county planning board or agency where such a board fails to review an RCA within the time designated by COAH. Does the Fair Housing Act authorize COAH to so act?

RESPONSE: Yes, at N.J.S.A. 52:27D-312(c).

COMMENT: N.J.A.C. 5:91-11.5(b) states that the Council may approve contract guarantees and resale controls of less than 30 years. As RCAs usually deal with urban aid municipalities, is COAH proposing to change the existing 10-year resale controls in these municipalities to 30 years unless special circumstances exist? If so, this change is extraordinarily burdensome.

RESPONSE: COAH is not proposing to change the existing 10-year resale controls. However, the language of N.J.A.C. 5:91-11.5(b) is found verbatim in the Fair Housing Act at N.J.S.A. 52:27D-312(e).

COMMENT: N.J.A.C. 5:91-11.6 does not make explicit whether there are any consequences for a sending municipality where a receiving municipality defaults on its obligations under an RCA. The commenter recommends that there should not be any adverse consequences for a

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sending municipality, particularly where the sending municipality has done its part by paying the necessary funds under the RCA.

RESPONSE: The Council agrees with the commenter, and does not intend that a sending municipality suffer adverse consequences.

COMMENT: If a receiving municipality defaults on its obligations under an RCA, a sending municipality which has not fully paid all funds under the RCA should be afforded a mechanism to pay the money into an escrow account, which COAH may then apply to another receiving municipality. In this way, the good faith efforts and intentions of the sending municipality are not penalized.

RESPONSE: The Council agrees with the suggestion. The Council believes it has the power under N.J.A.C. 5:91-11.6(b) to order such a procedure.

COMMENT: N.J.A.C. 5:91-11.6 should be greatly expanded and COAH should be required to create and maintain a data base covering various aspects of the monitoring and implementation, an analysis of which will form the basis of sound policy decisions.

RESPONSE: The Council intends to take all steps necessary to implement N.J.A.C. 5:91-11.6 and, if in the future, maintenance of a data base is necessary, this will be done.

COMMENT: N.J.A.C. 5:91-13.2(a)2 requires that a petition for an amendment to certification must have the endorsement of the municipal planning board. Why does the Council wish to grant a veto power over ordinance amendments to the planning board?

RESPONSE: It is not the Council's intent to give veto power to the planning board, but rather to recognize the planning board's responsibility to adopt the housing element that the Council must consider.

COMMENT: The procedural rules continue to retain the provision at N.J.A.C. 5:91-15.1 that would allow municipalities which have previously collected fees prior to the Supreme Court's *Holmdel* decision to retain those fees if they meet conditions established by COAH's substantive rules. This issue has been, and remains, under litigation. Inclusion of this provision can only be viewed as inflammatory, inviting further litigation.

RESPONSE: The commenter correctly notes that the issue of whether the Council can enable municipalities to retain at least some of the development fees collected prior to the *Holmdel* decision is the subject of current litigation. In fact, N.J.A.C. 5:91-15.1 is currently being challenged in three separate suits in the Appellate Division. The Council, however, is convinced of the correctness of the retroactive effect of the rules, which have been "potentially" affirmed in *Greek v. South Brunswick Twp.*, 257 *N.J. Super.* 94 (App. Div. 1992), *petition for certif. filed* N.J. (1992). Therefore, the rules have been adopted as proposed.

COMMENT: The Council is required by N.J.A.C. 5:91-3.2(d) to publish a monthly list of petitions received. The commenter suggests that the date of petition should be included on the list and that the Council maintain a list of plans filed.

RESPONSE: The Council does maintain at its office a list of filed plans, including the date of petitioning. The list is available for public inspection upon contact with the Council office.

COMMENT: The procedural rules should address the need to make substantive certification a more certain guarantee of actual development. At present substantive certifications, in many cases, are mere way stations to the construction of actual housing. So many steps remain that the substantive certifications really lose a great deal of their meaning. For example, many projects require sewerage to complete development. Yet the Council disclaimed jurisdiction over sewerage issues involving regional or non-local entities years ago. Other environmental permits are also a problem. Wetlands is one example. Also, the planning board procedures occasionally slow approval of actual development of certified projects, even though these procedures are fully within the control of the municipality receiving the certification. COAH, at this point, has not involved itself in planning board proceedings. Finally, there are the prerogative writ suits which were authorized to be filed independently by the Supreme Court in *Alexander v. Paramus*, 125 *N.J.* 100 (1991). At this point, COAH has no published procedures for supporting its certification by ensuring timely and appropriate results in these actions. These several barriers to the effectiveness of substantive certification should be addressed in the procedural rules.

RESPONSE: Procedural rules are not needed to encourage the Council to defend its substantive certification actions. In appropriate situations, the Council has already entered into Superior Court actions to defend its certification. In cases where the Council has not defended its substantive certification, the Council has not known about the challenge. Therefore, those involved should inform the Council when a substantive certification decision is being challenged. A procedural rule is not necessary to encourage this notification. The remaining criticisms are more appropriately addressed in the substantive rules, and the commenter is encouraged to review, and comment on, that proposal when it is published in the New Jersey Register.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*).

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.

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"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 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

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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 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 Redevelopment 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 repetition for substantive certification within 120 days. The municipality shall provide notice of repetitioning as required in N.J.A.C. 5:91-3.3. Repetitioning shall require an objector period as defined in N.J.A.C. 5:91-4.1.

(d) If objections are filed upon repetitioning 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 refiling 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

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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 repetition. For purposes of calculating the time period between filing and repetitioning for substantive certification, the Council shall consider the initial filing as the date of filing and the date of repetitioning 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.

SUBCHAPTER 6. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN OBJECTIONS ARE FILED

5:91-6.1 Overview

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 repetitioning 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 repetitioning for substantive certification, the Council shall consider the initial filing as the date of filing and the date of repetitioning 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 repetitioning as required in N.J.A.C. 5:91-3.3. Refiling and repetitioning 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

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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.

(c) A municipality that is required to repetition shall provide notice as required in N.J.A.C. 5:91-3.3. Refiling and repetitioning 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.

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(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.

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

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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.

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.

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(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 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

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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.

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]* ***December 7, 1992*** 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.

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APPENDIX

CHART I

VOLUNTARY TOWNS NO OBJECTORS

N.J.A.C. 5:91-5.2

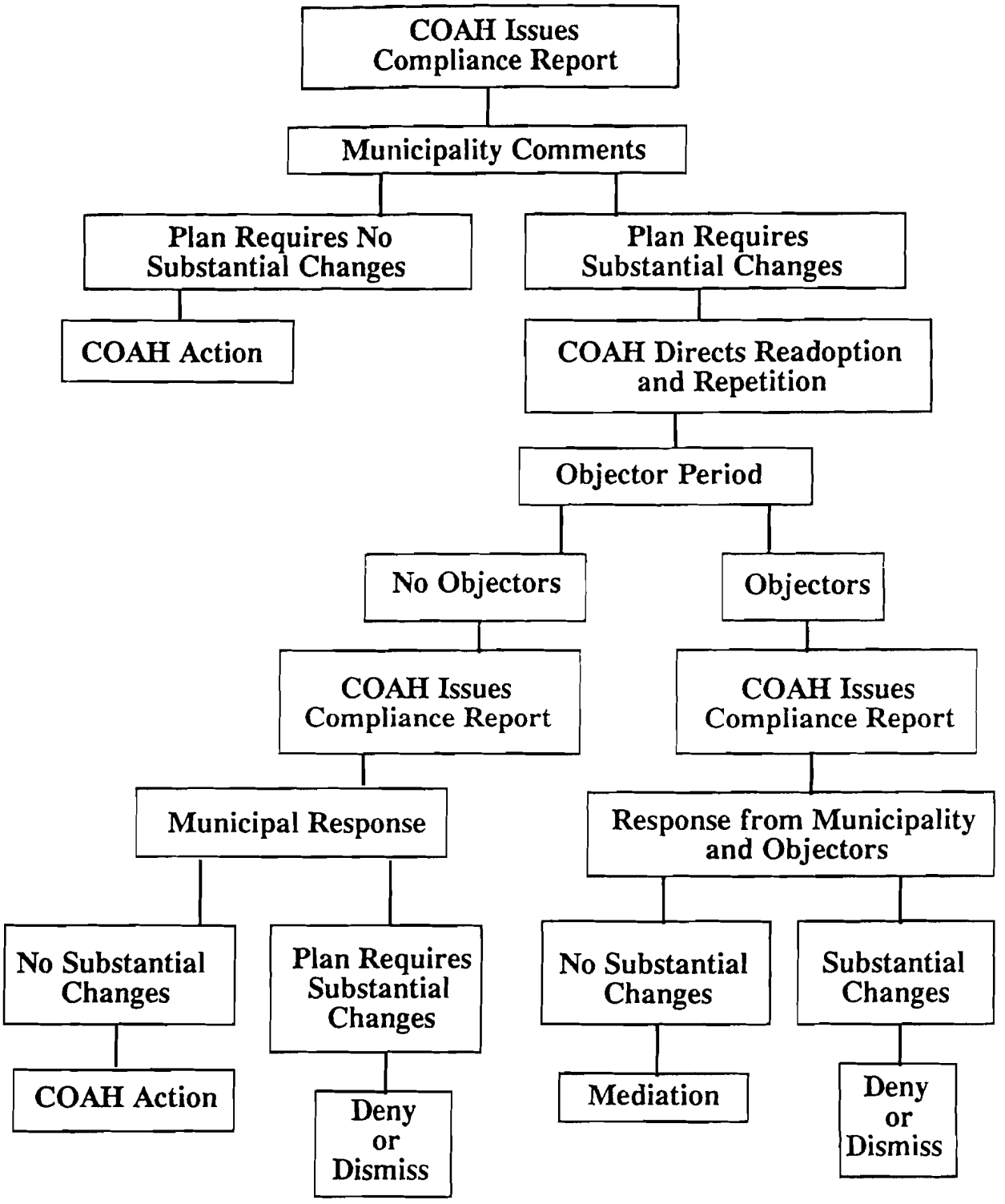

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CHART 2

PETITION WITHIN TWO YEARS/OBJECTIONS

N.J.A.C. 5:91-6.2

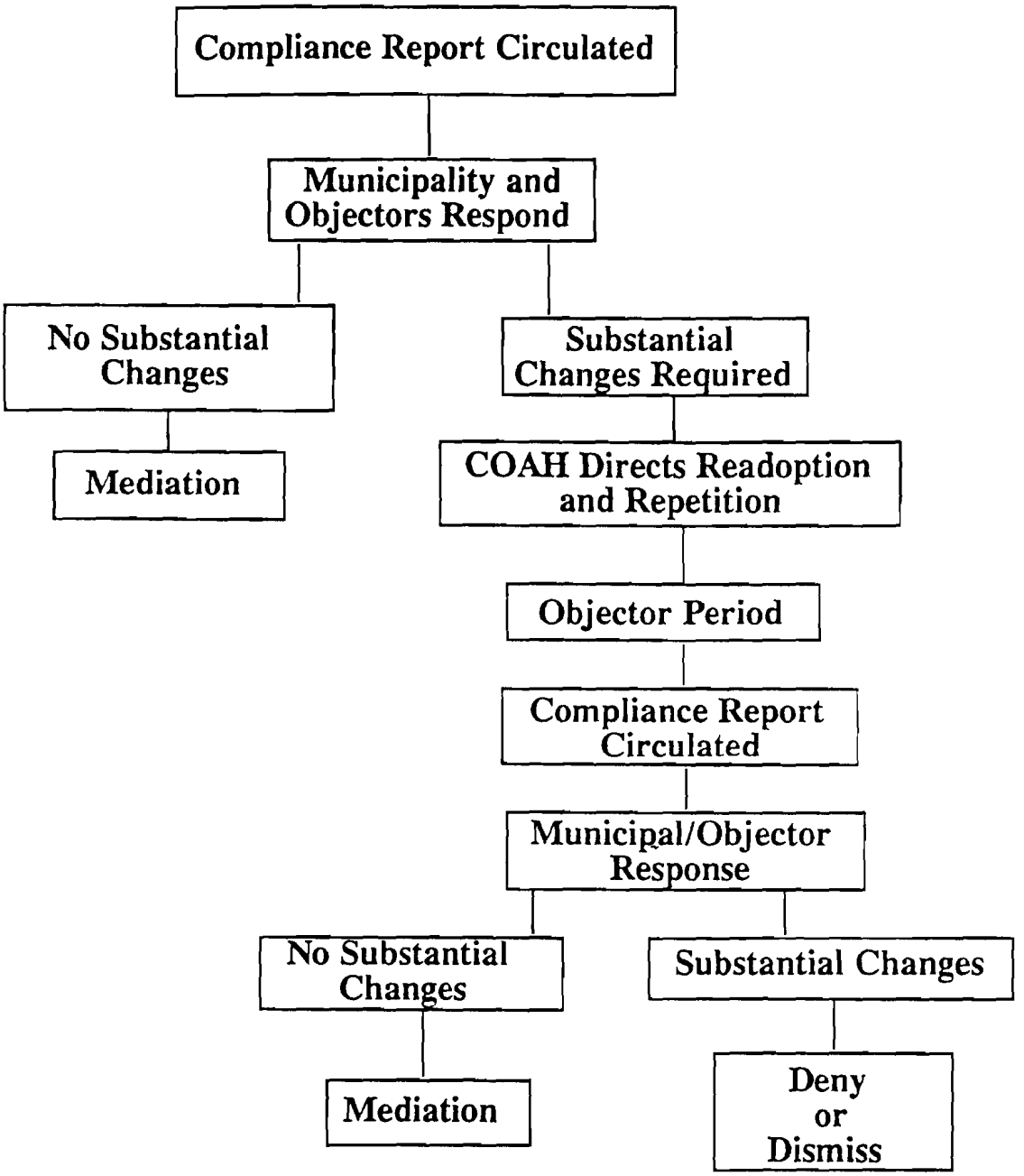

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CHART 3

PETITION AFTER TWO YEARS, BUT BEFORE LAWSUIT

N.J.A.C. 5:91-6.3

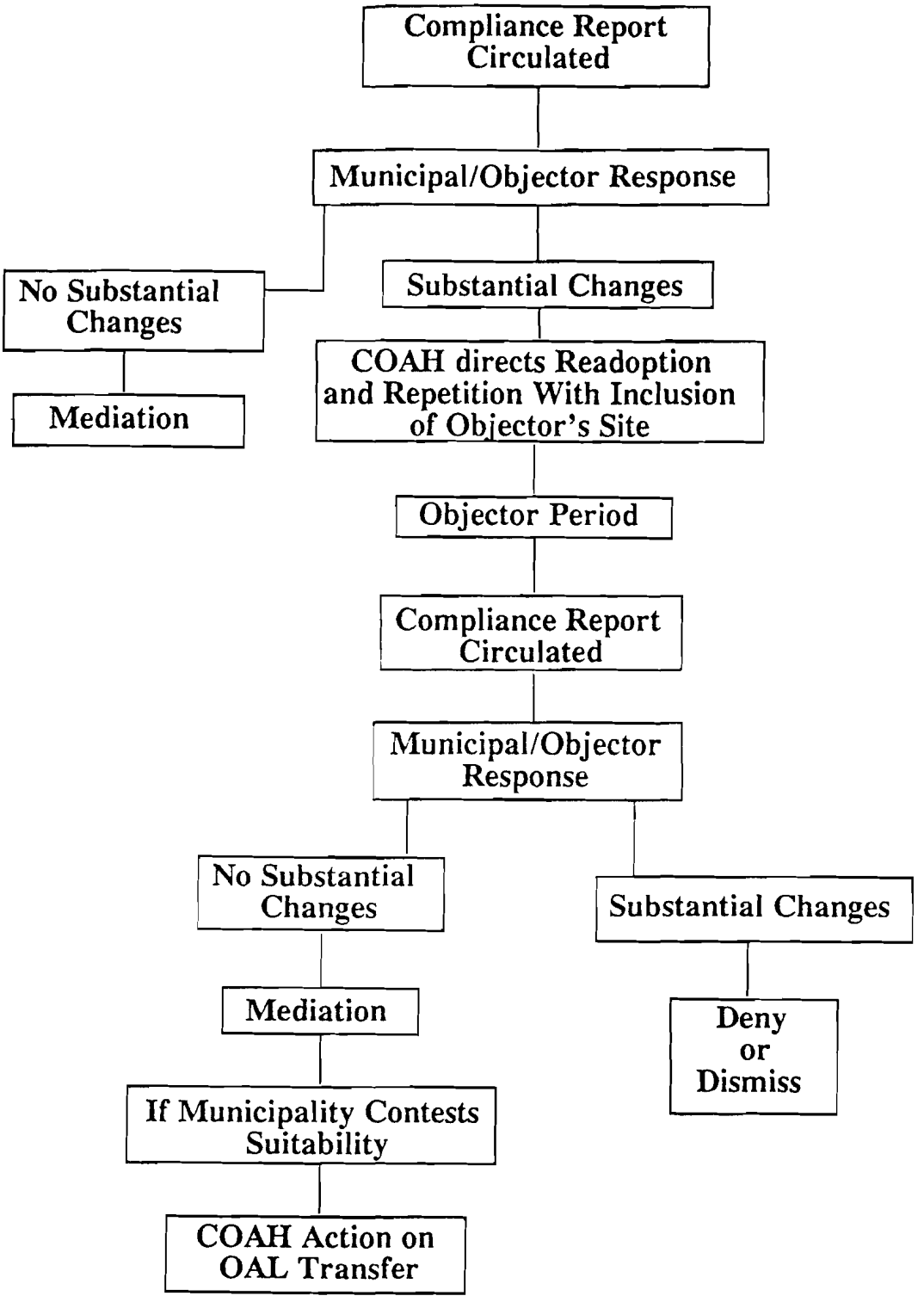

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CHART 4
COURT TRANSFER OF BUILDERS REMEDEY CASES
N.J.A.C. 5:91-6.4

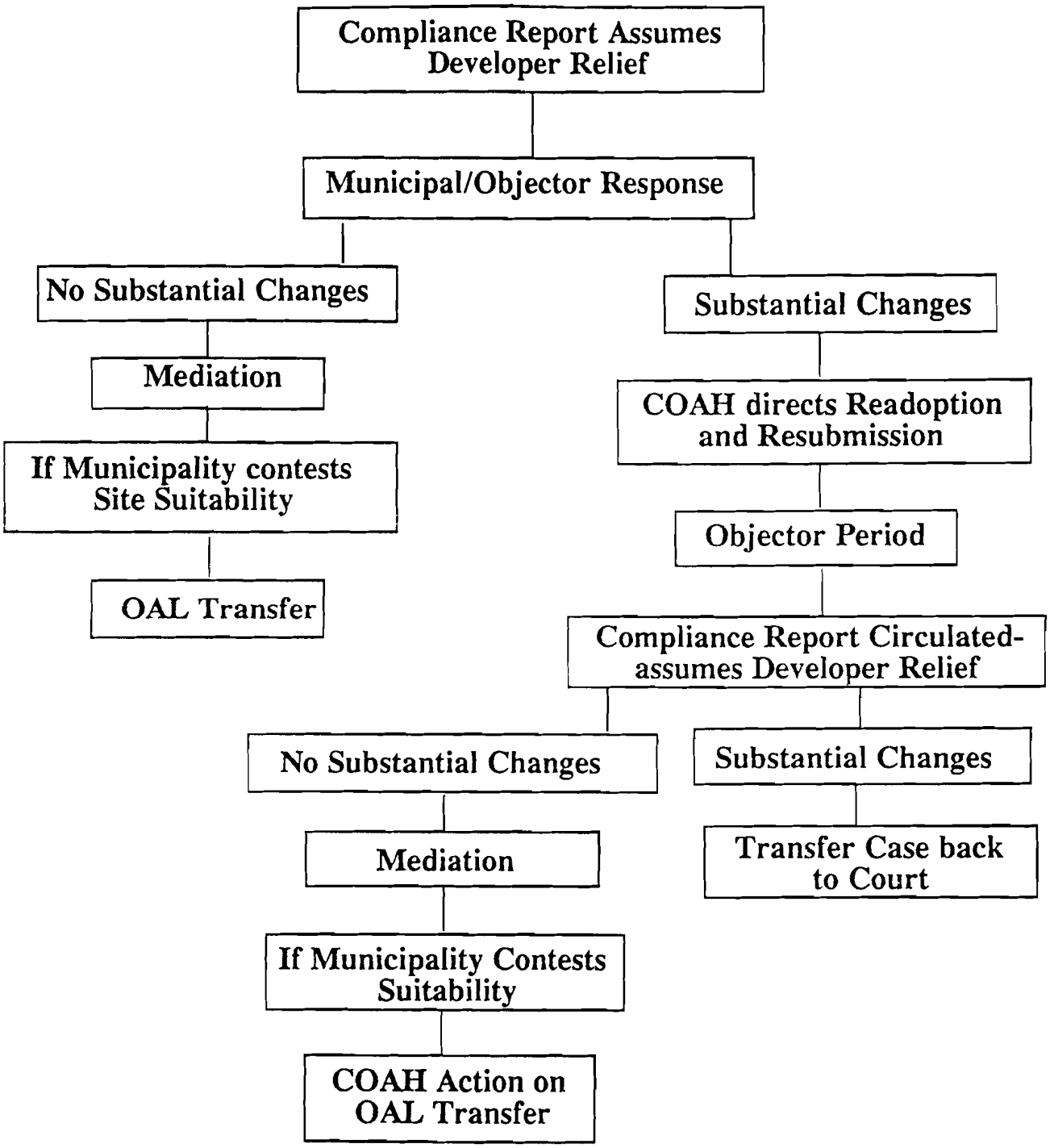

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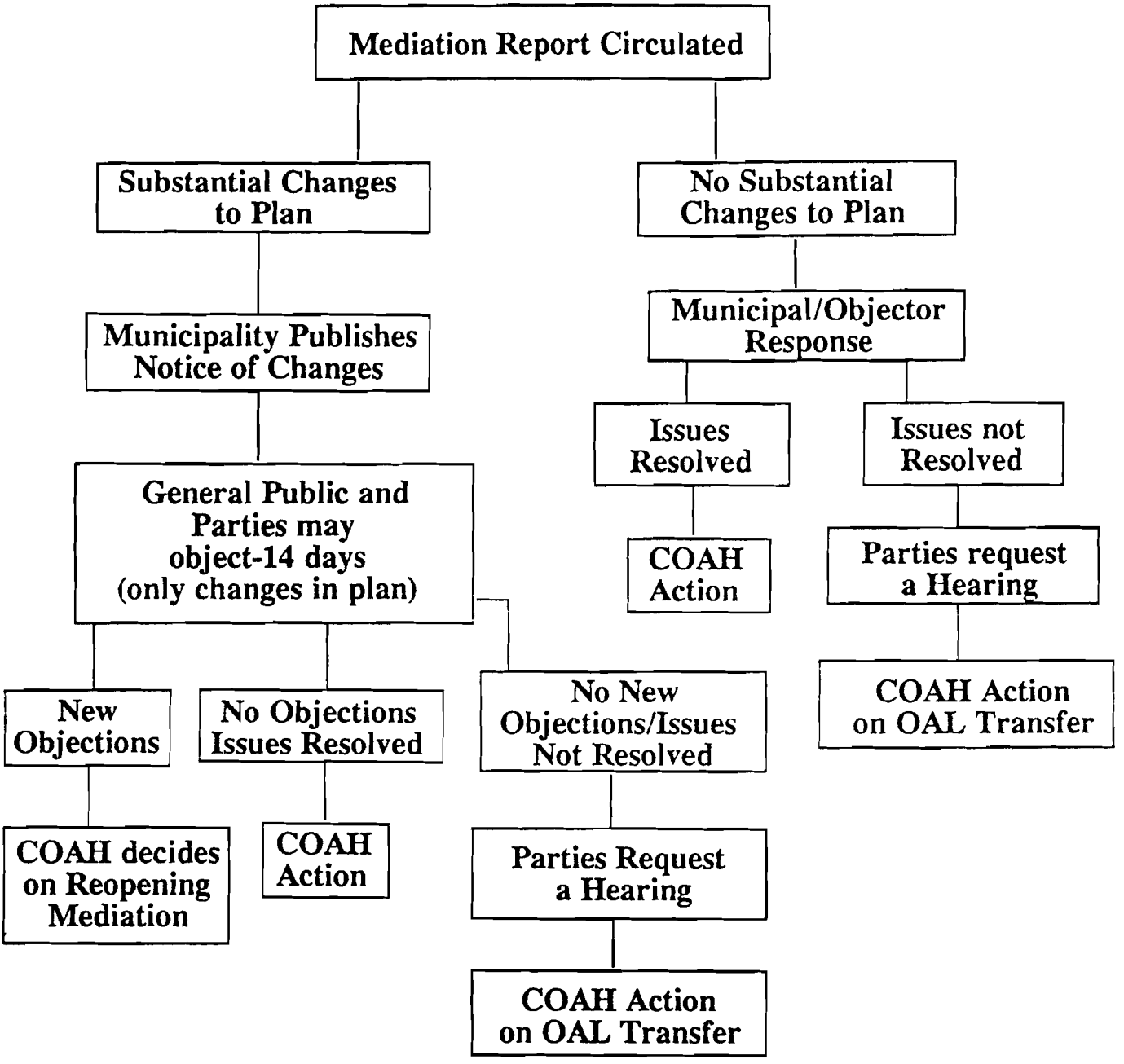
CHART 5
MEDIATION
N.J.A.C. 5:91-7.3, 7.4, 7.5 AND 7.6



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EDUCATION

(a)

STATE BOARD OF EDUCATION

Pupil Records

Conditions for Access to Pupil Records

Adopted Amendment: N.J.A.C. 6:3-2.6

Proposed: September 8, 1992 at 24 N.J.R. 3038(a).
Adopted: November 4, 1992 by the State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: November 10, 1992 as R.1992 d.490, **without change**.
Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:36-19, 18A:36-192 and Public Law 94-142.
Effective Date: December 7, 1992.
Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

6:3-2.6 Conditions for access to pupil records
(a) All authorized organizations, agencies and persons defined in this subchapter shall have access to the records of a pupil, subject to the following conditions:
1.-4. (No change.)
5. A record may be withheld from a parent of a pupil under 18 or from an adult pupil only when the local education agency obtains a court order or is provided with evidence that there is a court order revoking the right to access. Only that portion of the record designated by the court may be withheld. When the local education agency has or obtains evidence of such court order the parent or adult pupil shall be notified in writing within five days of his or her request that access to the record has been denied and that the person has the right to appeal this decision to the court issuing the order.

(b)

STATE BOARD OF EDUCATION

Governor's Teaching Scholar Program

Adopted Amendments: N.J.A.C. 6:12

Proposed: September 8, 1992 at 24 N.J.R. 3050(a).
Adopted: November 4, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: November 10, 1992 as R.1992 d.489, **without change**.
Authority: N.J.S.A. 18A:4-15, 18A:71-86 and Public Law 1991, c.4.
Effective Date: December 7, 1992.
Expiration Date: March 8, 1996.

Summary of Public Comments and Agency Responses:
COMMENT: One written comment was received from Ms. Jean Paashaus. The writer believes that the term, "district board of education" should be used rather than "school, college or other institution" when referring to the cancellation of loan indebtedness by participants in the Governor's Teaching Scholars Program.
RESPONSE: The Department of Education believes that the code should refer to the scholars' loan redemption based on a teaching contract with a school, college or other institution because those words describe the institutions where the scholar will seek work to gain loan redemption. Therefore, the Department has defined public, and nonpublic school. The definition of public school includes the words "operated by or under contract of a board of education."

Full text of the adoption follows:

6:12-1.2 Definitions
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
. . .
"Loan redemption schedule" means the plan whereby redemption (forgiveness) of the loan is based upon number of years the borrower has taught either in a public or nonpublic school in New Jersey or a New Jersey county or State college, or performed other approved teaching service in the State of New Jersey, and the schedule shall take into account whether the teaching assignment is in an urban or non-urban location.
. . .
"Nonpublic school" means an elementary or secondary school within the State, other than a public school, offering education for grades kindergarten through 12, or any combination of those grades, where any child may legally fulfill compulsory attendance requirements and which complies with the requirements of Title IV of the Civil Rights Act of 1964 (P.L. 88-352).
"Public school" means any elementary or secondary education program that is supported by public funds and is operated by or under contract with a board of education, or an educational services commission established pursuant to section 1 of P.L. 1968, c.143, (N.J.S.A. 18A:6-51) or a State facility as defined in Section 3 of P.L. 1975, c.213 (N.J.S.A. 18A:7A-3).
. . .

6:12-1.7 Program participant responsibilities
(a) Students selected for GTSP participation shall:
1.-3. (No change.)
4. Represent and declare an intention to enter the teaching profession in school, college and other approved teaching services in the State of New Jersey upon graduation from college;
5.-11. (No change.)
(b) (No change.)

6:12-1.8 Source of loan funds
(a)-(c) (No change.)
(d) Loans shall accrue interest at the highest established rate by the U.S. Department of Education at the time of disbursement, and during the time a participant is enrolled as a full-time student in the program; however, the combination of principal and interest can be redeemed after graduation for full-time teaching service in the State of New Jersey. Interest will not accrue while the loan recipient is engaged in the approved redemption service. Per diem substitute teaching is not permitted as approved redemption service.
(e) (No change.)

6:12-1.9 Redemption
(a) Redemption (forgiveness) of the loan is contingent upon the following:
1. Teaching service in the New Jersey public school system;
2. Teaching service in a New Jersey nonpublic school;
3. Teaching service in a New Jersey State college or county college; or
4. Other teaching service as approved by the Commissioner provided that the service is performed within the State and requires the performance of professional duties similar to those of a public school teacher. Teaching service may include, but need not be limited to, teaching for the State Departments of Correction or Human Services; teaching in pre-kindergarten or day care settings; or designing and developing educational activities relating to teaching in museums. Such service should include responsibility for classroom instruction, professional planning, implementation and evaluation activities of at least three consecutive months duration.
(b) Prior to commencing service in (a)2 through 4 above, a participant must have pursued employment as a teacher in the public schools and have sought the assistance of the Department of Education as provided pursuant to N.J.S.A. 18A:71-83.

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(c) Borrowers with earned baccalaureate degree will be eligible for the redemption phase of the GTSP.

(d) Depending on the location of the teaching assignment, the principal balance of each loan will be cancelled with cumulative percentages as per the following schedule:

Urban Location (high priority)							
Years teaching in New Jersey public and nonpublic schools:	1	2	3	4			
Rate of loan cancellation:	10%	20%	30%	40%	= 100% total redemption		
Non-Urban Location							
Years teaching in New Jersey public and nonpublic schools:	1	2	3	4	5	6	
Rate of loan cancellation:	5%	10%	10%	20%	25%	30%	= 100% total redemption
Years teaching in New Jersey county or State college:	1	2	3	4	5	6	
Rate of loan cancellation:	5%	10%	10%	20%	25%	30%	= 100% total redemption

(e) The rate of loan cancellation for years teaching in approved other service will be determined by whether the teaching is performed in an urban or non-urban location as per the following schedule:

Urban Location							
Years teaching in approved other service in New Jersey:	1	2	3	4			
Rate of loan cancellation:	10%	20%	30%	40%	= 100% total redemption		
Non-Urban Location							
Years teaching in approved other service in New Jersey:	1	2	3	4	5	6	
Rate of loan cancellation:	5%	10%	10%	20%	25%	30%	= 100% total redemption

(f) Total cancellation of loan indebtedness will not exceed the maximum of $30,000 plus accrued interest per student. Any loans obtained by the borrower from any other New Jersey State agency will not be eligible for loan redemption.

(g) The participant's loan indebtedness will be redeemed each year based on submission of a copy of:

1. The signed contract between the school, college or other institution and the borrower indicating a full-time teaching agreement is in force, submitted by a specified date; and

2. A letter from the chief school administrator or equivalent officer in a school, college or other institution submitted by a specified date indicating a year of service has been completed or that at least three months of teaching in approved other service has been rendered.

(h) If a participant is unable to secure a position in New Jersey's schools or colleges or perform other approved teaching service after demonstrably showing that he or she has applied for and been interviewed for positions, the participant may request a one year deferment from loan redemption. No interest shall accrue during the period of deferment. This request will be referred to a three member panel appointed by the Commissioner. The panel will make its recommendation for deferment to the Commissioner who shall issue a final determination to the participant and inform the Department of Higher Education of the decision.

(i) Temporary deferments of loan repayment/redemption may be granted by the Commissioner of Education upon receipt of written requests from GTSP candidates for the following additional reasons. The candidate is:

1.-3. (No change.)

4. Unable to secure employment for a period not to exceed 12 months by reasons of the care required by a spouse who is disabled;

5. Seeking and unable to secure full-time employment in a public elementary or secondary school, nonpublic school, county or State college, or through other approved teaching service not to exceed 12 months as per (h) above; or

6. (No change.)

6:12-1.10 Terms of repayment

(a) Repayment of loans under the GTSP shall be governed under the following conditions:

1. (No change.)

2. Interest will be waived from the month of graduation until employment begins the following September. Interest will begin to accrue again on or as close to September 16 as possible if a copy of the employment contract has not been presented to the Commissioner. The interest period will be deferred while the borrower is employed as a full-time teacher in a school or college, or performs other approved teaching service, and is therefore participating in the redemption plan;

3. (No change.)

6:12-1.14 Appeals

If, for any reason, a student believes that the application of the rules in this subchapter results in an unfair determination of eligibility or selection, an appeal may be filed with the Commissioner of Education within 60 days of notification. Appeals should be in the form of a letter addressed to the Commissioner of Education, Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625, and should contain the student's full name, social security number, high school of attendance, and a description of the basis for the appeal. Any party aggrieved by any determination of the Commissioner may appeal from his or her determination to the State Board pursuant to N.J.A.C. 6:2.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF THE COMMISSIONER

Rules of Practice and Procedure

Effect of Delegation of Authority; Definitions

Adopted New Rules: N.J.A.C. 7:1-1.3 and 1.4

Proposed: November 4, 1991 at 23 N.J.R. 3276(a).

Adopted: October 28, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: October 30, 1992 as R.1992 d.473, **without change.**

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-3 and 13:1B-4; N.J.S.A. 13:1D-2, 13:1D-9; and N.J.S.A. 52:14B-1 et seq., particularly 52:14B-3.

DEPE Docket Number: 39-91-10.

Effective Date: December 7, 1992.

Expiration Date: August 15, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

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SUBCHAPTER 1. GENERAL PROVISIONS OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

7:1-1.3 Effect of delegation of authority

(a) No provision of this Title 7 or of any other rules of the Department which delegates any power, duty or authority of the Department or the Commissioner to any delegee shall be construed to limit the power or authority of the Commissioner over the delegated subject matter. Without limiting the generality of the foregoing, the Commissioner may take any action for which responsibility has been delegated to a delegee, with the same force and effect as if such responsibility had not been delegated. Such actions include, without limitation, the grant or denial of an application for a permit; revocation of a permit; action on any other application to the Department; or the issuance of an administrative order, administrative consent order, directive, notice of violation, or penalty assessment.

(b) The election to exercise any delegated power, duty or authority shall be solely within the discretion of the Commissioner.

(c) No provision of this section shall be construed as affecting any substantive or procedural provisions of this Title 7 or of any other rules of the Department, except to the extent that any such provision delegates any power, duty or authority of the Department or the Commissioner to any delegee. No provision of this section shall be construed as affecting the right of any person to an administrative hearing under N.J.S.A. 52:14B-10, or administrative review under N.J.S.A. 52:14B-12.

7:1-1.4 Definitions

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

"Appellant" means a person requesting an appeal pursuant to N.J.A.C. 7:1-2.2.

"Commissioner" means the Commissioner of the Department.

"Delegee" means any Assistant Commissioner, Director, or other individual within the Department, or any organizational unit within the Department, to whom or to which any power, duty or authority of the Commissioner or the Department has been delegated.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Organizational unit" means any division, office, bureau or other entity within the Department.

"Permit decision" means a decision of the Department or any organizational unit to issue or to deny a permit.

"Third party" means, with respect to any permit decision, any person other than the applicant for the permit.

(a)

OFFICE OF REGULATORY POLICY

Notice of Administrative Corrections and Changes Statewide Stormwater Permitting Program

N.J.A.C. 7:14A-1.8, 3.9, 3 Appendices A and B, 10.3, and Appendix H

Take notice that the Department of Environmental Protection and Energy has discovered a number of minor errors and needed changes in the text of N.J.A.C. 7:14A, as adopted effective November 2, 1992 at 24 N.J.R. 4088(a). Through this notice, published pursuant to N.J.A.C. 1:30-2.7, the following errors are corrected and necessary changes made:

At N.J.A.C. 7:14A-1.8(i), the word "should" in the first sentence is in error, having been proposed and adopted as "shall" by the Department. A correction through this notice to "shall" will bring the requirement into conformance with NJPDES Permit No. NJ0088315, Parts ID1, IIC and IIID2, which make clear that the annual fee for that permit is $500.00.

At N.J.A.C. 7:14A-3.9(c), "the effective date of this subsection" is replaced by "November 2, 1992" for clarity. At N.J.A.C. 7:14A-10.3(a)25, "by December 2, 1992" is added after "whichever is later," in order to replace the phrase "30 days of the effective date of N.J.A.C. 7:14A-10.3(a)25" deleted upon adoption. This change conforms to those made upon adoption to N.J.A.C. 7:14A-10.3(a)24 and 25iv.

The duplicate appendix titles in N.J.A.C. 7:14A-3 Appendices A and B are deleted. The issuance, effective and expiration dates set forth in the heading to Appendix A, Permit Number NJ0088315, are clarified to conform in style to those listed in the heading of Appendix B, Permit Number NJ0088323. The unnecessary signature lines in the headings of both Permits are also deleted.

In Permit Number NJ0088315, Part IIIA, and Permit Number NJ0088323, Part IIIA, "[this]" is added to the quoted text of N.J.S.A. 58:10-23.11c; while included in the proposal text, it was erroneously deleted in the publication of the adoption.

In Appendix A, Permit Number NJ0088315, at Part IIIB2aii, bii and c, and Attachment D, the term "Stormwater Pollution Prevention Implementation and Inspection Certification" is changed to "Stormwater Pollution Prevention Plan Implementation and Inspection Certification," to conform to the term as used in the Attachment D title.

In the first paragraph of Attachment A to Permit Number NJ0088315, the phrase "notarized Notary Public" is corrected to read "notarized by an authorized Notary Public." The correct text was included in the original proposal and adoption documents, but erroneously not published. Its correction is necessary for clarity, in conformance with the text at Appendix B, Permit Number NJ0088323, Attachment A.

In the fourth paragraph of Appendix B, Permit Number NJ0088323, Attachment C, the phrase "in these Stormwater Pollution Prevention Plan Preparation Certifications" is changed to "in this Stormwater Pollution Prevention Plan Preparation Certification" to reflect the adopted certification requirement.

At N.J.A.C. 7:14A, Appendix H, the word "Settable" in the third column heading is a printing error; the correct word is "Settleable."

Word number (plural/singular) and punctuation changes are made at N.J.A.C. 7:14A-3, Appendix A, Permit Number NJ0088315, Parts IC, IIIB2c and IIIG, and Attachment B, Sections A3 and C6; Appendix B, Permit Number NJ0088323, Parts IB3, IIIA and VK1; and N.J.A.C. 7:14A-10.3(a).

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

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(i) For NJPDES Permit No. NJ0088315 (N.J.A.C. 7:14A-3, Appendix A, incorporated herein by reference), the annual fee collected under (a) above [should] **shall** be the minimum fee of $500.00 set forth in (h)1 above. A request for authorization under that permit shall not be complete unless this fee is included in that request, or unless this permit has been reissued and this fee has already been paid for the billing year in which the RFA is submitted.

(j) (No change.)

7:14A-3.9 General permits

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

(c) Appendix A to this subchapter and Appendix B to this subchapter contain two final general permits that the Department has issued for stormwater discharges associated with industrial activity. The inclusion of these two general permits within this subchapter does not affect the status or requirements of other general permits that the Department issued prior to [the effective date of this subsection] **November 2, 1992.**

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APPENDIX A

PERMIT NUMBER NJ0088315

NJPDES/DSW GENERAL INDUSTRIAL STORMWATER PERMIT (ROUND 2)

[PERMIT NUMBER NJ0088315
NJPDES/DSW GENERAL INDUSTRIAL STORMWATER PERMIT (ROUND 2)]

Permittee	Co-Permittee
GENERAL PERMIT—CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION	

Property Owner	Location of Activity
GENERAL PERMIT—CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION	GENERAL PERMIT—CATEGORY 5G2 PER INDIVIDUAL NOTICE OF AUTHORIZATION

Current Authorization Covered By This Approval And Previous Authorization	Issuance Date	Effective Date	Expiration Date
5G2: GEN INDUST STRMWTR ROUND 2	10/01/1992	11/02/1992	11/01/1997

By Authority of: SCOTT A. WEINER, COMMISSIONER

[———————————————————————————]

PART I. *AUTHORIZATION UNDER THIS PERMIT*

A.-B. (No change.)

C. *Requiring an Individual Permit or Another General Permit[;]*

1.-2. (No change.)

D. (No change.)

PART III. *EFFLUENT LIMITATIONS*

A. *Hazardous Substances*

The permittee shall comply with the applicable provisions of N.J.A.C. 7:1E (Department rules entitled "Discharges of Petroleum and other Hazardous Substances") relevant to the stormwater discharges authorized by this permit. No discharge of hazardous substances (as defined in N.J.A.C. 7:1E-1.6) shall be deemed to be "pursuant to and in compliance with **[this]** permit" within the meaning of the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11c.

B. *Preparation and Implementation of the Stormwater Pollution Prevention Plan*

1. (No change.)

2. Deadlines and Certifications

a. Existing discharges:

i. (No change.)

ii. Except as provided in iii. below, within 18 months after the effective date of the general permit authorization, the permittee shall implement the SPPP prepared for the facility; and shall submit to the Department the "Stormwater Pollution Prevention **Plan** Implementation and Inspection Certification" contained in Attachment D (except if this certification was already included in the RFA submitted to the Department under Part II).

iii. (No change.)

b. New discharges for which RFA's are submitted within 24 months of the effective date of this permit:

i. (No change.)

ii. Within *24 months after the effective date of this permit,* the permittee shall implement the SPPP prepared for the facility; and shall submit to the Department the "Stormwater Pollution Prevention **Plan** Implementation and Inspection Certification" contained in Attachment D (except if this certification was included in the RFA submitted to the Department under Part II).

c. New discharges for which RFA's are submitted within 24 months of the effective date of this permit:

The SPPP shall be prepared and implemented prior to submission of the RFA under Part II; and the RFA shall contain the "Stormwater Pollution Prevention Plan Preparation Certification[s]" contained in Attachment C, and the "Stormwater Pollution Prevention **Plan** Implementation and Inspection Certification" contained in Attachment D.

3. (No change.)

C.-F. (No change.)

G. *Other Permits or Regulatory Requirements*

Compliance with the conditions of this permit does not exempt the permittee from any other applicable permit or other regulatory requirements including, but not limited to, all other Department rules and the Pinelands rules (N.J.A.C. 7:50).

PART IV. (No change.)

ATTACHMENT A: *RFA Certification*

Every Request for Authorization (RFA) shall include the following RFA certification. All signatures on this RFA certification shall be notarized **by an authorized** Notary Public.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this Request for Authorization and all attached documents, and that this Request for Authorization and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete, and that as far as I know, none of the stormwater discharges for which this Request for Authorization is submitted are excluded from authorization by part I.B of NJPDES Permit No. NJ0088315.

"I also certify that I have made arrangements for publication, in a daily or weekly newspaper within the area affected by the facility identified in this RFA, of a notice which states that a request for authorization under general permit no. NJ0088315 to discharge stormwater to surface water(s) has been submitted pursuant to N.J.A.C. 7:14A-3.9(b)2. This notice identifies the general permit number, the legal name and address of the owner and operator, the facility name and address, and type of facility or discharges.

"I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

The RFA certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

A separate RFA certification shall be signed and submitted for each person submitting the RFA.

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ATTACHMENT B: *Contents of the Stormwater Pollution Prevention Plan*

A. Inventory Requirements

The SPPP shall contain an inventory that includes the following:

1.-2. (No change.)

3. For discharges identified in A.2. above, a list of any final or draft NJPDES permits, pending NJPDES permit applications, or pending requests for authorization under another general NJPDES permit (including the NJPDES permit number where available).

B. (No change.)

C. Narrative Description of Existing Conditions

The SPPP shall include a narrative description concerning the management of all source materials at the facility which are handled, treated, stored, disposed, or which otherwise exist in a manner allowing contact with stormwater. The narrative description shall address the following:

1.-5. (No change.)

6. Any discharges of domestic wastewater, non-contact cooling water, or process waste water (other than stormwater) that the SPPP lists in accordance with B.6 above (unless such discharges have been authorized by other NJPDES permits or identified in applications or requests for authorization submitted for other NJPDES permits). The narrative description shall also discuss any existing practices to prevent or permit such discharges.

D.-I. (No change.)

ATTACHMENT C: *Stormwater Pollution Prevention Plan Preparation Certification*

The following certification shall be signed and submitted by the owner/operator to the Department using the appropriate Department forms.

"I certify under penalty of law that I have personally examined and am familiar with the information in this Stormwater Pollution Prevention Plan Preparation Certification and all attached documents, and in the stormwater pollution prevention plan referred to in this certification. I further certify that I have signed this stormwater pollution prevention plan (SPPP), the implementation of which will ensure that there will be no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters.

"I further certify that this Stormwater Pollution Prevention Plan Preparation Certification, all attached documents, and stormwater pollution prevention plan were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in this Stormwater Pollution Prevention Plan Preparation Certification, all attached documents, and stormwater pollution prevention plan is true, accurate and complete.

"I certify that the stormwater pollution prevention plan referred to in [these] **this** Stormwater Pollution Prevention Plan Preparation Certification[s] has been signed and is being retained at the facility in accordance with part III.B of NJPDES Permit No. NJ0088315, and that this stormwater pollution prevention plan will be fully implemented at the facility in accordance with the terms and conditions of that permit. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

This signature shall be notarized by an authorized Notary Public. Whenever there are two or more permittees for the facility, all of those permittees shall jointly submit this Stormwater Pollution Prevention Plan Preparation Certification.

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with this certification (with updated names, addresses and telephone numbers attached), unless the certification is submitted concurrently with the RFA.

ATTACHMENT D: *Stormwater Pollution Prevention Plan Implementation and Inspection Certification*

The following certification shall be signed and submitted by the owner/operator to the Department using the appropriate Department forms.

"I certify under penalty of law that I have personally examined and am familiar with the information in this Stormwater Pollution Prevention **Plan** Implementation and Inspection Certification and all attached documents, and in the stormwater pollution prevention plan referred to in this certification.

"I certify that this Stormwater Pollution Prevention **Plan** Implementation and Inspection Certification and all attached documents were prepared by personnel under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate this information. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the information in this Stormwater Pollution Prevention **Plan** Implementation and Inspection Certification and all attached documents is true, accurate and complete.

"I certify that the facility has been inspected to identify areas contributing to the stormwater discharge authorized under NJPDES permit No. NJ0088315 and to evaluate whether the stormwater pollution prevention plan (SPPP) prepared under that permit complies with part III.B. of that permit and is being properly implemented.

"I certify that the stormwater pollution prevention plan referred to in this Stormwater Pollution Prevention **Plan** Implementation and Inspection Certification has been and will continue to be fully implemented at this facility in accordance with the terms and conditions of part III of NJPDES Permit No. NJ0088315. I specifically certify that there is no exposure, during and after storm events, of industrial materials, machinery, waste products or other source materials located at the facility, to stormwater that is discharged through separate storm sewers to surface waters (except for any incidents of non-compliance identified in the attached report). I also specifically certify that this facility does not generate and discharge, through storm sewers to surface waters, any domestic wastewater, non-contact cooling water, or process waste water (including leachate and contact cooling water) other than stormwater, unless that discharge is authorized by another NJPDES permit or identified in an application (or request for authorization) submitted for another NJPDES permit.

"I also certify that this facility is not in violation of any conditions of NJPDES Permit No. NJ0088315, including requirements in part III of that permit for preparation and implementation of a stormwater pollution prevention plan, except for any incidents of noncompliance (which are noted in the attached report). For any incidents of noncompliance identified in the annual inspection (or made known to me during the course of the past year), I have attached a report identifying these incidents, and identifying steps taken or being taken to remedy the noncompliance and to prevent such incidents from recurring. If the attached report identifies any incidents of noncompliance, I certify that any remedial or preventative steps identified therein were or will be taken in compliance with the schedule set forth in the attachment to this certification. I am aware that pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., there are significant civil and criminal penalties for making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under that Act, including fines and/or imprisonment."

This certification shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

This signature shall be notarized by an authorized Notary Public.

A copy of the RFA form that was originally submitted to the Department (in accordance with Part II of this permit) must be submitted along with this certification (with updated names, addresses and telephone numbers attached), unless the certification is submitted concurrently with the RFA.

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The permittee shall also identify the number of the NJPDES permit of any discharges through storm sewers to surface waters of domestic wastewater, non-contact cooling water, or process waste water other than stormwater generated by the facility. If no NJPDES permit number has been assigned yet, the permittee shall provide a copy of the cover page of the application or request for authorization in an attachment to this certification.

APPENDIX B

[PERMIT NUMBER NJ0088323

NJPDES/DSW GENERAL PERMIT CONSTRUCTION ACTIVITY STORMWATER]

PERMIT NUMBER NJ0088323
NJPDES/DSW GENERAL PERMIT CONSTRUCTION ACTIVITY STORMWATER

Permittee	Co-Permittee
GENERAL PERMIT—CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION	

Property Owner	Location of Activity
GENERAL PERMIT—CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION	GENERAL PERMIT—CATEGORY 5G3 PER INDIVIDUAL NOTICE OF AUTHORIZATION

Current Authorization Covered By This Approval And Previous Authorization	Issuance Date	Effective Date	Expiration Date
5G3: GEN PERMIT CONSTRUCT ACTIVITY	10/01/1992	11/02/1992	11/01/1997

By Authority of: SCOTT A. WEINER, COMMISSIONER

[_____]

PART I. *AUTHORIZATION UNDER THIS PERMIT*

A. (No change.)

B. *Eligibility*

1.-2. (No change.)

3. Other discharges are not authorized by this permit, even if such discharges are combined with stormwater discharges[,] that are authorized by this permit.

C.-D. (No change.)

PART II. (No change.)

Part III. *EFFLUENT LIMITATIONS*

A. *Hazardous Substances*

The permittee shall comply with the applicable provisions of N.J.A.C. 7:1E (Department rules entitled "Discharges of Petroleum and Other Hazardous Substances") relevant to the stormwater discharges authorized by this permit. No discharge of hazardous substances (as defined in N.J.A.C. 7:1E-1.6) shall be deemed to be "pursuant to and in compliance with **[this]** permit" within the meaning of the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11c.

B.-C. (No change.)

PART IV. (No change.)

PART V. *CONDITIONS APPLICABLE TO GENERAL PERMITS AUTHORIZING STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY*

A.-J. (No Change.)

K. *Reporting Changes and Violations*

1. Planned Changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of the pollutants discharged (N.J.A.C. 7:14A-2.5(a)14i).

2. (No change.)

L.-Y. (No change.)

ATTACHMENT A. (No change.)

7:14A-10.3 Discharges to surface waters (DSW)

(a) Except as exempted pursuant to N.J.A.C. 7:14A-2.1(g)1, any person planning to discharge pollutants from a point source to surface waters of the State must apply for a Discharge Allocation Certificate (DAC) prior to applying for a NJPDES permit. Any person with a valid NPDES or NJPDES permit shall apply for a NJPDES permit in accordance with the schedules in N.J.A.C. 7:14A-2 and 10. Pre-application conferences with the Department are strongly recommended. The following information, in addition to the requirements of N.J.A.C. 7:14A-2, shall be required for a DAC or NJPDES permit (unless different information is required by a general permit to be included in the request for authorization for that permit, pursuant to N.J.A.C. 7:14A-3.9(b)2ii):

1.-24. (No change.)

25. Any entity whose group application to EPA pursuant to 40 CFR 122.26(c)(2) lists New Jersey facilities shall, within 30 days of the EPA decision to approve or deny the members of the group application (see 40 CFR 122.26(e)(2)(ii)) or **December 2, 1992,** whichever is later, provide the following information to the Department;

i.-iv. (No change.)

26.-27. (No change.)

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

Appendix H
Schedule of Monitoring

Wastewater Treatment Plant (or discharge) Size	Raw + Final, COD, BOD, and Suspended Solids	pH, Residual Chlorine, [Settable] **Settleable** Solids, Temperature	Fecal Coliform Grab
<.05 MGD	1/Month, Grab	Daily, Grab	1/Month
.05-.1 MGD	2/Month, 4 hr.	Daily, Grab	1/Month
.1-.5 MGD	2/Month, 6 hr.	Daily, Grab	2/Month
.5-1 MGD	3/Month, 6 hr.	Daily, Grab	2/Month
1-5 MGD	1/Week, 24 hr.	2/Day, Grab	4/Month
5-10 MGD	2/Week, 24 hr.	3/Day, Grab	8/Month
10-15 MGD	3/Week, 24 hr.	3/Day, Grab	8/Month
>15 MGD	Daily, 24 hr.	6/Day, Grab	Daily

Notes: COD Testing may be deleted for POTW.

COD, BOD, TSS, pH, and/or settleable solids monitoring may be relaxed (or deleted) for non-contact cooling water discharges if the applicant's activities will not affect these constituents.

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Residual chlorine monitoring will not be required at facilities which do not add chlorine to their discharge.

Fecal Coliform monitoring may be relaxed (or deleted) for facilities which do not receive domestic wastewater and which do not receive wastewaters containing pathogenic and/or coliform organisms.

Appendix H does not apply to general DSW permits for stormwater point sources or discharges from separate storm sewers. For such discharges, the schedule of monitoring, if any, shall be stipulated in the NJPDES permit. However, Appendix H may be used as a guide in establishing the schedule of monitoring, if any, in individual DSW permits for stormwater point sources or separate storm sewers. Also, Appendix H does apply to discharges into storm sewers of domestic wastewater, non contact cooling water, or process wastewater other than stormwater.

(a)

WATER SUPPLY ELEMENT
Notice of Administrative Correction
Water Supply Loan Programs
Eligible Project Costs; Priority Determination
N.J.A.C. 7:1A-2.13 and 5.2

Take notice that the Department of Environmental Protection and Energy has discovered errors in the text of N.J.A.C. 7:1A-2.13(f)3i and 5.2(g)2iii. The citation to the Local Public Contracts rules in N.J.A.C. 7:1A-2.13(f)3, "N.J.S.A. 5:34", should correctly be "N.J.A.C. 5:34." The formula for "affected services" at N.J.A.C. 7:1A-5.2(g)2iii does not correspond to that adopted at 24 N.J.R. 2245(a). Through this notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7, these errors are corrected.

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

7:1A-2.13 Eligible project costs

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

(f) Prior to any final award of bids for construction contracts the borrower shall submit for the Department's review and approval the final construction contracts with work specifications detailing any changes made since the Department's previous design approval.

1.-2. (No change.)

3. The borrower shall certify to the Department the following:

i. The borrower's compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, [N.J.S.A.] **N.J.A.C.** 5:34;

ii.-iii. (No change.)

(g) (No change.)

7:1A-5.2 Priority determination (Type A and Type B loans)

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

(g) Priority points to address contamination problems related to publicly owned wells shall be awarded based on the three factors of severity, public hardship and population served, as indicated below:

1. (No change.)

2. In considering financial hardship, project costs and the relative income levels of those affected will be considered.

i.-ii. (No change.)

iii. A point system reflecting the degree of hardship will be used according to the following schedule:

Incremental annual project cost per affected service:

0-$ 25/yr:	0 pts.
$ 26-$ 75/yr:	15 pts.
$ 76-$125/yr:	30 pts.
$126-$175/yr:	45 pts.
over $175/yr:	60 pts.

Affected services = Total Services × (present rated well pump capacity of wells presently contaminated plus wells anticipated to be contaminated, as estimated by the Department, divided by present rated [well pump] **system capacity (including wells, surface water, and bulk purchase interconnections)**).

iv. (No change.)

3. (No change.)

(h) (No change.)

(b)

DIVISION OF FISH, GAME AND WILDLIFE
Marine Fisheries
Size and Possession Limits
Adopted Amendment: N.J.A.C. 7:25-18.1

Proposed: April 20, 1991 at 24 N.J.R. 1456(a).

Adopted: October 28, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: November 2, 1992 as R.1992 d.476, **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. 23:2B-6.

DEPE Docket Number: 11-92-03.

Effective Date: December 7, 1992.

Expiration Date: February 15, 1996.

The New Jersey Department of Environmental Protection and Energy (Department) is adopting the amendment of N.J.A.C. 7:25-18.1. The amendment was proposed on April 20, 1992 at 24 N.J.R. 1456(a). A public hearing on the proposal was held on May 6, 1992. The comment period closed on May 20, 1992.

Twelve individuals submitted written comments while four provided testimony at the public hearing.

The following is a list of those persons and organizations that submitted written comments or provided testimony at the public hearing directly related to the proposal:

Individual	Organization
Thomas Buban	Atlantic Star Fishing & Cruises, Inc.
Joe Cioban	
J.F. Clifford	American Cyanamid Co.
William Dorny	
Edward Glomkowski	
Andrew Krucyek	
Sam Krugler	
Emanuel Luftglass	
Chris Nastasi	
Tom Polchanes	
David Schmehr	
Robert Stout	
Dennis Sullivan	
Neil Robbins	Cape May County Party & Charter Boat Assoc.
Dan Mazza	
John Griffin	

Summary of Public Comments and Agency Responses:

The following is a summary of comments received on the Department's proposal and the Department's responses to the comments.

General

1. COMMENT: Commenters suggested that preventing filleting of flatfish at sea is a ridiculous idea, extreme regulatory overkill and will do nothing to stop fishermen from catching and keeping undersized, illegal flatfish.

RESPONSE: The Department disagrees with the commenters' statements. Filleting fish at sea is an easy way to circumvent minimum size limits. Preventing filleting of flatfish at sea will require fishermen to land fish whole, where dockside inspections will allow law enforcement authorities the opportunity to enforce minimum size limit regulations. In New Jersey, other species are already regulated by some type of filleting at sea-minimum size limit regulation or anti-mutilation regulation, including striped bass, weakfish and American lobster. The regulations for these species are also aimed at preventing fishermen from circumventing minimum size limits. In addition, of the other 13 Atlantic

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coastal states, 11 have instituted or are in the process of implementing filleting at sea or anti-mutilation regulations on various species to prevent fishermen from circumventing minimum size limits. These states include Maine, New Hampshire, Massachusetts, Connecticut, New York, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida. New York is discussing a proposal on summer flounder that is modeled after the New Jersey proposal which exempts party boats from the filleting restriction.

2. COMMENT: Commenters suggested that in addition to preventing filleting at sea, summer flounder stocks could be enhanced by increasing the size limit to 14 inches and preventing illegal inshore trawling at night.

RESPONSE: The Department agrees with the commenters' statements that additional management strategies, such as increasing summer flounder size limits and preventing illegal harvest, will benefit summer flounder stocks. Amendments to various regulations are being developed for proposal within the next two months that will increase the summer flounder size limit to 14 inches and facilitate enforcement efforts regarding prohibition on otter trawling in restricted waters.

3. COMMENT: Several commenters suggested that if the filleting at sea regulation is adopted, more law enforcement should be directed toward inspecting fishermen to make sure the regulation works.

RESPONSE: The Department agrees that adequate enforcement is essential to make any regulation more effective. The purpose of preventing flatfish filleting at sea, however, is to make enforcement of existing minimum size limits easier and less demanding on enforcement authorities. Landing flatfish whole will enable increased dockside enforcement of size limits and eliminate the need for enforcement of size limits at sea. The Department believes that this amendment will increase compliance with summer flounder and winter flounder size limits and will actually ease the burden of enforcement.

4. COMMENT: One commenter supported the proposal to eliminate flatfish filleting at sea but was concerned that the exemption for party boats would allow them to harvest, fillet at sea and land flatfish smaller than the minimum size limit.

RESPONSE: The Department agrees that it is extremely important to enforce minimum size limits on party boats and believes that the adopted amendment will be enforceable. Enforceability has been retained by additional requirements imposed on party boats licensed to carry 15 or more passengers, including obtaining a special permit, minimum sizes on flatfish fillets, no discarding of flatfish parts or carcasses while fishing, no mutilation of flatfish carcasses, retaining flatfish carcasses until docking, and carcasses from a previous trip must be disposed of prior to fishing on a subsequent trip. Violators of the permit system will incur not only monetary fines but also permit suspensions or revocation.

5. COMMENT: Several commenters suggested that there will be social impacts resulting from the proposal as a result of the amount of carcasses which will need to be disposed of on land and the lack of cleaning facilities available at docks, ramps and marinas.

RESPONSE: The Department recognized in the Social Impact section of the proposal a slight adverse social impact to those recreational fishermen aboard private boats and party and charter boats licensed to carry less than 15 passengers who wish to fillet, or have filleted by mates, their fish before returning to the dock. The Department believes that this impact will not be substantial as facilities exist in many places for shoreside cleaning of fish and waste disposal. Where not available, facilities such as cleaning tables, running water and waste disposal containers can easily be set up without significant problems. Although this amendment may cause some minor difficulty where there are no shoreside facilities for cleaning of fish or disposal of waste, this difficulty is outweighed by the importance of the rule in preventing circumvention of size limits and the small cost of establishing these facilities. The Department will monitor this situation following implementation and work with local municipalities and marinas to determine if any problems with the disposal of flounder carcasses shoreside arise.

6. COMMENT: One commenter agreed with the proposed amendment but suggested that charter boats licensed to carry six passengers should be eligible for the special permit to permit filleting at sea.

RESPONSE: The Department considered various options under which a vessel would be eligible for a special permit and the inclusion of vessels licensed to carry 15 or more passengers was recommended by a special committee comprised of industry representatives, Marine Fisheries Council members and Division of Fish, Game and Wildlife staff. Vessels licensed to carry less than 15 passengers were not included under the special permit because social and economic impacts of the amendment are severely reduced for smaller vessels. Because there would be only a maximum of six fishermen from a charter boat licensed to carry six passengers waiting to have fish filleted at the end of a fishing trip, a competent mate should be able to fillet the catch in a timely manner; thereby reducing waiting time and decreasing the number of fishermen not willing to wait for dockside filleting. In addition, this amendment will not prohibit the cleaning of other species at sea such as bluefish and sea bass.

7. COMMENT: Commenters supported the proposed amendment and the special permit as a way to preserve the traditional employment and income for mates working on party boats while at the same time enforcing minimum size limits and preserving flatfish stocks.

RESPONSE: The Department agrees with the commenters' statements.

8. COMMENT: One commenter suggested that minimum fillet sizes should be instituted instead of prohibiting filleting of flatfish at sea.

RESPONSE: The Department disagrees with the commenter's suggestion. Although minimum fillet sizes were considered by the Department as a way to better enforce size limits, the concept was determined to be ineffective and unenforceable. The relationship between fish length and fillet length is extremely variable based on filleting expertise. In addition, positive identification of fillets from different species of flatfish is impossible without expensive laboratory testing and would prevent law enforcement authorities from determining violations in the field. An exception to the prohibition of filleting flatfish at sea was provided to party boats licensed to carry 15 or more passengers because of the unique social and economic circumstances of that industry. Party boat captains have advised the Department that mates on these vessels receive tips based upon cleaning or filleting their customer's catch which have historically constituted a significant portion of the mate's income. The captains further advised the Department that if this service could not be provided in a reasonable manner, they would lose a portion of their customers who did not have the ability or desire to fillet their own fish. Minimum fillet sizes were then used in conjunction with other strict requirements of a Special Fillet Permit only as a means to facilitate effective enforcement of the permit.

9. COMMENT: One commenter suggested that prohibiting filleting of summer flounder at sea is not needed to help stocks because the existing 13 inch size limit is working. More people are filleting fish at sea because more fish are being caught, not because people are trying to circumvent size limits.

RESPONSE: The Department disagrees with the commenter's statements. Long-term trends in abundance and recruitment of summer flounder, derived from several surveys conducted over the range of the species, indicated that summer flounder stocks are depressed and severely overfished. In order to allow for stock rebuilding, the Mid-Atlantic Fishery Management Council and Atlantic States Marine Fisheries Commission have recommended several additional management measures to reduce the harvest of summer flounder. Among these management measures is a recommendation to increase the summer flounder size limit to 14 inches. The Department is currently proposing the change in size limit under a separate amendment to N.J.A.C. 7:25-18.1.

10. COMMENT: One commenter recommended that party boats should be allowed to fillet summer flounder because large numbers of fishermen will not wait at the dock after a fishing trip for a mate to clean their fish.

RESPONSE: The Department agrees with the commenter's statement. The amendment to N.J.A.C. 7:25-18.1 allows for filleting on party boats licensed to carry 15 or more passengers provided that the party boat owner obtains the special permit.

11. COMMENT: One commenter suggested that mates on party boats eligible for a special limit to fillet summer flounder should also be allowed to fillet winter flounder at sea.

RESPONSE: The Department considered this suggestion carefully and has determined that mates on party boats eligible for a special permit should be allowed to fillet winter flounder at sea also. This change has been made in the adoption to eliminate any economic and social impacts to mates and fishermen aboard party boats who have traditionally participated in at sea filleting of winter flounder. The name of the permit has been modified throughout the regulation to include winter flounder. A minimum fillet size of five inches has been established to coincide with the winter flounder size limit and fishing season.

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N.J.A.C. 7:25-18.1(f)3vi(3)

12. COMMENT: One commenter suggested that the words "regardless of vessel ownership" should be deleted to allow for a new owner of a vessel having a revoked special permit to apply for a new permit.

RESPONSE: The Department disagrees with the commenter's statement. The adopted amendment will allow at sea filleting of summer and winter flounder on board vessels eligible for and obtaining a special permit to protect traditional at sea filleting by mates and eliminate social and economic impacts to mates and fishermen. In order for the permit to be revoked, a vessel must violate the provisions of the permit three times. The Department believes that any vessel committing three offenses against the provisions of the permit is in complete disregard of the Department's management efforts for winter and summer flounder. In order to sufficiently deter any vessel from violating the provisions of the special permit, revocation of the permit should remain with any vessel committing three offenses regardless of ownership.

Summary of Agency-Initiated Changes:

At N.J.A.C. 7:25-18.1(f)3vi(1) and (2), the Department has deleted the period (May through October) in which permit suspension would occur for first and second offenses of the special permit that allows party boats to fillet flounder at sea. In the proposal the special permit only applied to the filleting of summer flounder and the Department felt that any violation of the permit should result in a suspension during the summer flounder fishing season (May through October). Since the permit has been modified to also allow party boats to fillet winter flounder, which are traditionally caught from November through April, the period of suspension proposed was not applicable. By including winter flounder and summer flounder under the same permit, the fishing season for these species could occur in every month of the year. The Department has, therefore, determined to delete the May through October period of suspension. However, the permit suspension will remain at 30 days for the first offense and 90 days for the second offense as was specified in the proposal.

Summary of Hearing Officers' Recommendations and Agency Responses:

Thomas W. McCloy, Chief, Bureau of Marine Fisheries, served as hearing officer at the May 6, 1992 public hearing regarding the proposal to prohibit the filleting of flatfish at sea. After receiving testimony presented at the public hearing and written comments received during the comment period, he recommended that the Department adopt the amendment to N.J.A.C. 7:25-18.1 with the following changes:

1. In N.J.A.C. 7:25-18.1(f)1, the exemption for party boats that allows the filleting of summer flounder with a permit from the Department should be modified to also include the filleting of winter flounder under the same permit.

2. In N.J.A.C. 7:25-18.1(f)3iv, language should be modified to specify that the minimum size of flounder fillets shall not be less than seven inches during the period from May 1 through October 31, or less than five inches during the period of November 1 through April 30. These minimum fillet lengths coincide with the minimum sizes on summer flounder and winter flounder during their respective fishing seasons.

3. The title of the special permit for party boats should be changed from the "Special Summer Flounder Fillet Permit" to the "Special Flounder Fillet Permit" in N.J.A.C. 7:25-18.1(f), (f)1, (f)3, and (f)3vi and vii.

4. In N.J.A.C. 7:25-18.1(f)3vi(1) and (2), the period of suspension for the first and second offense of the permit should be deleted. Since the permit will be applicable to both summer flounder and winter flounder, the originally proposed suspension period from May through October is no longer justified. Permit suspensions should remain at 30 days for the first offense and 90 days for the second offense as specified in the proposal.

As set forth above, these recommendations were adopted by the Department.

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

7:25-18.1 Size and possession limits

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

(e) Except as provided in (f) below, a person shall not remove the head, tail or skin, or otherwise mutilate to the extent that its length or species cannot be determined, any summer flounder, winter flounder or other species of flatfish, except after fishing has ceased and such species have been landed to any ramp, pier, wharf or dock or other shore feature where it may be inspected for compliance with the appropriate size limit.

(f) Special provisions applicable to a Special Summer Flounder Fillet Permit are as follows:

1. A party boat owner may apply to the Commissioner for a permit for a specific vessel, known as a Special *[Summer]* Flounder Fillet Permit to fillet summer flounder (fluke) ***and winter flounder*** at sea;

2. For purposes of this section, party boats are defined as vessels that can accommodate 15 or more passengers as indicated on the Certificate of Inspection issued by the United States Coast Guard for daily hire for the purpose of recreational fishing;

3. The Special *[Summer]* Flounder Fillet Permit shall be subject to the following conditions:

i. Once fishing commences, no flatfish parts or carcasses shall be discarded overboard; only whole live flatfish may be returned to the water;

ii. No carcasses of any flatfish shall be mutilated to the extent that its length or species cannot be determined;

iii. All flatfish carcasses shall be retained until such time as the vessel has docked and been secured at the end of the fishing trip adequate to provide a law enforcement officer access to inspect the vessel and catch;

iv. No fillet of any *[summer]* flounder shall be less than seven inches in length ***during the period of May 1 through October 31 or less than five inches in length during the period of November 1 through April 30***;

v. Flatfish carcasses from the previous trip shall be disposed of prior to commencing fishing on a subsequent trip;

vi. Violation of any of the provisions of the Special *[Summer]* Flounder Fillet Permit shall subject the violator to the penalties established pursuant to N.J.S.A. 23:2B-14 and shall result in a suspension or revocation, applicable to both the vessel and the owner, of the Special *[Summer]* Flounder Fillet Permit according to the following schedule:

(1) First offense: 30 days suspension*[, imposed during the period from May through October; any remaining period of suspension not occurring prior to November 1 of any particular year shall be applied during the next year beginning May 1]*;

(2) Second offense: 90 days suspension*[, imposed during the period from May through October; any remaining period of suspension not occurring prior to November 1 of any particular year shall be applied during the next year beginning May 1]*; and

(3) Third offense: Revocation of permit, rendering the vessel and the owner not eligible for permit renewal regardless of vessel ownership.

vii. Prior to the suspension or revocation of the Special *[Summer]* Flounder Fillet Permit, the permittee has the right to a hearing, upon the permittee's request to the Department. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) Any person violating the provisions of (a) (b) (d), or (e) above shall be liable to a penalty of $20.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

Recodify existing (f)-(j) as (h)-(l) (No change in text.)

(m) Any person violating the provisions of (i) through (l) above shall be liable for a penalty of $100.00 for each fish taken or possessed. Each fish taken or possessed shall constitute a separate and distinct offense.

(n) Pursuant to the provisions of N.J.S.A. 23:5-45.1c, except in Delaware Bay and the Delaware River and tributaries, the possession of one "trophy sized" striped bass, measuring not less than 38 inches in length, will be allowed in addition to the one fish allowed under the provision of N.J.S.A. 23:5-45.1(a) in accordance with the following provisions:

1.-4. (No change.)

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5. Any fish possession tag not utilized during the calendar year in which it was issued will be valid for subsequent years except during those period in which the Department has closed the State's waters to harvesting as provided below at (n)11;

6.-11. (No change.)

12. The quota described in (n)11 above shall be 63,800 pounds until such time as another quota is duly promulgated by the Atlantic States Marine Fisheries Commission.

13. Upon promulgation of any change in the quota described in (n)11 above, the Division will provide notice thereof in the Newark Star Ledger, the Asbury Park Press and The Press (of Atlantic City).

(o) Any person violating the striped bass size or possession limits as provided for in N.J.S.A. 23:5-45.1, or (h) and (n) above shall be liable for a penalty of $100.00 per fish for the first offense and a penalty of $200.00 per fish for each subsequent offense.

Recodify existing (n)-(o) as (p)-(q) (No change in text.)

(a)

COMMISSION ON RADIATION PROTECTION

Notice of Administrative Correction

Radio Frequency Radiation

Radio Frequency Protection Guides (RFPG) for Whole Body Exposure

N.J.A.C. 7:28-42.4

Take notice that the Commission on Radiation Protection has discovered three instances at N.J.A.C. 7:28-42.4 in which the current text does not correspond to the text of the rule as proposed and adopted (see 16 N.J.R. 7(a) and 2120(a), respectively). In the first column, Frequency Range, the second entry, "300 MHz-30 MHz," was proposed and adopted as "3 MHz-30 MHz." In the fourth column, Equivalent Plane Wave Power Density (mW/cm)^2, "(mW/cm)^2" was proposed and adopted as "(mW/cm^2)." In the third column, Maximum Allowed Mean Squared Magnetic Filed Strength (A/m)^2, the fourth entry, "0.25 (f/300)," was proposed and adopted as "0.025 (f/300)" but erroneously published in the notice of adoption as "0.25 (f/300)." Through this notice, published pursuant to N.J.A.C. 1:30-2.7, the rule text will be corrected.

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

7:28-42.4 Radio Frequency Protection Guides (RFPG) for whole body exposure

Frequency Range	Maximum Allowed Mean Squared Electric Field Strength (V/m)^2	Maximum Allowed Mean Squared Magnetic Field Strength (A/m)^2	Equivalent Plane Wave Power Density [(mW/cm)^2] **(mW/cm^2)**
300 kHz-3 MHz	400,000	2.5	100
[300]3 MHz-30 MHz	4,000 (900/f^2)	0.025 (900/f^2)	900/f^2
30 MHz-300 MHz	4,000	0.025	1.0
300 MHz-1.5 GHz	4,000 (f/300)	0.025 (f/300)	f/300
1.5 GHz-100 GHz	20,000	0.125	5.0

Notes 1.-7. (No change.)

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION

Characteristics of a University

Adopted Amendments: N.J.A.C. 9:1-1.2, 3.1, 3.2 and 3.4

Adopted New Rule: N.J.A.C. 9:1-3.5

Proposed: April 20, 1992 at 24 N.J.R. 1464(a).

Adopted: September 25, 1992 by the Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.

Filed: October 22, 1992 as R.1992 d.466, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:3-14 et seq.

Effective Date: December 7, 1992.

Expiration Date: February 21, 1994.

Summary of Public Comments and Agency Responses:

Comments on the proposed amendments and new rule were received from members of the public in response to the noticed rule and amendments and at two public hearings held on May 15 and June 23, 1992. In addition, at the June 23 hearing, the Board heard testimony from a panel of experts. A copy of the transcript of the public hearings may be obtained from:

Roberta Leslie
Assistant Chancellor for Policy and Planning
Department of Higher Education
20 West State St.
CN 542
Trenton, NJ 08625

Written comments on the proposal were received from:

Patrick C. Sweeney, President and Chief Executive Officer, Peoples Bank, Fairfield, NJ

Robert Altman, Chair, Montclair State College Board of Trustees

Catherine A. Becker, President, Local 1904 AFT, Montclair State College

Richard Ambacher, Glassboro State College Senate President

Josh Weston, Chairman and CEO, Automatic Data Processing, Inc.

At the May 15, 1992 public hearing (Albert W. Merck, Chair, Board of Higher Education, Presiding), testimony was received from:

J. Barton Luedeke, President, Rider College and Westminster Choir College

Thomas H. Wirth, Senior Staff Representative, Council of New Jersey State College Locals

Irvin D. Reid, President, Montclair State College

Samuel H. Magill, President, Monmouth College

Arnold Speert, President, William Paterson College

At the June 23, 1992 public hearing (Sister Jacqueline Burns, Member, Board of Higher Education, Presiding), testimony was received from:

Panelists:

Robert Atwell, President, American Council on Education

Robert Berdahl, Professor and Director of the Institute for Research in Higher and Adult Education, University of Maryland, College Park

Thomas Porter, Provost, Connecticut State University System

Gary Sojka, President, Bucknell University

Public:

Cary Edwards, Member, Board of Trustees, Monmouth College

Harry Mahler, Vice Chairman, Board of Trustees, Montclair State College Foundation and Chairman and Chief Executive Officer, Grad Associates

William Jellema, Professor of Higher Education, University of Connecticut

Bart Resnick, U.S. Army Communications-Electronics Command

Brother Joseph Burke, President, La Salle University

Kathleen C. Marchetti, Past President, Montclair State College Alumni Association and Partner in law firm of Budd, Larner, Gross, Rosenbaum, Greenberg, and Sade

Richard A. Lynde, Provost, Montclair State College

Robert Hanson, Former Division President, Schering-Plough Corporation

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Darryl Greer, Executive Director, NJ State College Governing Boards Association, Inc.

Allen W. Ostar, President Emeritus, American Association of State Colleges and Universities

Henry Frank, New Jersey State Conference, AAUP

Comment and Response Summary

With the exception of comments from Thomas Wirth, who opposed the change in the rules, and Catherine Becker, who indicated Local 1904 of the AFT was neutral, all others commenting were generally in favor of the proposed amendments and new rule. A number of issues, however, were raised and these are identified below.

COMMENT: A change in the rules will divide the State colleges into two categories: teaching universities and colleges. Whatever detrimental effect "college" has had in the past will be intensified for those institutions that remain colleges (Wirth).

RESPONSE: There is no evidence that "college" has had a detrimental effect on the State colleges. In fact, Trenton State College now has a national reputation as one of the best higher education institutions in the nation. If it chooses to retain its "college" designation, it is doubtful that it will be harmed by a change in designation by its sister institutions. How an institution carries out its mission and goals is what's important to the reputation of an institution—what percent of its students graduate, how many are able to gain appropriate employment, how many go on to graduate school, etc.

COMMENT: Since institutions will be evaluated for university designation with respect to each of the standards identified in N.J.A.C. 9:1-3, a numerical criteria for enrollments should not constitute an inflexible requirement, but enrollment should be viewed in the context of an institution as a whole and its stated mission (Atwell, Greer, Jellema, Proter, Sojka, Ambacher, Weston).

RESPONSE: This suggestion regarding flexibility in numerical criteria for enrollments is accepted by the Board since, in fact, the Board had no intention of refusing to consider an institution's petition for university designation if an institution had, for example, an FTE enrollment of 2,475 rather than 2,500, or a 19 percent graduate enrollment rather than one of 20 percent. The Department would follow its usual review process and employ an out-of-State consultant(s) to assist it in making this determination. Therefore, after reviewing the comments made at the June 23 hearing, the Board is amending N.J.A.C. 9:1-3(c) upon adoption to clarify the Department's and the Board's intention in proposing the rules. Additional text is added to explain that institutions failing to meet the minimum enrollment of 2,500 FTE students and/or 20 percent or more graduate degree enrollment figure may still be eligible for university designation consideration if a Department of Higher Education out-of-State consultant(s) so recommends upon review of the institution's petition.

COMMENT: There should be no prohibition regarding religious institutions petitioning for a university designation (Jellama).

RESPONSE: The Department will take this comment under consideration. The Chancellor, in his supporting memorandum to the Board regarding University Designation (September 16, 1992), indicates that the Department will examine in greater depth the question of whether seminaries and other institutions should be afforded the opportunity to pursue university designation.

COMMENT: All graduate faculty in non-professional programs should be full-time; for professional graduate programs, it is acceptable to have some adjuncts (Atwell and Sojka).

RESPONSE: The Board believes that the proposed and adopted rules address this issue at N.J.A.C. 9:1-3.2(b): "A significant number of faculty in each graduate program are associated with the institution full-time . . .". The Board does not believe that absolutely every graduate faculty member in non-professional programs should be full-time. Consultants will assist the Board in making this determination.

COMMENT: There should be no distinction (or the distinction is inappropriate or the distinction is inaccurate) made regarding types of universities—teaching vs. research (Atwell, Greer, Luedeke, Speert). "Doctoral" vs. "non-doctoral" is more useful (Speert).

RESPONSE: The Department and Board are aware that the dichotomy selected is not perfect—research is conducted at "teaching universities" and teaching is also an important element at "research universities." However, the distinction made in N.J.A.C. 9:1-3.1 is to provide truth in advertising. While "teaching university" will not be part of an institution's title, institutions will be required in all official documents and promotional materials to include the N.J.A.C. 9:1-3.1(c) definition and make a reference to N.J.A.C. 9:1-3 for a full description of a teaching university. With respect to "doctoral" vs. "non-doctoral" universities, research can take place at non-doctoral institutions as well. "Teaching" better conveys the distinction in mission between the two types of universities.

COMMENT: Institutions designated university should be routinely reviewed with respect to the appropriateness of their designation (Reid and Frank).

RESPONSE: Institutions are routinely reviewed. The mission and goals of public institutions along with enrollments, graduation rates, faculty needs, special priorities, etc., are reviewed annually by the Board of Higher Education (BHE) Budget Committee with each institution. The appropriateness of their designation will be clear to this Committee, the Chancellor, and the BHE. The Commission on Higher Education, Middle States Association of Colleges and Schools (MSA) conducts an accreditation evaluation once every five years. Department of Higher Education staff participate fully in the on-site visit which is conducted once every 10 years to public and independent MSA accredited institutions. The fulfillment of an institution's stated mission and goals is basic to the evaluation. In the intervening fifth year, MSA provides the Department with the outcome of its review of the institution's Periodic Review Report (PRR). MSA action in that fifth year is based on the PRR which fully considers the mission and goal of the institution.

COMMENT: A change in an institution's designation from college to university will have cost implications (Atwell).

RESPONSE: This is quite possible. The flexibility, however, in the rule's enrollment guidelines should help to mitigate this. Institutions seeking a university designation will not have to increase their graduate enrollment and, therefore, their graduate faculty in order to fully meet the graduate enrollment requirement. With respect to salaries, in the State college sector it is mandated that faculty salaries be negotiated at the State level and negotiated across the nine State colleges. Faculty salaries are controlled.

Summary of Agency-Initiated Changes:

The following technical changes have been made to clarify and eliminate redundancy in the rules.

In proposed N.J.A.C. 9:1-3.1(b), the word "studies" has been inserted in the second sentence.

In proposed N.J.A.C. 9:1-3.1(c), the following sentence was deleted from the description of a teaching university: "It identifies graduate studies and programs as distinct elements in its organization." This requirement appears in N.J.A.C. 9:1-3.2(a) and applies to both the traditional and teaching university.

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

9:1-1.2 Definitions

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

. . .

"Academic disciplines" refers to the major areas of study identified in the Classification of Instructional Programs (CIP), that is, the first two digits of the CIP code, developed by the National Center for Education Statistics, 1990.

. . .

"University" refers to both the traditional research/teaching institution as well as to the institution whose major focus is on teaching. The traditional university provides a wide range of undergraduate and graduate studies, programs in two or more professional fields and operative programs leading to the doctorate or comparable terminal degrees in two or more areas, whose faculty are involved in extensive research, and which already identifies graduate studies and programs as distinct elements in its organization. A teaching university is an educational institution which provides a wide range of undergraduate programs and provides graduate programs in at least three academic disciplines, and which identifies graduate studies and programs as distinct elements in its organization. A teaching university has a minimum of 2,500 full-time equivalent (FTE) students. At least 20 percent of the university's total student body (headcount) are enrolled in graduate degree programs. See N.J.A.C. 9:1-3.

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9:1-3.1 Programs

(a) In an atmosphere of freedom of inquiry and expression, there exist both the traditional research-teaching university and the university whose major focus is on teaching.

(b) The traditional university provides a wide range of undergraduate ***studies*** and graduate studies in two or more professional fields such as medicine, law, public administration, engineering, or education, and operative programs of instruction leading to the doctorate or comparable terminal degrees in two or more areas. A university should offer a range of graduate studies related to those fields in which it offers advanced degrees to provide students elective opportunities and a selection of support studies which may be useful but not prescribed by a graduate degree program. Additionally, a university should explore the possibilities of public service.

(c) A university whose major focus is on teaching provides a wide range of undergraduate programs and provides graduate programs in at least three academic disciplines. *[It identifies graduate studies and programs as distinct elements in its organization.]* A teaching university has a minimum of 2,500 full-time equivalent (FTE) students. At least 20 percent of the university's total student body (headcount) are enrolled in graduate degree programs. ***Institutions failing to meet the minimum enrollment of 2,500 FTE students and/or the 20 percent or more graduate degree enrollment figure may still be eligible for university designation consideration if a Department of Higher Education out-of-State consultant(s) so recommends upon review of the institution's petition.***

9:1-3.2 Organization

(a) (No change).

(b) A university recruits faculties for graduate or professional programs whose competence is known beyond the institution. A significant number of faculty in each graduate program are associated with the institution full time, have attained the doctorate or have terminal degrees appropriate to their disciplines or records of substantial and superior professional achievements, and remain abreast of their respective fields. The faculty, including representation from the departments offering graduate programs, participates in the initiation, development, and approval of curricula as the institution determines.

(c) (No change).

9:1-3.4 Accreditation

(a) A university is accredited by the Commission on Higher Education, Middle States Association of Colleges and Schools.

9:1-3.5 Eligibility for university status and use of "university" as part of an institution's name

(a) Non-profit educational institutions incorporated and located in New Jersey and licensed by the New Jersey Board of Higher Education which believe they meet all of the requirements stipulated in this subchapter are eligible to apply, with the concurrence of their governing boards, to the New Jersey Board of Higher Education for university status. Educational institutions dedicated primarily to the education or training of ministers, priests, rabbis or other professional persons in the field of religion are not eligible to apply for university status.

(b) When an institution's governing body determines that the institution shall seek university status, it shall file with the New Jersey Board of Higher Education an application which shall demonstrate the institution's eligibility for designation as a university.

(c) University status and the actual title of the institution require the approval of the New Jersey Board of Higher Education.

(a)

STUDENT ASSISTANCE BOARD

Student Assistance Programs

Student Assistance Board; General Provisions For All Programs Administered by the Student Assistance Board; Tuition Aid Grant Program; Garden State Scholarships; Public Tuition Benefits Program; Garden State Graduate Fellowship Program; Veterans Tuition Credit Program; Vietnam Veterans Tuition Aid Program; Paul Douglas Teacher Scholarship Program

Readoption with Amendments: N.J.A.C. 9:7
Adopted Repeals: N.J.A.C. 9:7-7 and 8

Proposed: July 20, 1992 at 24 N.J.R. 2510(a).

Adopted: November 2, 1992 by the Student Assistance Board, M. Wilma Harris, Chairperson.

Filed: November 6, 1992 as R.1992 d.486, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:71-15.2, 18A:71-15.3, 18A:71-26.8, 18A:71-48, 18A:71-76.6, 18A:71-77, 18A:71-15.3, Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984, 20 U.S.C. 1119d-8 and the Higher Education Technical Amendments Act of 1987.

Effective Date: November 6, 1992, Readoption;
December 7, 1992, Amendments and Repeals.

Expiration Date: November 6, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

The Department has made several technical changes upon adoption, one of which is due to a printing error in N.J.A.C. 9:7-2.4 and involves the word "board" which should be capitalized when used here to refer to the Student Assistance Board. The other three technical changes all refer to the proper referencing of the title for Subchapter 2 in three other subchapter rules, N.J.A.C. 9:7-5.1, 6.2 and 9.1. In order to provide clarification as to the applicability of the rules contained in Subchapter 2, an amendment was made to the title and published in the proposed readoption. This amended title is being properly referenced within the above three rules.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:7.

Full text of the adopted amendments follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

9:7-1.2 Creation of Student Advisory Committee

The Student Assistance Board shall create a Student Advisory Committee whose purpose shall be to advise the Student Assistance Board on the effect of Board policy and regulations; suggest alternative policy and regulations to the Board; and provide a means of communication between the Student Assistance Board and students. The Student Assistance Board shall initially appoint a nine member Student Advisory Committee from nominations provided by the student government associations of each individual college in New Jersey. The nine members, all of whom shall be full-time students, shall consist of two students from independent colleges, two students from Rutgers, The State University, two students from the State colleges, one student from the New Jersey Institute of Technology, and two students from the county colleges. Students representing each sector shall be chosen such that in any given year one of the representatives shall complete his or her degree requirements within one academic year from the time of his or her selection and one shall be of lower class rank. Members of the Student Advisory

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Committee shall serve one year terms and their appointments may be renewed according to the initial appointment process. The Student Advisory Committee shall elect a Chairperson and Vice Chairperson from among its members one of whom shall be a student at an independent institution and one of whom shall be a student at a public institution. The Chairperson and Vice Chairperson shall serve as voting members on the Student Assistance Board. In the event of a vacancy on the Student Advisory Committee, the Student Assistance Board may fill the vacancy in the same manner as the original appointment.

SUBCHAPTER 2. GENERAL PROVISIONS FOR TUITION AID GRANT AND GARDEN STATE SCHOLARSHIP PROGRAMS

9:7-2.1 Undergraduate enrollment

Students must be enrolled or plan to be enrolled as full-time undergraduate students matriculated in a curriculum leading to a degree or certificate in an eligible institution as defined in N.J.S.A. 18A:71-47 in order to be eligible for student assistance. Students possessing an undergraduate degree (either a Baccalaureate or Associate degree) are not eligible for student assistance at that degree level. Certification of full-time status is the responsibility of the enrolling institution based on the current institutional definition of full-time status and subject to review and approval by the Student Assistance Board.

9:7-2.2 Residency

(a) Students must be legal residents of New Jersey for a period of not less than 12 consecutive months immediately prior to receiving a grant. The residence of a student is defined in terms of domicile. Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment, and to which, whenever he or she is absent, he or she has the intention of returning.

1. A dependent student as defined in N.J.A.C. 9:7-2.6 is presumed to be a legal resident of the state in which his or her parent(s) or guardian(s) is a resident. A dependent student whose parent(s) or guardian(s) is not a legal resident of New Jersey is presumed to be in the State for the temporary purpose of obtaining an education. However, any dependent student who is domiciled in this State and enrolled in an institution of higher education in New Jersey shall continue to be eligible for New Jersey financial assistance despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year. The student's eligibility continues only if the student received a State grant or scholarship for at least one semester before the parent(s)' or guardian(s)' change of domicile to another state.

(b) Residence established solely for the purpose of attending a particular college cannot be considered as fulfilling the definition of domicile. When in question, a student must demonstrate proof of residence by presenting the following documents: driver's license, voter registration form, tax return(s), or other suitable proof. The Office of Student Assistance, Department of Higher Education shall determine the state of residence for any individual whose residency is not certain. Institutions may be asked by the Office of Student Assistance to certify and maintain documentation on the student's claim of legal New Jersey residence and provide the documentation, if needed, to substantiate an appeal.

9:7-2.3 Foreign nationals

(a) A foreign national must present affirmative evidence that he or she is not in the United States for the temporary purpose of obtaining an education. Such evidence must include documentation from the United States Immigration and Naturalization Service that the student may remain permanently in this country and such evidence must be placed in the student's file. The student must:

1. Be the holder of an Alien Registration Receipt Card form I-151 or I-551; or

2. Be the holder of an Approval Notice from the Immigration and Naturalization Service form I-181 stating that the non-citizen has applied and met the requirements for Permanent Resident status; or

3.-5. (No change.)

(b) (No change.)

9:7-2.4 Determination of eligibility for and value of student assistance

In order to receive a need-based award students must have demonstrated financial need through submission of a financial aid form approved by the Student Assistance Board in accordance with annually established deadline dates. Students may not receive State financial assistance under the programs administered by the Student Assistance *[board]* **Board* if they owe a refund on a grant or scholarship previously received from a state or Federal program through any institution or are in default on any loan made under any state or Federal student financial assistance program at any institution. Students owing a refund on a grant or scholarship or who are in default on a loan may receive State financial assistance if they make arrangements acceptable with the appropriate office to repay the debt.

9:7-2.5 Student notification

Students shall be notified of grant eligibility through the Student Eligibility Notice issued by the Office of Student Assistance, Department of Higher Education. The amount of the grant is subject to change based on the annual level of appropriations and other resources available to the student (see N.J.A.C. 9:7-2.9). The institution's written notification to the student regarding State financial assistance shall contain a clause indicating the State is not responsible for funding of the grant in the event of fraudulent, inaccurate or misleading information.

9:7-2.6 Dependent/independent student defined

(a) (No change.)

(b) Except as provided in (c) below an individual meets the requirements of this section if such individual:

1.-6. (No change.)

7. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For purposes of receiving State financial assistance as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i.-ii. (No change.)

iii. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5 (or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education), is living with a relative who is providing support to the student, and complies with the provisions of (b)6 above except for the resource requirement set forth therein.

iv. The student's economic and personal circumstances are of such a unique or unusual nature that denial of independent student status would create an unjust hardship upon the student. Eligibility under this subparagraph is subject to the approval of the director of the applicable student assistance program within the Department of Higher Education.

(c)-(e) (No change.)

9:7-2.7 Verification of family financial data

Students upon request must provide an authorization to the Department of Higher Education, Office of Student Assistance, which permits the release of Internal Revenue Service and/or State income tax returns for verification purposes. Financial data provided on the financial aid form may be verified by the Department and/or institution through the comparison of information reported on income tax returns and other documentation. Discrepancies will require the reevaluation of the student's eligibility. Students as well as institutions will be notified if an adjustment in the value of aid is required.

9:7-2.8 Renewal eligibility and filing

Students must apply to renew their need-based State financial assistance through the annual filing of a financial aid form in accordance with N.J.A.C. 9:7-2.4. To receive a renewal of State finan-

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cial assistance, students must continue to meet all program eligibility requirements as contained in these rules and applicable statutes.

9:7-2.9 Award combinations and overawards

(a) Students receiving New Jersey State financial assistance funds may receive combinations of a Tuition Aid Grant, an Edward J. Bloustein Distinguished Scholars award, a Public Tuition Benefits award, an Urban Scholars award, a Garden State Scholars award, and an Educational Opportunity Fund grant. However, students cannot simultaneously hold an Educational Opportunity Fund grant and a Garden State Scholars award in any single semester.

(b) State grants, scholarships and other financial assistance cannot exceed the student's cost of attendance as determined by the institution.

(c) If the total amount of financial assistance, including State assistance, exceeds the student's cost of attendance by more than $200.00, an adjustment to some portion of the aid package is required. A student's total aid may be limited to financial need (as defined in Title IV of the Higher Education Act of 1965, P.L. 89-329 including all subsequent amendments and supplements) if financial assistance includes a Stafford loan and/or campus-based Title IV funds. The first adjustment, wherever possible, should be made to reduce student loans, then to any institutional aid (including Federal campus-based programs) and lastly, to State awards.

9:7-2.10 Verification of enrollment and academic performance

(a) (No change.)

(b) Each institution shall provide copies of its minimum standards for academic performance and satisfactory academic progress to the Department of Higher Education. Thereafter, institutions are required to provide copies of such standards when changes occur.

(c) The Student Assistance Board shall recognize minimum standards for academic performance and satisfactory academic progress that an institution adopts for determining State financial assistance eligibility if these standards are the same as or stricter than the standards outlined in this section.

(d) Students receiving State financial assistance under the student assistance programs administered by the Student Assistance Board shall remain in good academic standing as defined by the institution which they are attending.

(e) Students receiving State financial assistance under the student assistance programs administered by the Student Assistance Board shall meet the following Statewide minimum standards of academic progress:

1. After earning the first 12 college-level credits, all students receiving State financial assistance shall earn either an additional 12 college-level credits during every semester in which they receive State financial assistance, or a minimum of 24 college-level credits during every academic year of payment.

2. The number of award payments students may receive in order to earn their first 12 college-level credits depends on their level of preparation for college work and the admission policy of their institution:

i. Students in the Educational Opportunity Fund (EOF) Program, at any institution, may receive up to three semesters of payments to earn the first 12 college credits or up to four payments to earn the first 24 credits. The definition of college credits is subject to the provisions of N.J.A.C. 9:11-1.10.

ii.-iii. (No change.)

(f) (No change.)

(g) The academic standing and progress of all students receiving State financial assistance must be monitored by institutions at least once a year, prior to the fall semester.

(h) Students who fail to achieve the above minimum standards shall be ineligible to receive State financial assistance under the programs administered by the Student Assistance Board until such time as the institution certifies that they are in good academic standing and are achieving satisfactory academic progress.

(i) Students and institutions shall have the right to appeal the denial of State financial assistance based upon these guidelines through the established appeal procedures (see N.J.A.C. 9:7-2.15).

9:7-2.11 Payments

(a) The maximum number of semester award payments which students may receive are as follows:

1. Tuition Aid Grant Program:

	Enrollment Status	Maximum Semesters for Award Payments
TWO-YEAR COLLEGES:	Regular 2-Year Program	5
	Remedial/Developmental or Bilingual (ESL) Curriculum	6
	EOF Program	6/8[1]
FOUR-YEAR COLLEGES:	Regular 4-Year Program	9
	County College Transfers/Remedial/Developmental/Bilingual Curriculum	10[2]
	5-Year Program	11/12[3]
	EOF Program	12[1]

[1]As stipulated in N.J.A.C. 9:11-1.8.

[2]Remedial/Developmental or Bilingual (ESL) Curriculum must contain the equivalent of 18 or more credit hours of remedial or bilingual (ESL) courses.

[3]County College Transfer, Remedial/Developmental or Bilingual (ESL) curriculum.

i. Students shall not receive more than nine semesters of payment unless they are enrolled in a five-year program, receiving assistance under the EOF Program, transferred from a county college to a four-year college or were required to take the equivalent of 18 or more credit hours of noncredit remedial, developmental, or bilingual (ESL) courses.

ii.-iii. (No change.)

2. All Other State Student Assistance Programs:

	Enrollment Status	Maximum Semesters for Award Payments
TWO-YEAR COLLEGES:	Regular 2-Year Program	5
	Remedial/Developmental or Bilingual (ESL)	6
FOUR-YEAR COLLEGES:	Regular 4-Year Program	8
	Regular 5-Year Program	10

(b) Payments will be made by the Department of Treasury for eligible students in equal installments over the regular academic year, the number of installments corresponding to the number of school terms. Deadline dates shall be established annually by the Student Assistance Board to comply with the State's fiscal year and to allow for academic term expenditure control. The Student Assistance Board shall provide payment directly to institutions on behalf of student recipients. Listings of eligible students to be credited shall also be provided to each institution.

9:7-2.12 Award adjustments/refunds

(a) If a refund is due a student under the institution's refund policy and the student received State financial assistance under any State student financial assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the State: amount of State financial assistance (minus work earnings) awarded for the payment period divided by the total amount of financial aid (minus work earnings) awarded for the period.

(b) (No change.)

(c) The above formula shall be applied if a student reduces his or her academic course load to less than full-time prior to the end of the institutional refund period. However, if the student reduces his or her academic course load to less than full-time after the end of the institutional refund period, a refund to the State is not required.

(d) If a combination of State student funds has been packaged for the student and a refund is due the State, a prorated amount is applied to each of the State programs in the student's State financial assistance package.

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(e) If a cash disbursement has been made by an institution for non-institutional costs from any State financial assistance program, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Office of Student Assistance of the amount owed for each State financial assistance program. Non-institutional costs may include but are not limited to room and board, books and supplies, transportation, and miscellaneous expenses.

(f) (No change.)

9:7-2.13 Student's obligation to report changes in institution or financial status

Any changes in college choice or family financial status which occur after the Student Eligibility Notice has been issued to the student must be reported immediately, in writing by the student, to the Office of Student Assistance, Department of Higher Education, in order that the student's continued eligibility may be evaluated and prompt payment provided. Institutions may report these changes on behalf of the student.

9:7-2.14 Check endorsements

All checks issued to institutions by the Department of the Treasury must be negotiated within 90 days of their issuance. Checks are automatically cancelled if not cashed within 90 days.

9:7-2.15 Appeals

If, for any reason a student, his or her family or an institution feels that the application of these rules results in an unfair determination of eligibility, an appeal shall be filed with the Department of Higher Education, Office of Student Assistance, within 60 days of notification of eligibility or ineligibility. Appeals should be in the form of a letter addressed to the Appeals Committee, in care of the Director of the Office of Student Assistance, New Jersey Department of Higher Education, CN 540, Trenton, New Jersey 08625, and shall contain the student's full name, social security number, college of attendance, and a description of the basis for the appeal. Appeals will be considered on the basis of this appeals process approved by the Student Assistance Board.

9:7-2.16 Accounting and auditing standards

(a) (No change.)

(b) As part of the institution's periodic audit by an independent accounting firm, and in accordance with the State Single Audit Act Policy, State student assistance programs shall be included to insure compliance with Student Assistance Board rules, and a copy of the audit report must be provided to the Department of Higher Education, Office of Grants and Scholarships. The Department reserves the right to conduct its own institutional audit.

(c) (No change.)

9:7-2.17 General provisions; applicability

General provisions provided in N.J.A.C. 9:7-2 shall pertain in their entirety to the Tuition Aid Grant and the Garden State Scholarship Programs administered by the Student Assistance Board. Applicable general provisions for other student financial assistance programs are cited in their subchapters.

9:7-3.1 Determination of eligibility for and value of student assistance

The information on the financial aid form shall be evaluated by employing the methodology used to calculate the New Jersey Eligibility Index (NJEI). The evaluation results in an estimate of the family or student's ability to contribute to the cost of education. This estimate is then used to determine eligibility for and value of the Tuition Aid Grant.

9:7-3.2 Tuition Aid Grant Award Table

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

(e) The value of the student's grant may change dependent upon appropriated funds, the student's cost of attendance and other State financial assistance. The student will be notified of any change in his or her grant.

9:7-3.5 Part-time students

(a) Eligibility for Tuition Aid Grants shall be extended on an annual basis to part-time students upon the approval of the Student Assistance Board and the Board of Higher Education depending on the level of appropriated funds.

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

(d) Payments to eligible students shall be counted for the purpose of the requirements set forth in N.J.A.C. 9:7-2.11 as one-half a semester of payment.

(e) (No change.)

9:7-4.1 Program categories

(a) The Garden State Scholarship Program shall provide for grants to undergraduate students in the following program categories:

1. Edward J. Bloustein Distinguished Scholars;
2. Urban Scholars; and
3. Garden State Scholars.

9:7-4.2 Academic requirements

(a) (No change.)

(b) The academic requirements for Garden State Scholarships shall include secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test (SAT) scores or grade point average. Where SAT scores are not available, the appropriate equivalent from the American College Testing (ACT) Program may be used.

(c) Edward J. Bloustein Distinguished Scholars shall be selected on the basis of the following criteria:

1. Class rank of one, two or three in the graduating class at the end of the junior year; or

2. Class rank within the top 10 percent of the graduating class at the end of the junior year with combined SAT scores of 1,200 or above at the end of the junior year.

(d) Distinguished Urban Scholars attending secondary schools within the Type A and B school districts as determined by the New Jersey Department of Education shall be selected on the basis of the following criteria:

1. Class rank within the top 10 percent of the graduating class at the end of the junior year with a grade point average (GPA) of at least 3.0 on a scale of 4.0 (or an equivalent scale) at the end of the junior year.

(e) Students from each school selected pursuant to (d) above shall be ranked among the students selected at that school according to the following formula and the highest ranking students will be offered scholarships:

1. Academic qualification for a scholarship is determined by an Academic Index (AI). The AI is derived by combining two factors, secondary school GPA and rank in class which will be weighted equally. The formula for combining the two factors is:

$$AI = (GPA \times 37.5) + (\text{Converted Rank} \times 2)$$

2. The converted rank shall be determined from the table set forth in (h)1ii below.

(f) For students selected pursuant to (d) and (e) above, each school located within a Type A and B school district shall receive that proportion of the total available scholarships which reflects the size of the graduating class at the end of the junior year as compared to the total number of students in the graduating classes from all schools within Type A and B districts at the end of the junior year.

(g) Garden State Scholars shall be selected on the basis of the following criteria:

1. Class rank within the top 20 percent of the graduating class at the end of the junior year with combined SAT scores of 1000 or above at the end of the junior year, or through the January administration of the SAT in the senior year in the event that funds permit a second-round selection of awards.

(h) Garden State Scholars shall be ranked according to the following formula and the highest ranking students will be offered scholarships based on information as of the end of the junior year. Additional scholarships may be offered during the senior year dependent upon available appropriations.

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1. Academic qualification for a scholarship is determined by an Academic Index (AI). The AI is derived by combining two factors, the combined SAT scores from the College Entrance Examination Board and a converted secondary school rank in class. The formula for combining the two factors is:

$$AI = \frac{\text{Verbal} + \text{Math SAT scores}}{10} + (\text{Converted Rank} \times 2)$$

i. SAT scores: Verbal and math scores are to be weighed equally. Where SAT scores are not available, the appropriate equivalent from the ACT Program may be used. The highest verbal score from any administration may be combined with the highest math score from any administration.

ii. Rank in class: In order to weigh secondary school rank equally with combined SAT scores, the converted rank is multiplied by two. Conversion of the secondary school rank to a standardized score is necessary in order to combine it equally with the combined SAT scores which have also been standardized. The following table gives the converted rank multiplied by two, which is the figure to be combined with the test score sum in the AI formula given in this subsection.

SECONDARY SCHOOL RANK CONVERSION TABLE

Percent Standing		Converted Rank × 2	Percent Standing		Converted Rank × 2	Percent Standing		Converted Rank × 2
00-01	=	150	13-14	=	122	44-47	=	102
02	=	142	15-16	=	120	48-52	=	100
03	=	138	17-18	=	118	53-56	=	98
04	=	136	19-21	=	116	57-60	=	96
05	=	134	22-24	=	114	61-64	=	94
06	=	132	25-27	=	112	65-68	=	92
07	=	130	28-31	=	110	69-72	=	90
08	=	128	32-35	=	108	73-75	=	88
09-10	=	126	36-39	=	106			
11-12	=	124	40-43	=	104			

9:7-4.3 Eligibility requirements

(a) Garden State Scholarship recipients shall attend an eligible New Jersey institution of higher education as defined by N.J.S.A. 18A:71-26.5.

(b) Scholarship awards shall be renewable for up to three or four years of undergraduate programs of study regularly requiring four or five academic years respectively for completion. In order to be eligible for a renewal award the student shall continue to achieve satisfactory academic progress pursuant to N.J.A.C. 9:7-2.10 and demonstrate continued financial need, if applicable.

(c) Garden State Scholarship recipients who transfer to another eligible New Jersey institution may transfer their awards provided they have demonstrated satisfactory academic progress and have notified the Department in writing in accordance with applicable procedures.

(d) Students may not simultaneously hold an Edward J. Bloustein Distinguished Scholars award and an Urban Scholars award and/or a Garden State Scholars award.

9:7-4.4 Award amounts

(a) (No change.)

(b) Edward J. Bloustein Distinguished Scholars and Urban Scholars shall receive annual awards of up to $1,000 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(c), (d), and (e). If sufficient funds are available, the award may be increased up to an additional $1,000 based upon the student's New Jersey Eligibility Index (NJEI) pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following table:

Additional Amount of Grant

NJEI	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. NJIT & UMDNJ
Under 1500	$1000	$1000	$1000	$1000
1500- 2499	500	1000	1000	1000
2500- 3499	250	500	1000	1000
3500- 4499	250	500	500	500
4500- 5499	250	250	500	500
5500- 6499	0	250	500	250
6500- 7499	0	250	250	250
7500- 8499	0	0	250	250
8500- 9499	0	0	250	250
9500-10499	0	0	250	0
Over 10499	0	0	0	0

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

9:7-4.5 Award combinations

(a) All scholarship recipients may be eligible for assistance under the Tuition Aid Grant Program if they complete the required financial aid application.

(b) Edward J. Bloustein Distinguished and Urban Scholars may be eligible to receive an Educational Opportunity Fund grant.

9:7-4.8 Renewal of scholarships

(a) Students receiving undergraduate scholarship assistance will continue to receive State financial assistance provided they continue to meet all of the eligibility criteria as stipulated in the statute and in the rules adopted by the Student Assistance Board.

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

9:7-5.1 General provisions

General provisions for *[all programs administered by the Student Assistance Board]* ***Tuition Aid Grant and Garden State Scholarship Programs*** (N.J.A.C. 9:7-2) which pertain to residency (2.2), foreign nationals (2.3), payments (2.11), award adjustments/refunds (2.12), check endorsements (2.14), appeals (2.15), and accounting and auditing standards (2.16) shall be in effect for the Public Tuition Benefits Program.

9:7-5.8 Period of eligibility

Eligibility to receive tuition benefits shall be limited to eight years from the date of the death of the member or officer in the case of a widowed spouse or eight years following graduation from secondary school in the case of a child. Recipients shall not be eligible for more than eight semesters of payment for full-time enrollment or the equivalent for half-time enrollment. Payment for half-time enrollment shall count as one half a semester of payment. Students enrolled in a program of study normally requiring five years to complete shall be eligible for 10 semesters of payment.

9:7-6.2 General provisions

General provisions for *[all programs administered by the Student Assistance Board]* ***Tuition Aid Grant and Garden State Scholarship Programs*** (N.J.A.C. 9:7-2) which pertain to residency (2.2), foreign nationals (2.3), verification of enrollment and academic performance (2.10), payments (2.11), award adjustments/refunds (2.12), check endorsements (2.14), appeals (2.15), and accounting and auditing standards (2.16) shall be in effect for the Garden State Graduate Fellowship Program.

SUBCHAPTER 7. (RESERVED)

SUBCHAPTER 8. (RESERVED)

9:7-9.1 Rules and statutes incorporated by reference

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

(c) The provisions of the following sections of subchapter 2 of this chapter, N.J.A.C. 9:7-2.2 residency, 2.3 foreign nationals, 2.14 check endorsements, 2.15 appeals and 2.16 accounting and auditing standards, *[governing the programs administered by the Student Assistance Board]* shall also apply to this program unless they are inconsistent with or otherwise excepted within the provisions of this subchapter.

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HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Medicaid Eligibility for Children

Adopted Amendments: N.J.A.C. 10:72-1.1, 3.4 and 4.1

Proposed: May 18, 1992 at 24 N.J.R. 1860(a).

Adopted: November 2, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 4, 1992 as R.1992 d.484, **without change**.

Authority: N.J.S.A. 30:4D-3, 30:4D-7, 7a, b, and c and 1902(a)(10)(A)(IV), 1902(l)(1)(D) and (2)(C) of the Social Security Act.

Effective Date: December 7, 1992.

Expiration Date: August 24, 1997.

Summary of Public Comment and Agency Response:

A single comment on the proposed amendments was submitted by Carlo B. Melini, M.D., President of the American Academy of Pediatrics/ New Jersey Chapter (AAP/NJ).

COMMENT: The commenter stated that the AAP/NJ supports the extension of Medicaid eligibility to children. The commenter suggested that increasing the number of patients without effectively increasing the amount of reimbursement, and thus the numbers of attending physicians, "will only cause more harm to the system." The commenter recommended states reimburse Medicaid (Title XIX) providers at least at the Medicare (Title XVIII) level, or 80-90 percent of the usual and customary fee. The commenter further alleged that increased reimbursement would attract more physicians, including pediatricians, and thereby expand the accessibility of pediatric care for Medicaid children. The commenter also stated that "increasing Medicaid reimbursement will be cost effective," because (1) expensive emergency room outpatient visits could be eliminated, (2) easier and early access to physicians might prevent some hospital admissions, and (3) it would "eliminate the need to finance and run other types of primary care services, such as clinics, immunization stations, community health centers, etc."

RESPONSE: The agency's initial response is that the rule is being adopted without change, since it is necessary to have a regulatory basis for the increased Medicaid eligibility levels for children established by Federal and State law cited above. The commenter supports this regulatory change.

However, the agency recognizes the commenter's concern about physician reimbursement. The agency's response to the issue of reimbursement is that it is considering various ways to improve physician participation, including targeted fee increases, increased participation in managed care and Health Maintenance Organization (HMO's), such as the Garden State Health Plan, pursuant to State legislation (P.L. 1991, c.87, approved July 1, 1991). Any changes in reimbursement levels, however, will be based upon the availability of new appropriations and will be the subject of future regulatory action.

Full text of the adoption follows:

10:72-1.1 Program scope

(a) (No change.)

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1. Pregnant women; and

2. Children under the age of six years and children born after September 30, 1983 who have:

i. Effective December 1, 1991, attained the age of six, seven, or eight;

ii. Effective October 1, 1992, attained the age of nine;

iii. Effective October 1, 1993, attained the age of 10;

iv. Effective October 1, 1994, attained the age of 11;

v. Effective October 1, 1995, attained the age of 12;

vi. Effective October 1, 1996, attained the age of 13;

vii. Effective October 1, 1997, attained the age of 14;

viii. Effective October 1, 1998, attained the age of 15;

ix. Effective October 1, 1999, attained the age of 16;

x. Effective October 1, 2000, attained the age of 17; and

xi. Effective October 1, 2001, attained the age of 18.

3. (No change.)

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medicaid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person so long as the person was alive during a portion of the three month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

i. Retroactive Medicaid coverage is not available under the provisions of this chapter for a child for any period prior to the effective date of program coverage for the age of the child. Retroactive eligibility is not available to pregnant women and children up to the age of one whose family income exceeds 133 percent of the Federal poverty guideline for any period prior to July 1, 1991.

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1. (No change.)

2. Children under the age six years, and children born after September 30, 1983 who have:

i. Effective December 1, 1991, attained the age of six, seven, or eight;

ii. Effective October 1, 1992, attained the age of nine;

iii. Effective October 1, 1993, attained the age of 10;

iv. Effective October 1, 1994, attained the age of 11;

v. Effective October 1, 1995, attained the age of 12;

vi. Effective October 1, 1996, attained the age of 13;

vii. Effective October 1, 1997, attained the age of 14;

viii. Effective October 1, 1998, attained the age of 15;

ix. Effective October 1, 1999, attained the age of 16;

x. Effective October 1, 2000, attained the age of 17; and

xi. Effective October 1, 2001, attained the age of 18.

3.-7. (No change.)

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for aged, blind, and disabled persons, as well as children aged six years or older, covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes of one and two for aged, blind, and disabled individuals and for the appropriate family size for children aged six years or over. The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of the year for which the poverty income guideline is promulgated.

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

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(a)

DIVISION OF FAMILY DEVELOPMENT

Service Programs for Aged, Blind or Disabled Persons

Readoption: N.J.A.C. 10:83

Proposed: September 8, 1992 at 24 N.J.R. 3074(a).
Adopted: October 29, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: November 2, 1992 as R.1992 d.477, **without change.**
Authority: N.J.S.A. 44:7-12, 4:12-13, 44:7-38 and 44:7-43.
Effective Date: November 2, 1992.
Expiration Date: November 2, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:83.

(b)

DIVISION OF FAMILY DEVELOPMENT

Special Payments Handbook; Aged, Blind and Disabled

Emergency Assistance

Adopted Repeal and New Rule: N.J.A.C. 10:83-1.2

Proposed: February 3, 1992 at 24 N.J.R. 326(a) (see also 24 N.J.R. 1204(a)).
Adopted: November 5, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: November 9, 1992 as R.1992 d.488, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 44:7-12, 44:7-13, 44:7-38 and 44:7-43.
Effective Date: December 7, 1992.
Expiration Date: January 19, 1994.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing was held on April 23, 1992 at the Division of Family Development, Quakerbridge Road, Trenton, New Jersey. No recommendations were made by the hearing officer (Robert Hodes, Field Service Supervisor 2). Comments received at that hearing have been incorporated in the Summary of Comments and Agency Responses which follows.

Summary of Agency-Initiated Changes:

N.J.A.C. 10:83-1.2(a)1 has been amended to clarify that the provision of the basic needs essential for the health and safety of the individual are to be provided through EA funds.

N.J.A.C. 10:83-1.2(b) has been amended to clarify and emphasize that the provisions under this subsection deal with "SSI" EA.

N.J.A.C. 10:83-1.2(e)6iii(3) corrects an incorrect reference.

Summary of Public Comments and Agency Responses:

A list of commenters follows:

1. Angelica Harrison, County of Hudson, Division of Social Services
2. Beverly J. Bearmore, Ocean County Board of Social Services
3. Edward Testa, County Welfare Directors' Association
4. Robert Fasanello, Hunterdon Board of Social Services
5. Daniel J. Farrell, Community Health Law Project
6. Connie Pascale, Legal Services of New Jersey
7. Cornelia B. Thum, Somerset County Board of Social Services
8. George Williams, Burlington County Welfare Board
9. Louis Paparozzi, Monmouth County Division of Social Services
10. Andrea Rauer, Camden County Board of Social Services
11. Angelica Harrison, on behalf of Comprehensive Emergency Assistance Systems (CEAS) Committee
12. Henry D. Dinger, Warren County Welfare Board

COMMENT: The proposed rule fails to provide for the appointment of a protective payee when Emergency Assistance (EA) is granted due to functional incapacity. Many Supplemental Security Income (SSI) recipients have problems whose very nature are characterized by lack of insight and judgment. The provision that refers to the development of a service plan addresses this issue only minimally, and does not account for the possibility of multiple episodes with the mentally ill client who cannot be forced to comply with treatment.

RESPONSE: The services plan is the main mechanism through which an SSI/EA recipient can be assisted with any problems that may arise which would prevent the client from complying with SSI/EA rules. If the commenter is referring to the appointment of a protective payee to handle the client's SSI assistance check, the Social Security Administration alone can make an SSI protective payee determination.

COMMENT: Reimbursement formulas should be included for administrative costs. Current rules should not be changed or expanded so as to increase county costs and burdens, unless or until State or Federal matching funds are available for mandated CWA activities.

RESPONSE: The Department submits that staffing needs should not be substantially influenced, since the subject amendments merely place currently operational program policies through N.J.A.C. 10:82-5.10 (AFDC/EA) into regulatory format, specifically to address SSI/EA. Any impact on staffing needs and administrative costs has already taken place.

COMMENT: The revisions are a positive response to the issue of homelessness within the SSI population.

RESPONSE: The Department takes note of the positive comment.

COMMENT: There is no Federal statutory authority for these expenditures or for the reimbursement of administrative and assistance costs. Since the provision of granting EA to SSI recipients was removed by P.L. 1973, c. 256, there is no statutory authority for the granting of such assistance. If the proposed rule and the rule now governing the EA program for SSI recipients lack any basis in law for being, they should be rescinded and repealed.

RESPONSE: N.J.S.A. 44:7 continues to provide statutory authority for the provision of SSI/EA and other services and payments to a population which would have been eligible for Old Age Assistance/Disability but are now receiving SSI payments. Since N.J.S.A. 44:7-12 (Old Age Assistance) is still in effect, authorization remains to make EA payments to persons covered by that program. N.J.S.A. 44:7-87, which sets forth the Commissioner's powers, supports the Department's action to adopt the subject rules.

COMMENT: EA for SSI and AFDC recipients should be restored to its true meaning: short-term interim emergency relief, that is, 30 days.

REPONSE: The Department cannot agree with the commenter's observation that EA should be limited to 30 days. Emergent situations have causes that, in many instances, take much longer than 30 days to resolve. For example, once a family is displaced, the lack of affordable housing may prohibit rapid resolution of the emergency situation.

COMMENT: Since most surrounding states do not have a similar SSI/EA program, we will see increasing numbers of SSI recipients coming to New Jersey from out-of-State solely to take advantage of our SSI/EA program. What steps can and will be taken to control this?

RESPONSE: The presumption that a poor aged or disabled population will, because of SSI/EA, migrate to New Jersey in large numbers seems unlikely. This position is supported by the fact that SSI/EA has existed in New Jersey since 1974 and such an exodus has not occurred to date. Additionally, it is observed that the amendments neither encourage nor discourage persons from seeking assistance to which they are otherwise entitled. Durational State residence cannot be legally imposed as a prerequisite for public assistance. In any event, the Department is not aware of reliable data to suggest that persons come to New Jersey for the sole purpose of specifically accessing this State's public assistance programs.

COMMENT: The section concerning Temporary Assistance makes no reference to the discontinuance of Temporary Rental Assistance if SSI benefits are terminated. This seems inconsistent with the AFDC/EA rules which require Temporary Rental Assistance to be terminated when ongoing benefits cease.

RESPONSE: As stipulated at N.J.A.C. 10:83-1.2(a), SSI/EA is for an individual(s) receiving SSI benefits. Included in SSI/EA benefits is coverage for temporary rental assistance. Thus, if SSI is terminated, eligibility for SSI/EA ceases, including temporary rental assistance.

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COMMENT: N.J.A.C. 10:83-1.2(a) should be amended as follows: "EA shall be authorized to or for individuals receiving **or entitled to receive** SSI benefits." There are individuals who are entitled to SSI but not actually receiving benefits because the Social Security Administration is recovering an overpayment (for example, a client could receive $430.00 in disability and $40.00 in SSI, but the $40.00 is being withheld and the client therefore actually receives only the disability benefit). Under the proposed rules, these individuals would be denied EA.

RESPONSE: The proposed new rule provides EA to SSI recipients. Temporary periods where one or more SSI payments are withheld to recover an overpayment do not preclude SSI/EA eligibility during that period.

COMMENT: A letter from the landlord, to document a pending eviction (N.J.A.C. 10:83-1.2(a)3), can be a tool for abuse. In AFDC/EA, a letter from the landlord is only considered in extreme circumstances where other documentation does not exist.

RESPONSE: This paragraph states that documentation of pending eviction be provided. A letter from the landlord is only an example of what documentation might be satisfactory. It should be noted that any documentation is still subject to CWA verification.

COMMENT: At N.J.A.C. 10:83-1.2(a)3i, when issuing EA for utilities (both in AFDC and SSI), clients should first be made to apply for Home Energy Assistance (HEA). Also, if clients received HEA in their name and did not use it for utilities, they should not be eligible for back utilities (due to realistic capacity), or the amount of the HEA checks should be subtracted from the amount allotted through EA.

RESPONSE: The proposed new rule already provides for referral to and/or application for other available benefits, entitlements or services (including HEA) at N.J.A.C. 10:83-1.2(e)6iii(4) and (g)2iii(3). Using HEA funds for purposes other than paying for utilities may or may not establish that a client had a capacity to plan. For example, a client may have failed to pay an electric bill because of a rent increase which caused the client to choose between paying the rent or utilities.

COMMENT: The provisions at N.J.A.C. 10:83-1.2(a)3iii, which provide for the lack of realistic capacity to plan for substitute housing, are so expansive that any recipient of SSI will, because of age or disability, qualify under these provisions, in spite of the fact that SSI grants far exceed per capita AFDC and GA grants for units of the same size and greater. These provisions need to be more specific in order to avoid abuses and problems.

RESPONSE: The proposed new rule is designed to provide for SSI recipients who are homeless or are about to become homeless. The relationship between the amount of the SSI grant relative to a potential for increased abuse is unclear. It seems to suggest that because SSI grant entitlements are higher than other programs (AFDC/GA), the SSI recipient is more likely to take advantage of the EA program.

COMMENT: With respect to the statement at N.J.A.C. 10:83-1.2(a)3iii(1) which states, "when the person can demonstrate that there was insufficient time to secure substitute housing between receipt of notice of imminent loss of shelter and actual eviction . . .", what constitutes insufficient time?

RESPONSE: Since it would be impossible to comprehensively identify all possible types of family emergencies that may occur, a specific time frame cannot be established to cover all or most such situations. This issue must be handled on a case-by-case basis.

COMMENT: At N.J.A.C. 10:83-1.2(a)3iii(2), as long as a client can simply sign a document attesting to the use of funds in an appropriate manner, without being held responsible to produce proof, there will be an increased likelihood of persons taking unfair advantage of the public system.

RESPONSE: The Department takes note of the commenter's concern, but the provision allowing for a client to "sign a document" to certify that available funds were exhausted in payment of necessary housing and living expenses is being retained in the adoption. There may be situations in which an SSI/EA client may not be able to produce receipts to substantiate his or her actions. The Department notes, however, that if the CWA believes that there may be a "questionable" situation, under the provisions at N.J.A.C. 10:83-1.2(a)3, all documentation is subject to CWA verification. In any event, the Department will review text under this paragraph for possible clarification and, if determined appropriate, amendments will be proposed in the New Jersey Register.

COMMENT: The proposed rule does not address the fact that there are a number of split AFDC/SSI cases. The differences in the rule for each kind of categorical assistance will create confusion, conflict and procedural difficulties.

RESPONSE: In situations where there is a possible "split" AFDC/SSI EA case, the CWA will help the family members as a whole unit and provide assistance to such household as if it were one case.

COMMENT: At N.J.A.C. 10:83-1.2(a)3iii(3), lack of realistic capacity to plan for substitute housing exists if the person can demonstrate functional incapacity. Inasmuch as we are dealing with aged and disabled individuals, virtually all SSI recipients will be judged "functionally incapacitated."

RESPONSE: The determination of whether or not an SSI recipient has a functional incapacity which prevents him or her from having an ability to plan is to be based on an individual evaluation.

COMMENT: The phrase "functional incapacity" needs to be defined at N.J.A.C. 10:83-1.2(a)3iii(3). The reference to paragraph (g)1 does not provide such a definition. The definition can be patterned after N.J.A.C. 10:82-5.10(d)2iii and can include situations where evidence of alcohol or drug abuse exist and those suffering from mental illness.

RESPONSE: A definition here would be unnecessarily restrictive, given the characteristics of the SSI population. As noted above, the determination of whether or not an SSI recipient has a functional incapacity which prevents him or her from having an ability to plan is to be based on an individual evaluation. With respect to N.J.A.C. 10:83-1.2(d)2iii, the examples provided in that rule are not prescriptive nor necessarily intended to provide a definition of functional incapacity. The Department observes that, although no documentation of impairment by CWA staff is required in the case record, CWAs are not precluded from obtaining such documentation. The new rule is not intended to place CWA staff in a position of making medical judgments.

COMMENT: Client assets should be considered as stated at N.J.A.C. 10:83-1.2(d); but asset vertification may take time, thus precluding action as required at N.J.A.C. 10:83-1.2(e)1 concerning immediate authorization of EA. Inasmuch as resources may become known after EA has been provided, EA should be terminated or a "payback" system should be put in place.

RESPONSE: EA should not be withheld pending verification that the applicant has exhausted his or her SSI exempt resources. If resources are later found, the client will be provided with a termination notice.

COMMENT: The written service plan at N.J.A.C. 10:83-1.2(e)5 presents a problem for individuals who are suffering from substance abuse or mental illness. Most of the time these individuals lack the insight to recognize that they have a problem which requires treatment and thus may refuse to agree to a plan that mandates treatment. Commenter states that ". . . CWA(s) will attempt to make EA eligibility contingent upon enrollment in a rehabilitation program, acceptance of medication and/or participation in mental health treatment." Treatment should not be a requirement.

RESPONSE: The Department notes that shelter is an essential benefit as identified in the decision by the New Jersey Supreme Court in the case of *Floyd Williams et al. v. The Department of Human Services and Sam Jimperson et al. v. The Department of Human Services,* 116 *N.J.* 102, 114-115 (1989), and therefore eligibility for such shelter should not be predicated on participation in such program. This is supported by N.J.A.C. 10:83-1.2(e)5, which specifies that a sanction will be imposed only when the client refuses to participate in the development of the service plan or when the client does not cooperate with the terms of the service plan directly related to securing permanent housing. (Although the aforementioned decision did not apply to SSI recipients, the GA/EA regulations were adopted in support of that decision and some of the SSI/EA provision are based on the GA/EA regulations.)

COMMENT: At N.J.A.C. 10:83-1.2(e)6, the face-to-face meeting should not be at a "place convenient to both the client and the CWA." The CWA does not have the time nor the staff to do it.

RESPONSE: The rule as written still allows for the meeting, to prepare the service plan, to be held at the CWA. But due to the type of clients being assisted (that is, aged and disabled), there may be situations where the client just cannot make it to the CWA. In such situations, an arrangement needs to be made between the CWA and the client to develop the service plan.

COMMENT: N.J.A.C. 10:83-1.2(e)5 and (e)6iii(2)(A) should be amended to state that the development of the service plan be accomplished by the 10th day of the date of EA authorization and that searches for permanent housing commence on the 11th day. The new rule allows a maximum of 16 days to pass before the SSI client is to start searching for housing. The above suggestions allow a more appropriate time frame for the development of the written service plan and would confirm to the EA client that the search for permanent living

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arrangements is of utmost importance. Changing it to 10 days will also align the rule with current provisions at N.J.A.C. 10:82-5.10(e)2iv.

RESPONSE: The Department observes that the suggested extension for the service plan time frame will not serve to support the purpose of the emergency shelter program and could negatively impact on the overall goal of the program, inasmuch as the intent is to ensure that the CWA and the client immediately focus on the necessary steps to address the loss or lack of permanent housing. The Department notes that the service plan is designed to be a multi-stage document, subject to alteration based on changing housing needs of the client, client circumstances, and the physical and mental ability of the client to comply with the terms set forth in the plan. With respect to the "housing search," although the proposed amendments indicate that housing search activities are to begin no later than the 11th day after the date the service plan is signed, the Department observes that the proposed amendments allow flexibility to establish an earlier commencement date for such activities, as appropriate. With respect to the commenter's comment on aligning the "10 day provision," it should be noted that these provisions are in alignment with current provisions at N.J.A.C. 10:85-4.6(c)5, the other State-only funded EA program.

COMMENT: N.J.A.C. 10:83-1.2(e)6iii(2) seems to imply that the CWA has more obligation than the client in the search of permanent housing. How much responsibility does the CWA service staff have?

RESPONSE: The Department observes that housing searches are mutually agreed upon activities and envisions that balanced actions will be undertaken, based on the functional capacity of the individual concerned, as well as the availability of resources. The requirement, or good cause exemption from the requirement, shall be reduced to writing in the service plan. Continuing eligibility for EA benefits will be based on the client's cooperation to conduct those housing search activities established in the service plan, when possible.

COMMENT: N.J.A.C. 10:83-1.2(e)6iii(2)(B), which provides a "good cause" provision for nonparticipation in housing searches, by definition of the clientele (aged and disabled), will in reality assure virtually all clients "good cause" for noncompliance. Are these services payable from the assistance account?

RESPONSE: As a whole, the percentage of SSI recipients who will be unable to participate in housing searches could be higher than in the GA or AFDC EA programs; but not all SSI/EA applicants will be unable to participate in housing searches. It should be noted that the age and disability issue presented by the commenter does not focus on the proposed regulatory text, but rather refers to a case management approach in the development of the service plan. The proposed text, however, does provide that medical and social circumstances are to be taken into consideration when determining appropriate housing search activities within the service plan. With respect to the question as to whether these services are payable from the assistance account, the Department notes that transportation costs are payable from the Assistance Account.

COMMENT: The cost of transportation services at N.J.A.C. 10:83-1.2(e)6iii(3) could amount to a "hefty sum." Clients should utilize their SSI benefits for this need while EA is being provided. If clients are in a shelter they could be asked to use some of their $453.00. Such clients have much more to work with than the AFDC clients.

RESPONSE: The transportation services being provided here are being brought into alignment with the same services that are now being provided under the GA and AFDC EA rules at N.J.A.C. 10:85-4.6(c)6iii(3) and 10:82-5.10(1), respectively.

COMMENT: N.J.A.C. 10:83-1.2(e)6iii(3)(E) should not cover transportation to psychiatric counseling sessions, as all SSI recipients are eligible for Medicaid-funded transportation to such counseling sessions.

RESPONSE: Inasmuch as these services are provided to GA and AFDC-EA recipients, they are being made available to SSI/EA recipients as well to cover those situations where transportation services are not available from any other source. It should be noted that the Department's Division of Medical Assistance and Health Services has advised that medical transportation for SSI recipients is provided by the CWAs and the costs incident to the provision of such services can be paid by Medicaid through reimbursement.

COMMENT: The requirement at N.J.A.C. 10:83-1.2(e)6iv to monitor the EA client's compliance with the service plan, as well as document CWA support activities at least once a month, is not a requirement under N.J.A.C. 10:82.

RESPONSE: Development of a service plan, without monitoring compliance or providing necessary support is counterproductive. This provision is found in both the GA and AFDC EA rules. While N.J.A.C. 10:85-4.6(c)6iv contains the same provisions, N.J.A.C. 10:82-5.10(e)2v is even more flexible and provides for the service plan to be routinely reevaluated and/or revised as warranted by changes. The latter provision could actually be done more than once a month, as warranted.

COMMENT: N.J.A.C. 10:83-1.2(f) should be amended to include written notice and appeal rights for any determination made by the CWA with respect to EA, not just denials or terminations. The notice should contain the names, addresses and telephone numbers of all legal service organizations available locally. Suggestion was made to revise this subsection as follows: "An EA client shall be entitled to receive a written notice, inclusive of appeal rights, concerning a decision made by the CWA to deny, [or] terminate, **modify or refuse a request to modify** EA benefits." The same revision needs to be done at N.J.A.C. 10:83-1.2(f)1 and (f)2.

RESPONSE: The Department disagrees and submits that regulatory text, as written, provides with sufficient clarity the right of the recipient to appeal any local agency action or inaction which may adversely affect the receipt or ultimate receipt of any benefits, including EA. The Department further submits that since the areas of the agreement which the client is mandated to pursue will be limited to housing searches, impact on the client will be minimal. As to the suggestion of furnishing the address of the legal services agency, N.J.A.C. 10:83-1.2(k) already provides for such referral as part of the general case management stipulation relative to the receipt of SSI/EA.

COMMENT: The provision at N.J.A.C. 10:83-1.2(f)3 requiring that a written notice to deny or terminate EA benefits be provided by the CWA at a face-to-face meeting with the EA client seems to be an unreasonable requirement, adds to administrative costs, and in certain circumstances is impossible for the CWA to accomplish (that is, client's whereabouts unknown). Although this provision is similar to the GA/EA rule, such should not apply to SSI recipients.

RESPONSE: The intent of the face-to-face concept for delivery of EA termination notices is to ensure that the SSI/EA client is made aware of the importance of the notice and to explain the impact that the action taken will have on his or her benefits. If a person is to be terminated and cannot be located for purposes of notification, termination of benefits should be undertaken.

COMMENT: N.J.A.C. 10:83-1.2(f)4 should require the CWA to provide transportation to the hearing, since SSI recipients do not have the financial resources to obtain transportation. Many EA recipients may not understand, or be able to express in precise terms, their request for a fair hearing. Therefore, any expression of objection or disagreement by a client concerning a termination or denial should be treated by the CWA as a hearing request. Commenter suggested that this paragraph be revised as follows: "Upon receipt of a notice of EA denial, [or] termination, **modification or refusal to modify,** the client has a right to request a fair hearing provided that such request is made on or before the effective date of the EA termination **or modification** or within 10 days of the personal delivery [receipt] date of a denial notice. **Any expression of disagreement or objection made by the client relative to the subject of the notice shall be treated as a request for a hearing.** Such appeals shall be resolved through the fair hearing process in accordance with N.J.A.C. 10:81-6. **The CWA shall provide the client with transportation to any such hearing."** N.J.A.C. 10:83-1.2(f)4i will also need to be modified to comport with the above suggestion.

RESPONSE: Under current rules, CWA's are required to provide transportation to fair hearings, if necessary. With respect to the commenter's suggestion that "any expression of disagreement or objection made by the client relative to the subject of the notice shall be treated as a request for a hearing", the Department observes that to amend the rule as suggested by the commenter would infringe on the client's right to choose whether or not to request a fair hearing.

COMMENT: Troubled clients will frequently deny or fail to grasp the importance of termination notices. Some may be out in the street before they receive the assistance or muster the strength needed to press an appeal. A new subparagraph needs to be added as N.J.A.C. 10:83-1.2(f)4ii to provide for such circumstances by relaxing the relevant hearing request time limitation in appropriate cases. Commenter suggested the following language: **"The time limits for requesting an appeal shall be relaxed, and appeals allowed, where the client's physical, mental, or emotional condition prevented him or her from acting within the stated periods, or for other good cause. Where a client's file indicates, or a caseworker is aware, that a client has a condition which may impair his or her ability to understand such a notice, a reasonable affirmative and additional effort shall be made by the CWA to achieve such understanding."**

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RESPONSE: The Department does not concur with the suggestion to insert the suggested language at N.J.A.C. 10:83-1.2(f)4ii, inasmuch as this would, in essence, constitute a substantial departure from the instant proposal and require a separate and more pervasive rulemaking. Such alterations impacting the fair hearing process may need to be specifically reviewed and developed in conjunction with the Department of State, Office of Administrative Law. The Department recognizes the relative ability of some clients and observes that the rule accents the service role of the CWA in that area.

COMMENT: N.J.A.C. 10:83-1.2(g)1 should be revised to allow the CWA, with case documentation as to the reason, to authorize EA extensions beyond the five month period, rather than to defer this decision to the Division of Family Development(DFD). This will align the rule with the AFDC EA rules, where the decision to authorize an extension of EA benefits beyond five months rests with the CWA.

RESPONSE: The Department agrees. N.J.A.C. 10:83-1.2(g)1 has been amended to allow the CWA, with case documentation as to the reason, to authorize EA extensions beyond the five month period. This alteration aligns the rule with N.J.A.C. 10:82-5.10(f)1iii and 10:85-4.6(e)3.

COMMENT: N.J.A.C. 10:83-1.2(g)1 needs to be modified to clarify that individualized extensions of EA must be granted to SSI recipients, in accordance with N.J.A.C. 10:83-1.2(g)3, when any of the criteria outlined in the latter section are present. Commenter suggested that paragraph (g)1 be revised as follows: "In addition [in extraordinary circumstances,] individualized extensions [may] **shall** be provided on a month-by-month basis [for temporary shelter/housing subject to authorization by DFD] **in accordance with (g)3i, ii and iii below."**

RESPONSE: In order to be consistent with current language at N.J.A.C. 10:82-5.10(f)1iii, the word "shall" and the commenter's suggested deleted language are not being incorporated in the adoption. The commenter's suggested reference has been incorporated at N.J.A.C. 10:83-1.2(g)1.

COMMENT: The requirement at N.J.A.C. 10:83-1.2(g)1 that the shelter arrangement shall also be reasonably related to the client's mental and physical needs may be unrealistic. There may be limited availability of what some might consider "reasonably related."

RESPONSE: The Department acknowledges the comment; however, it observes that the issue of the availability of "reasonably related" shelter is not within the purview of this rulemaking process. The proposed language comports with that at N.J.A.C. 10:85-4.6(e)1 (concerned with GA/EA).

COMMENT: The intent of the proposed language at N.J.A.C. 10:83-1.2(g)1i is not clear. If the intent of the rule is that SSI eligible applicants will not be required to share the costs of temporary shelter from their monthly check, then it should be explicitly stated.

RESPONSE: The Department disagrees and submits that the proposed text is clear in stating that SSI funds are not counted or used for temporary shelter.

COMMENT: In many cases, emergency placement is made in a rooming house or boarding house only until the arrival of the next SSI check which is then expected to be used to remain in this type of facility. Will the rule at N.J.A.C. 10:83-1.2(g)1i preclude this type of plan?

RESPONSE: If the placement is no longer temporary, and is affordable to the client, it would seem the emergency situation has been resolved and EA is no longer needed.

COMMENT: If the intent at N.J.A.C. 10:83-1.2(g)1i(1) is to require, in the mutual plan, that eligible SSI individuals save part or all of their SSI benefits for future payment of permanent housing, DFD should then promulgate standards which clearly state the amount an individual is allowed to retain for personal use. Such amount should vary dependent on the shelter arrangements. If this is not the intent of the proposed rule, then language should be added which bars CWAs from imposing "forced" savings plans on EA eligible individuals.

RESPONSE: The rule does not impose any "forced" savings plan on EA clients. If funds are actually available to the client when plans for permanent living arrangements are being made, then such funds will be counted, but will not be considered during the provision of temporary emergency shelter.

COMMENT: Paying for furniture storage, as provided at N.J.A.C. 10:83-1.2(g)1i(1), should be limited, because after a month or two it would be less expensive to purchase new furniture. "Appliances" should be limited to refrigerator only, unless the client loses a washing machine, and so forth, in a fire.

RESPONSE: Payment for furniture storage will not be of a durational nature. This will be in those circumstances where plans are made for a more permanent living arrangement and the client needs to store the furniture pending his or her actual date of moving. To limit appliances to refrigerators only would be inappropriate, inasmuch as GA and AFDC EA clients are provided funds to purchase a wider range of appliances.

COMMENT: At N.J.A.C. 10:83-1.2(g)1ii, why is the distance between employment and housing the measure upon which good cause is determined? SSI clients are usually unemployed as they are either elderly or disabled, so the issue of employment is a moot point.

RESPONSE: The Department disagrees with the commenter, and points out additionally that such language is merely intended to be an example of what may constitute good cause.

COMMENT: It would be more appropriate to have a separate agency or State funded component or organization administer the provisions at N.J.A.C. 10:83-1.2(g)2 concerning temporary rental assistance. The Division of Community Affairs may be a possible alternative.

RESPONSE: The issues raised deal with funding and services provided by a separate agency of State government and cannot be addressed within the purview of these amendments.

COMMENT: N.J.A.C. 10:83-1.2(g)2i and (g)iii(5) seem to be in conflict with each other. N.J.A.C. 10:83-1.2(g)2i indicates that an apartment must be affordable within a three-month period if Rental Subsidy is to be approved. This leads one to believe that the maximum length of subsidy allowed is a three-month period. N.J.A.C. 10:83-1.2(g)2iii(5) indicates the maximum length for a Rent Subsidy is 12 months.

RESPONSE: The intent here is not to limit Rental Subsidy to three months. The rule deals with a specific situation in which a person is in a permanent housing setting but the person is not able to pay the rent for at least three months, for reasons indicated in the proposed text. At the end of the three month period, it is anticipated that the person will be able to continue to pay the rent without continued subsidy. In many instances, it may be more cost effective to assist the person for three months than to place him or her in a motel/hotel until he or she finds another affordable residence.

COMMENT: At N.J.A.C. 10:83-1.2(g)2iii(1) the phrase "of a permanent nature" needs to be defined. If a client is in an apartment which is more expensive than his or her grant and he or she is receiving a rent subsidy, then that is not permanent housing.

RESPONSE: The Department does not concur with the commenter that there is a need to define such wording. "Permanent" housing is housing which the EA client can afford without EA. Housing of a "permanent nature" could be a room or an apartment as opposed to a shelter or a motel used as an interim placement.

COMMENT: Permitting the client at N.J.A.C. 10:83-1.2(g)2iii(3) to retain a minimum of 35 percent of monthly income will mean that the client will not be paying 50 percent of the monthly rent, thereby removing the client from Section 8 or other HUD funded housing assistance programs. Rules should be written to complement the rules of existing housing assistance programs so as not to leave clients in a prolonged "emergency" situation.

RESPONSE: The Department has made all attempts to coordinate Emergency Assistance programs under its purview with other related assistance programs, in order to best serve its needy population. The Department acknowledges that the policy cannot address every situation to accommodate all cases to advantage regarding other programs. The Department will continue in its efforts to strive to align provisions to best serve the needs of its population. In this case, the Department maintains that it is important to remain consistent in its related program efforts to ensure that the individual retains some income to provide for a minimum of necessary personal needs.

COMMENT: The $250.00 subsidy limit at N.J.A.C. 10:83-1.2(g)2iii(3) is too low to provide effective assistance in many areas of the State. The rule should be modified to provide emergency rental assistance of "up to the Federal Fair Market Rent for an appropriately-sized apartment for the area in which the CWA is located."

RESPONSE: The Department observes that the proposed amendments already provide for the granting of exceptions to the $250.00 temporary rental assistance maximum, on case-by-case basis, with DFD approval.

COMMENT: The $250.00 subsidy limit at N.J.A.C. 10:83-1.2(g)2iii(3) is too high. Because SSI clients have rooming houses and boarding homes as an alternative, less than $250.00 per month should be allowed for Temporary Rental Assistance for SSI clients.

RESPONSE: The $250.00 amount is a maximum, not a mandated expenditure.

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COMMENT: Temporary rental assistance needs to be extended beyond the proposed 12 months at N.J.A.C. 10:83-1.2(g)2iii(5). The rule should be revised as follows: "The CWA shall authorize temporary rental assistance on a case-by-case basis up to a period of one year. [In no event shall such temporary rental assistance exceed a total of 12 months when computed in combination with the number of months of back rent and EA temporary rental assistance.] Such authorization shall be based on a review of the individual's circumstances and in keeping with the mutually developed service plan. **Where an eligible recipient has been unable to locate alternative housing arrangements by the end of the year of rental assistance payments, the recipient shall be eligible for continued rental assistance as long as he or she makes continuing efforts to obtain permanent housing."**

RESPONSE: In light of the finite resources available in the funding of many of the program features, the Department is constrained to observe that it is necessary to limit temporary rental assistance to the time frames stipulated in the rule. The Department has, therefore, retained the rule as proposed.

COMMENT: N.J.A.C. 10:83-1.2(g)3 needs to be amended to make it clear, as indicated at N.J.A.C. 10:83-1.2(g)1, that the maximum EA period is five months, not three as that paragraph indicates.

RESPONSE: The Department agrees with the commenter and has amended N.J.A.C. 10:83-1.2(g)3 to specify a "five-month" maximum.

COMMENT: The provision at N.J.A.C. 10:83-1.2(g)3i, providing EA shelter extensions beyond the three-month maximum EA period due to illness or incapacity of the client or of another person requiring the client's presence in the home, will apply to nearly all SSI cases.

RESPONSE: The determination of whether or not an SSI recipient has a functional incapacity which prevents him or her from having an ability to plan is to be based on an individual evaluation.

COMMENT: N.J.A.C. 10:83-1.2(g)4 is the first time that the proposal speaks of a five-month EA maximum period. As written in this paragraph, it is clear that there is no maximum period or no prohibition from starting another five-month period of EA at the end of a prior one.

RESPONSE: As provided at N.J.A.C. 10:83-1.2(g)1, the five-month period consists of three calendar months with extensions for up to two additional months. The rule also provides for individualized extensions on a month-by-month basis for temporary shelter/housing.

COMMENT: The clothing allowances, as proposed at N.J.A.C. 10:83-1.2(i), have not been increased in many years. Commenter suggests that those allowances be increased by perhaps 25 percent or as follows: adult—$100.00, child ages 13 and over—$75.00, child ages 5 through 12—$75.00, child birth through age 4—$50.

RESPONSE: The Department takes note of the comment; however, such considerations will require further review and therefore cannot be included as part of this rulemaking.

COMMENT: The maximum allowances for furniture as found at N.J.A.C. 10:83-1.2(j) should be increased to a level which more accurately represents the current cost of the items listed. One commenter suggested using a 10 percent increase.

RESPONSE: The Department takes note of the comment; however, such considerations will require further review and therefore cannot be included as part of this rulemaking.

COMMENT: Are staff cost for providing the services at N.J.A.C. 10:83-1.2(k) charged to IV-A or Social Services Black Grant? What funding source is charged if any services have to be purchased?

RESPONSE: Staff performing N.J.A.C. 10:83-1.2(k) activities will be assigned to the Income Maintenance section employee work unit, which is funded by Title IV-A. Eligible purchased services resulting from this activity may be charged to the assistance account and are funded under the EA program.

COMMENT: Inasmuch as these clients are recipients of a Federal program, and there is no Federal administrative cost share, the services provided at N.J.A.C. 10:83-1.2(k)4 (that is, assistance in securing shelter, including transportation) should be eliminated or made payable from (State) assistance funds. How are the administrative costs to be reported?

RESPONSE: CWA administrative costs are reported through the administrative reporting process, using the "Statement of the Administrative Account", and its subsidiary forms. The administrative costs associated with N.J.A.C. 10:83-1.2(k)4 may be assigned to the Income Maintenance section employee work unit.

COMMENT: Landlords often require application fees, ranging from $15.00 to $30.00 from prospective tenants for credit checks, and so forth. Are such fees authorized to be paid by the CWA at N.J.A.C. 10:83-1.2(k)4, which concerns the securing of shelter?

RESPONSE: The aforementioned application fees are not authorized to be paid under the EA program.

COMMENT: Several commenters noted discrepancies in the numbers used in the Economic Impact, specifically, 26 and 32 as they referred to numbers of recipients in SFY 1991 (actual) and 1992 (estimated).

RESPONSE: The Division has reviewed the figures, and has found discrepancies, as described by the commenters. The Economic Impact should have stated that the average number of SSI/EA recipients in a month for SFY 1991 is 306. Further, the Division notes that the average number of SSI/EA recipients for SFY 1992 is 378 persons served.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisk ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*).

10:83-1.2 Emergency assistance

(a) Emergency assistance (EA), as delineated in this section, provides for the prevention of homelessness, the granting of emergency shelter assistance and temporary rental assistance. EA shall be authorized to or for an individual(s) receiving SSI benefits when circumstances set forth in (a)1 through 3 below exist:

1. When there has been substantial loss of shelter, food, clothing and/or househould furnishings by fire, flood or other similar disaster, and the eligible individual(s) is in a state of homelessness and the agency determines that the provision of ***EA funds for*** one or more of these basic needs is essential for the health and safety of the individual;

2. When the state of homelessness results from imminent or demonstrated violence which imperil the health and safety of the individual; or

3. Where there is documentation, subject to CWA verification, of a pending eviction, such as a letter from the landlord or other person who is providing shelter or dwelling space to the client, a tenancy complaint filed by the landlord, an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior shelter is no longer available, and the eligible individual(s) demonstrates a lack of realistic capacity to plan for substitute housing as defined in (a)3iii below, EA shall be authorized in accordance with (a)3i and ii below.

i. Payment may be authorized for three calendar months of retroactive rental or mortgage payments if it will prevent actual eviction or foreclosure. Retroactive utility payments may authorized for six months if it will prevent actual eviction or foreclosure. Payments for more than three months of retroactive/rental/mortgage and/or six months of retroactive utility payment may only be made in extraordinary circumstances subject to *[DEA]* ***DFD*** authorization.

ii. In situations of homelessness due to actual eviction or foreclosure or when prior shelter is no longer available, payment shall be authorized for emergency shelter in accordance with (g)1 below.

iii. Lack of realistic capacity to plan for substitute housing exists in the following circumstances:

(1) When the eligible person(s) can demonstrate that there was insufficient time to secure substitute housing between receipt of notice of imminent loss of shelter and actual eviction, foreclosure or loss of prior permanent shelter;

(2) When the eligible person(s) can demonstrate or signs a document, prepared by the CWA, certifying that available funds were exhausted in payment of necessary household and living expenses, such as food, clothing, shelter, or unreimbursed medical expenses, and that payment of such expenses resulted in homelessness; or

(3) When the eligible person(s) demonstrates functional incapacity (see (g)1 below) which would prevent him or her to plan for or secure substitute housing.

(b) Recipients of SSI will be identified on the basis of the most recent SSI/State Date Exchange System (SDX) listing. Individuals in the Medicaid Only program are not eligible for ***SSI/***EA.

(c) An application, Form PA-1G, will be completed in all situations involving EA payments. The CWA will attach to the application

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a written report of pertinent information concerning the amount and purpose of the payment.

(d) While SSI recipients are permitted to retain certain resources of up to $2,000 for an individual, or up to $3,000 per couple, for purposes of eligibility relative to the situations covered by this subchapter, this resource is to be considered by the CWA as available.

(e) The goal of the SSI/EA shelter program is to provide for the initial and continuing emergency shelter needs of SSI recipients. EA is designed to provide shelter and to coordinate support services, with client participation, at all levels of government and with other appropriate sectors of the human services delivery community. It is acknowledged that there is a shared responsibility among governmental/non-governmental entities at the municipal, county, and State levels. The CWA and client shall have a shared obligation to resolve the emergency situation and to secure a shelter arrangement which he or she will be able to ultimately maintain without EA. Upon contact with the EA eligible individual, the CWA shall have responsibility to:

1. Immediately authorize appropriate EA benefits to alleviate the emergency situation;

2. Review the circumstances which contribute to the client's homeless situation and limit his or her ability to secure and/or maintain permanent housing (for example, substance abuse, mental illness, insufficient funds);

i. Since SSI recipients are elderly and/or disabled these factors must also be evaluated in conjunction with the above;

3. Explain to the client, as well as provide a written copy of, his or her EA rights and responsibilities;

4. Discuss with the EA client the emergency shelter arrangement which the CWA determines, in accordance with (e)2 above, will meet his or her immediate emergency shelter needs;

5. Explain that a written service plan shall be mutually developed, within five working days of the EA authorization date, to provide an individualized plan of action aimed at working toward securing permanent shelter and also, where directly related to securing such shelter, at resolving the circumstances that contributed to his or her emergency situation. Refusal, without good cause, to cooperate with conditions set forth in the service plan that are directly related to the recipient's search for permanent housing or with the initial development of the service plan shall render the client ineligible for continuing EA benefits, until such time as cooperation has been resumed; and

6. Arrange a face-to-face meeting with the client to prepare the service plan at a time and place convenient to both the client and the CWA.

i. The service plan shall be signed by both the client and the CWA.

ii. The CWA shall retain the original plan and provide a copy to the client.

iii. The service plan shall include, but is not limited to:

(1) Selection of shelter arrangement which takes into consideration the client's individual circumstances, such as, but not limited to, mental and/or physical problems;

(2) Client responsibility to seek alternative permanent shelter or an optional permanent housing arrangement and to document such efforts in writing. The CWA shall have an obligation to assist the client in the search for permanent housing and document such assistance in the case record;

(A) Such permanent housing searches are to begin no later than the eleventh day after the date the service plan is signed.

(B) The CWA shall determine a reasonable number of contacts to be made per week by the client, taking into consideration his or her medical and/or social circumstances and availability of potential housing. For example, it shall be considered reasonable for a person who is not suffering from physical or mental incapacity to conduct up to 10 contacts per week, if potential housing resources are available. Where good cause for non-participation in housing searches exists, the service plan shall reflect the applicable reason(s).

(C) Contacts may be made by telephone, personal visit or a combination of both.

(D) Written documentation shall consist of the date of the contact, the telephone number (if applicable), the address (location) of the housing site, and the name of the person contacted (landlord or agent);

(3) Provision of services as set forth at (k) below, emphasizing the reasonable transportation needs of the client associated with the areas identified at (e)6iii**(3)***(A)-(E) below. Reasonable is defined as the least expensive mode of transportation that can be provided to accomplish the activity or need identified;

(A) Transportation to shelters or to alternate temporary housing;

(B) Search for alternate temporary or permanent shelter;

(C) Negotiation of Food Stamp Program authorizations to participate at issuance sites which are inaccessible to the client;

(D) Visits to the appropriate CWA office for case processing purposes and/or to secure assistance payments or visits to any other appropriate service agency for assistance; and

(E) Attendance at counseling sessions; and

(4) Referral to and/or application for other available benefit entitlements or services (for example, drug and alcohol rehabilitation program, Department of Community Affairs, Home Energy Assistance Program, Food Stamp Program, Community Mental Health Services, Section 8 Housing Certificates).

iv. The CWA shall monitor the EA client's compliance with the service plan, as well as document CWA support activities at least once a month.

v. The CWA shall reevaluate and/or revise the service plan as warranted by changes in the EA client's shelter needs and/or other pertinent circumstances.

(f) An EA client shall be entitled to receive a written notice, inclusive of appeal rights, concerning a decision made by the CWA to deny or terminate EA benefits.

1. Denial notices shall be provided to the client immediately upon denial determination.

2. Termination notices shall be provided at least 10 days in advance of the EA termination effective date.

3. Written notice shall be provided by the CWA at a face-to-face meeting with the EA client. At such time the CWA shall explain to the client the action to be taken, the reason(s) for such action, and his or her right to request a fair hearing.

4. Upon receipt of a notice of EA denial or termination, the client has a right to request a fair hearing provided that such request is made on or before the effective date of the EA termination or within 10 days of the personal delivery receipt date of a denial notice. Such appeals shall be resolved through the fair hearing process in accordance with N.J.A.C. 10:81-6.

i. When a fair hearing is requested because of receipt of an EA termination notice and such request is made on or before the effective date of the EA termination, EA shall continue unaltered until the fair hearing is held and a final decision is rendered by the Director of *[DEA]* ***DFD***.

(g) Rules concerning emergency shelter assistance are as follows:

1. The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed three calendar months which shall include any portion of the initial month of EA, with extensions for temporary housing for up to two additional months. In addition, in extraordinary circumstances, individualized extensions may be provided on a month-by-month basis for temporary shelter/housing *[subject to authorization by DFD]* ***when no alternative plan is available and the need for such extension(s) is documented in the case record, and is for any of the reasons stipulated in (g)3i through 3iii below***. The shelter arrangement shall also be reasonably related to the client's mental and physical needs (for example, if a client is suffering from a mental or physical incapacity, and the shelter arrangement would be detrimental to his or her condition, for instance in a situation where a client has recently been discharged from a hospital, requiring bed rest, he or she should be placed in a shelter arrangement that is available for 24 hours, enabling bed rest). Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not

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available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

i. SSI benefits are not to be counted in the determination of eligibility for or the amount of EA payments authorized for temporary emergency shelter.

(1) When plans for more permanent living arrangements are made, any funds actually available to the client are to be counted in the determination of EA payments for shelter, utility deposits, furniture storage, moving expenses, purchase of furniture and appliances.

ii. Every effort shall be made to locate suitable housing in the community of prior permanent residence. If, however, the CWA locates suitable permanent housing, not necessarily in the municipality of prior residence, the client must accept the arrangement. Refusal to relocate without good cause renders the person ineligible for further EA for temporary shelter. Good cause may include, but is not limited to, the need to travel more than one hour each way to and from a place of employment by public or private transportation.

iii. Payment may be authorized for furniture storage, moving expenses, advance rent and security deposits for rent and/or utilities when the CWA determines it is necessary to establish the client in a new permanent living arrangement.

2. Temporary rental assistance may be authorized by the CWA upon initial authorization of EA or at any other time during the receipt of EA. Temporary rental assistance benefits, as authorized in accordance with (g)2i and ii below, shall be expedited by the CWA to preclude the loss of an existing or potential housing arrangement.

i. The individual is facing pending eviction from permanent housing, which had previously been affordable, for reasons such as, but not limited to, loss of employment, temporary unemployment or under employment, or it is anticipated that such permanent housing will be affordable within a three-month period.

ii. The individual is able to locate a housing arrangement or can be accommodated in a housing arrangement in lieu of a temporary shelter arrangement.

(1) The determination of the CWA to authorize temporary rental assistance shall be based on conclusions reached as a result of the development of the action plan as set forth at (e) above, which indicates the individual's cooperation to comply with the case management efforts of the CWA and that there is reasonable assurance that:

(A) The individual's anticipated income from other sources, will support the ongoing housing expenses without continued temporary rental assistance: or

(B) The individual shall continue to conduct permanent housing searches to find a more affordable housing arrangement.

iii. Issuance of temporary rental assistance is governed by the following:

(1) Temporary rental assistance shall be provided for those housing arrangements which can be considered of "permanent nature" by the client and/or the community.

(2) The amount of the authorized temporary rental assistance shall take into account all shelter costs including basic utilities.

(3) CWAs shall authorize temporary emergency rental assistance of up to $250.00 per month to supplement an EA recipient's recurring income SSI benefit. CWAs shall ensure, however, that the recipient is able to retain at least 35 percent of his or her monthly income. Amounts in excess of the 35 percent may be authorized when it is determined that the client has special needs which must be documented in the case record. The portion of the client's regular income in excess of 35 percent or a higher approved amount shall represent his or her contribution towards the monthly shelter costs. The recipient shall, as a condition of eligibility for temporary rental assistance, cooperate in making application for other benefits for which he or she has potential entitlement, such as Section 8 housing Certificates and/or the Home Energy Assistance Program, with the assistance of the CWA.

(4) Request for temporary rental assistance in amounts in excess of $250.00 must be approved by *[DEA]* **DFD* prior to issuance.

(5) The CWA shall authorize temporary rental assistance on a case-by-case basis up to a period of one year. In no event shall such temporary rental assistance exceed a total of 12 months when computed in combination with the number of months of back rent and EA temporary rental assistance. Such authorization shall be based on a review of the individual's circumstances and in keeping with the mutually developed service plan.

3. Monthly EA shelter extensions beyond the *[three]* ***five***-month maximum EA period shall be authorized by the CWA to individual(s) because of any of the following:

i. Due to illness or incapacity of the client or of another person which requires the client's presence in the home on a substantially continuous basis, the individual(s) is unable to perform activities of daily living including participating in permanent shelter searches and/or complying with any of the other provisions of the service plan;

ii. Alternate permanent housing is anticipated to be available or a change in circumstance, for example, other sources of income, is expected within two months subsequent to the extension month which will obviate the need for such shelter extensions; or

iii. The EA recipient has satisfactorily fulfilled his or her permanent housing search responsibilities or was determined unable to make such permanent housing searches and continues to require additional EA shelter assistance.

4. Upon authorization of EA extensions beyond the five-month maximum period, the CWA shall conduct a face-to-face interview with the EA client to reinstate the provisions of the service plan or to adjust the service plan for a more appropriate plan of action. If, for reasons of "good cause," the CWA determines that the EA client will be unable to fulfill any or all of the provisions of the service plan, such reasons shall be duly noted on the service plan and shall be substantiated by appropriate documentation in the case file.

(h) As authorized in (a) above, when food is not available from any other source, an amount of $4.50 per day per person shall be allowed for a specified number of days only, and in no event beyond such time as other funds become available (for example, next regular benefit payment, support payment, receipt of earnings, receipt of food stamps, and so forth).

1. When it is necessary to provide temporary living arrangements in a hotel, motel, or other facility in which cooking facilities are not available or are determined by the CWA to be inadequate, payment for restaurant meals shall not exceed $7.50 per person per day and shall be allowed until such time as other funds become available (for example, next regular benefit payment, receipt of food stamps, and so forth).

(i) When authorized under (a) above to the individual(s) to purchase minimum essential clothing for physical health and safety, payment may be granted not to exceed the amounts stated below:

Age	Amount
Adult	$86.00
Child: 13 and over	86.00
Child: 5 through 12	48.00
Child: Birth through 4	29.00

(j) When authorized under (a) above, EA for house furnishings which the CWA deems urgent and essential to the physical health and safety of the eligible unit shall not exceed the maximum allowances in the following table.

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Number of persons in Eligible Unit:	1	2	3	4	5	6 or more
			Persons			
Kitchen furnishings:						
Range	$130	$130	$130	$130	$130	$160
Refrigerator	200	200	220	220	220	260
Washing Machine			200	200	200	200
Dinette Set	45	45	65	65	85	85*
Kitchen Equipment	50	60	60	72	72	80
Living Room Furnishings:						
Couch and Chair(s)	125	175	175	225	225	225
Table	20	20	20	20	20	20
Lamp(s)	20	20	20	35	35	35
Floor Covering	25	25	25	25	25	25

*Over 6-$12 each additional person

Bedroom and furnishings:		
Box Spring, Mattress, and Frame, per set	$110 Twin	$130 Double
Bunk Beds, per set of 2 (complete)	$135	
Crib with Mattress	$50	
Chest(s) of Drawers		
Bed and Bath Linens and Miscellaneous Furnishings	$36 Per Person	(Not to exceed $200 per family)
Window Coverings	$2.50 Per Window	

(k) The following services shall be performed by agency personnel and must, where appropriate, be provided to all cases granted EA benefits:

1. Information;
2. Referral;
3. Counseling;
4. Assistance in securing shelter, including transportation; and
5. Referral for legal services.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Administration

Scope

Adopted Amendment: N.J.A.C. 10:120-1.2

Proposed: November 18, 1991 at 23 N.J.R. 3420(b).

Adopted: October 27, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: October 28, 1992 as R.1992 d.471, **with substantive technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-9 and N.J.S.A. 52:14B-4(b).

Effective Date: December 7, 1992.

Expiration Date: July 9, 1996.

Summary of Public Comments and Agency Responses:

COMMENT: The Association for Children for New Jersey commented that the proposed section emphasized the Division's protective services role, without discussing the Division's broader child welfare mandate in sufficient detail.

RESPONSE: The Division feels that the language used is appropriate, and does discuss the Division's child welfare mandate. The Division fully recognizes the importance of child welfare services, as well as protective services, and feels that the proposed language reflects both services adequately.

Summary of Agency-Initiated Changes:

Adult protective services and the personal attendant services program are now mentioned in N.J.A.C. 10:120-1.2(c). These services had been mentioned in the original text, but the proposal did not include them, in the interests of brevity. The Division has decided that it is more descriptive and accurate to specifically mention these two services.

Also, in the interests of description and accuracy, in N.J.A.C. 10:120-1.2(c), the term "day care centers" has been replaced with "child care." And the word "centers" has been eliminated after "adoption placement," since these services are not necessarily performed only in centers. Additionally, in N.J.A.C. 10:120-1.2(d), the terms "services to the homeless" and "housing related services" have been removed. These services are performed by the Department of Community Affairs. And, in N.J.A.C. 10:120-1.2(h), "suspension of staff training" has been removed, since this is now a function of the Department of Personnel. Finally in N.J.A.C. 10:120-1.2(i), a reference has been added to the Department of Human Services Contract Manuals.

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

10:120-1.2 Scope

(a) The Division of Youth and Family Services is responsible for the implementation of programs to preserve families and protect children from abuse and neglect in New Jersey.

(b) The Division is responsible for investigating allegations of child abuse and neglect occurring in families and institutions.

(c) The Division of Youth and Family Services provides a variety of services to children and families directly. These services include, but are not limited to: protective services for abused and neglected children, foster and group home placements, residential placements, *[day]* ***child*** care *[centers]*, adoption *[placement centers]* ***services***, counseling, advocacy and case management***, adult protective services and personal attendant services***.

(d) The Division contracts with community social service providers for services DYFS does not provide directly. These services include, but are not limited to: day care for children, protective services for victims of domestic violence, *[services to the homeless,]* family planning, mental health therapy and counseling, *[housing-related services]* and legal services in non-criminal matters.

(e) The Division is mandated to license and regulate publicly and privately operated facilities and programs serving children and families, including, but not limited to: child care centers, children's residential treatment facilities, children's group homes, children's and families-in-crisis shelters and homes, and adoption agencies. The Division also regulates the State's voluntary family day care registration program.

(f) The Division is responsible for supervising the social service units of the county welfare agencies, which include the adult protec-

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tive services program and the personal attendant services program. The Division administers services to vulnerable adults through the social service units of the county welfare agencies, and by contracting with county offices on aging and with community providers. These services, within available resources, include, but are not limited to: services to residents of rooming houses, boarding homes, and residential health care providers, services to handicapped individuals living at home, and services to families whose level of functioning is marginal.

(g) Services of the Division are provided through a regional structure. Each regional office is headed by an administrator responsible for supervising DYFS local district offices, community social service providers under contract with the Division, and county welfare agency social services units in the counties comprising that region. The Division also operates adoption resource centers, children's residential treatment centers and children's day care centers.

(h) The Division's central office in Trenton provides support functions to the regional and district offices. These functions include, but are not limited to: policy and procedure development and publication, research and evaluation, management and fiscal services, monitoring residential placement facilities, quality assurance and accountability, regulatory and legislative services*[, and supervision of staff training]*.

(i) The policies and procedures of the Division of Youth and Family Services are formalized in DYFS Field Operations and Provider Manuals ***and the Department of Human Services Contract Manuals***. The DYFS Field Operations and Provider Manuals are available in the DYFS central, regional and district offices for examination or review during regular office hours on regular work days. DYFS issues these manuals and revises them as necessary.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Standards for Children's Shelter Facilities and Homes

Readoption with Amendment: N.J.A.C. 10:124

Proposed: September 8, 1992 at 24 N.J.R. 3089(a).

Adopted: November 2, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 4, 1992 as R.1992 d.485, **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. 30:1-14 and 15, 30:4C-4, 2A:4A-37 and 2A:4A-20 et seq.

Effective Date: November 4, 1992, Readoption;
December 7, 1992, Amendments.

Expiration Date: November 4, 1997.

Summary of Public Comments and Agency Responses:

The Division of Youth and Family Services received the following comments from the Department of Community Affairs.

COMMENT: The Department of Community Affairs indicated that the distinctions among the various use groups for shelter facilities currently identified at N.J.A.C. 10:124-5.1 were misstated and the use groups should reflect the definitions of the various residential and institutional use groups as set forth in the current edition of the BOCA National Building Code and adopted by the New Jersey Uniform Construction Code.

RESPONSE: The Division of Youth and Family Services agrees with this comment and has made the necessary technical changes at N.J.A.C. 10:124-5.1 to reflect the current definitions of use groups for shelter facilities as set forth in the current edition of the BOCA National Building Code and the New Jersey Uniform Construction Code.

COMMENT: The Department of Community Affairs indicated that at N.J.A.C. 10:124-5.2(c)2 and 3, the categories of construction formerly designated as Type 4A and Type 4B are now referred to as Type 5A and Type 5B.

RESPONSE: The Division of Youth and Family Services agrees with this comment and has made the necessary technical changes at N.J.A.C. 10:124-5.2(c)2 and 3.

COMMENT: The Department of Community Affairs indicated that the requirements for exits (N.J.A.C. 10:124-5.2(d)1), doors (N.J.A.C. 10:124-5.2(d)2) and handrails and guardrails (N.J.A.C. 10:124-5.2(d)3iv) do not reflect the current New Jersey Uniform Construction Code and New Jersey Uniform Fire Code requirements, as specified by N.J.S.A. 52:27D-123.1 and 213.

RESPONSE: The Division of Youth and Family Services agrees with this comment and has made the necessary technical changes at N.J.A.C. 10:124-5.2(d)1, 2 and 3iv. The Division is satisfied that compliance with D.C.A. standards will offer an acceptable level of safety. This was the original intent of the rules when first proposed and when proposed for readoption. (See Summary at 24 N.J.R. 3090.)

COMMENT: The Department of Community Affairs indicated that fire protection requirements at N.J.A.C. 10:124-5.2(e) do not conform to the current requirements contained in the New Jersey Uniform Fire Code and the New Jersey Uniform Construction Code, as specified by N.J.S.A. 52:27D-123.1 and 213.

RESPONSE: The Division of Youth and Family Services agrees with this comment and has made the necessary technical changes at N.J.A.C. 10:124-5.2(e). The Division is satisfied that compliance with D.C.A. standards will offer an acceptable level of safety. It was the Division's intent, when first proposing these rules, and when proposing the readoption, to reflect U.C.C. standards. (See Summary, 24 N.J.R. 3090.)

COMMENT: The Department of Community Affairs indicated that ventilation requirements (N.J.A.C. 10:124-5.2(j)) appeared to be more stringent than, or otherwise at variance with, current New Jersey Uniform Construction Code and New Jersey Uniform Fire Code requirements, as specified by N.J.S.A. 52:27D-123.1 and 213.

RESPONSE: The Division agrees with the commenter and has made the necessary technical changes at N.J.A.C. 10:124-5.2(j), to reflect the requirements of N.J.S.A. 52:27D-123.1 and 213, and the UCC and Fire Codes. The Division's original intent was to reflect State government physical facility requirements for shelter facilities.

COMMENT: The Department of Community Affairs has indicated that the requirements of N.J.A.C. 10:124-5.2(k), regarding plumbing, appear to be more stringent, and particularly in the case of the required water temperature, to be at variance with the requirements of the UCC, contrary to N.J.S.A. 52:27D-123.1.

RESPONSE: The Division agrees with the commenter, and, at N.J.A.C. 10:124-5.2(k), has amended the rule to require a maximum water temperature of 110 degrees Fahrenheit. However, pursuant to a discussion with DCA staff, the Division continues the more stringent standards it has established for plumbing for children's shelters, since this special population requires such standards. (For example, it is more appropriate to require a higher minimum number of toilets, since more frequent use is required of them by young children.)

COMMENT: The Department of Community Affairs notes that the requirements of N.J.A.C. 10:124-5.3(a)3 do not accurately reflect the requirements of the Fire Code, contrary to N.J.S.A. 52:27D-213.

RESPONSE: The Division agrees, and notes that the requirement, as it stands currently, would allow a fire extinguisher to become ineffective, since annual inspection and tagging were not required. Therefore, in keeping with the requirements of the Fire Code and the Fire Safety Act, the Division has amended the text on adoption to reflect the requirements found in the Fire Code (and in other Division manuals).

Summary of Agency-Initiated Changes:

The Division has revised the text of N.J.A.C. 10:124-5.1 to reflect more up-to-date language and to conform to the requirements of the Uniform Construction and Fire Safety Acts. This revision includes references to pre-1977 and post-1977 construction, and differentiation between these two categories, since the Construction Code was adopted in 1977. It also includes a requirement that the facility comply with the Fire Safety Code, instead of the local maintenance ordinances, where such existed. Clarification has been added regarding what is necessary to trigger an application for a CO; for example, a move to another site, an addition of another floor or wing, or other substantial changes.

The Division has also added on adoption a review provision, in order that the Division may assist the facilities with the preparation of their plans for the evaluation of the local construction official, as required by N.J.A.C. 5:23. It is not the Division's intent to supplant the responsibilities of the Department of Community Affairs in this regard;

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rather it is the Division's intent to facilitate the application process for the facilities by acting in an advisory capacity in providing this additional opportunity for review of the plans.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:124-5.1 Local government physical facility requirements for shelter facilities

*[(a) An applicant seeking approval to open and operate a shelter facility for the first time as such shall:

1. For newly constructed buildings, buildings whose construction code use group classification would change from that which it had been or existing buildings that require major alteration or renovation, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located, reflecting the shelter facility's compliance with the provisions of the State Uniform Construction Code (N.J.A.C. 5:23), hereinafter referred to as UCC, for the following use groups:

i. Use group R-1 for buildings accommodating more than 20 residents; or

ii. Use group R-2 for buildings accommodating from six to 20 residents;

2. For buildings not newly constructed whose construction code use group classification is already R-1 or R-2 and which has not had major alterations or renovations to make it suitable for use as a shelter, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located, at the time the building was originally constructed or approved for use in R-1 or R-2 use groups, or a certificate of continued occupancy issued by the municipality in which it is located, reflecting the shelter facility's compliance with the municipality's construction code requirements that were in effect at the time it was originally constructed or converted to use group R-1 or R-2; and

3. Submit to the Bureau a copy of the municipal or county health inspection approval for the building, based on an inspection conducted within the preceding 12 months. The local or county health official shall certify that the facility meets all local or county health codes and Chapter 12 of the State Sanitary Code (N.J.A.C. 8:24-1), and poses no health hazard to the children served.

(b) An applicant seeking renewal of the approval to operate a shelter facility shall:

1. Submit to the Bureau a copy of the municipal or county health inspection approval for the building, as specified in N.J.A.C. 10:124-5.1(a)3; and

2. If the municipality in which the shelter facility is located has enacted an ordinance governing the maintenance of buildings, including shelter facilities, submit to the Bureau a statement from the municipal enforcing agency certifying that the shelter facility is in compliance with such ordinance.

(c) The shelter facility shall submit to the Bureau a copy of a new certificate of occupancy issued by the municipality in which it is located, reflecting the shelter facility's compliance with the provisions of the UCC whenever it takes any of the following actions:

1. Changing the building's use group to one other than the one prescribed on its original certificate of occupancy; or

2. Making a major alteration or renovation, as defined by the UCC, of the building or premises in which the shelter facility is located; or

3. Increasing the floor area or the number of stories to the building or premises in which the shelter facility is located.]*

***(a) An applicant seeking an initial approval, as specified in N.J.A.C. 10:124-1.5, to operate a shelter facility or home shall comply with all applicable provisions of the New Jersey Uniform Construction Code, as specified in N.J.A.C. 5:23 and hereinafter referred to as the NJUCC.**

1. For newly constructed buildings, for existing buildings whose construction code use group classification would change from that which it had been, or for existing buildings that require major alteration or renovation, the shelter facility or home shall submit to the Bureau a copy of a Certificate of Occupancy (CO) issued by the municipality in which it is located, reflecting the shelter facility's or home's compliance with the appropriate use group classification provisions of the NJUCC.

2. For shelter facilities or homes that are planning to construct a new building, the shelter facility or home shall submit to the Bureau:

i. Preliminary architectural drawings for review and comment prior to beginning construction; and

ii. If applicable, revised architectural or final drawings containing all required items listed in the preliminary plan review for final approval as in compliance with this chapter from the Bureau before the shelter facility or home can open.

3. For buildings constructed after the adoption of the NJUCC (1977) and that have not had major alterations or renovations since receipt of the CO, the shelter facility or home shall obtain the CO that reflects the appropriate use group classification issued by the municipality in which it is located at the time the building was originally constructed or approved. This shelter facility or home shall submit a copy of the building's CO to the Bureau.

4. For existing buildings, whose use prior to the adoption of the NJUCC (before 1977) was and continues to be for a shelter facility or home and that have not had major alterations or renovations, the shelter facility or home shall obtain a Certificate of Continued Occupancy (CCO) or a letter to this effect, issued by the municipality in which it is located, reflecting the building's compliance with provisions of the municipality's construction code requirements that were in effect at the time it was originally constructed or converted for use as a shelter facility or home. The shelter facility or home shall submit a copy of the building's CCO or letter reflecting the building's compliance to the Bureau.

5. The shelter facility or home shall obtain a new CO or CCO issued by the municipality in which it is located, reflecting the building's compliance with provisions of the applicable NJUCC use group classification, and submit a copy of the new CO or CCO to the Bureau whenever it takes any of the following actions:

i. Changes the building's use group classification to one other than the one prescribed on its original CO;

ii. Makes a major alteration or renovation, as defined by the NJUCC, of the building or premises where the shelter facility or home is located;

iii. Increases the floor area or the number of stories to the building or premises where the shelter facility or home is located; or

iv. Relocates to another site.

(b) An applicant seeking an initial approval, as specified in N.J.A.C. 10:124-1.5, to operate a shelter facility shall comply with all applicable provisions of the New Jersey Uniform Fire Code, as specified in N.J.A.C. 5:18, 18A and 18B and hereinafter referred to as the NJUFC. The shelter facility shall obtain the building's fire safety inspection certificate issued by the municipality in which it is located, based on a fire inspection conducted within the preceding 12 months, reflecting the shelter facility's compliance with all applicable provisions of the NJUFC. The shelter facility shall submit a copy of the building's fire safety inspection certificate to the Bureau.

(c) An applicant seeking an initial approval, as specified in N.J.A.C. 10:124-1.5, to operate a shelter facility shall comply with all applicable provisions of the State Sanitary Code, as specified in N.J.A.C. 8:24. The shelter facility shall obtain a certificate or statement of satisfactory health approval issued by the applicable municipal, county or State health agency, based on a health inspection conducted within the preceding 12 months, certifying that the shelter facility complies with applicable provisions of local, county and State health codes and poses no health hazard to the children served. The shelter facility shall submit a copy of the certificate or statement of satisfactory health approval to the Bureau.

(d) An applicant seeking the renewal of a certificate of approval to continue operating a shelter facility shall obtain and submit to the Bureau, copies of:

1. A current fire safety inspection certificate for the building; and

2. A current certificate or statement of satisfactory health approval for the shelter facility.*

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10:124-5.2 State government facility requirements for shelter facilities

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

(c) Limitations on the use of upper and lower levels:

1. (No change.)

2. In ***NJ*** UCC-designated buildings of Type *[3]* ***4*** and Type *[4A]* ***5A*** construction, children shall not be permitted above the third floor ***unless the building meets all the applicable provisions of the NJUFC and the NJUCC***.

3. In ***NJ*** UCC-designated buildings of Type *[4B]* ***5B*** construction, children shall not be permitted above the second floor ***unless the building meets all the applicable provisions of the NJUFC and the NJUCC***.

(d) Exit requirements:

i. *[Exits:

i. Exits shall be maintained in proper operating conditions and the shelter facility shall insure that:

(1) There are two independent unobstructed exits from every floor of a building or room in two separate directions; and

(2) Exits shall not be permitted through boiler, furnace or storage areas.

ii. Exits above and below the first floor:

(1) Exits above or below the first floor in buildings having a maximum capacity of 12 children shall provide exiting by a corridor that leads to stairways completely enclosed at the upper landing with a one hour fire-rated partition and a C-label (3/4 hour) fire-rated door equipped with an automatic closing device. These stairways shall lead directly to an outside exit.

(2) Exits above or below the first floor in buildings having a capacity of greater than 12 children shall provide exiting by a corridor that leads to two stairways completely enclosed in fire separation assemblies of fire resistance rating of the building's construction type, as designated by the UCC.]* ***Shelter facility exits shall be maintained in proper operating condition and comply with all the applicable provisions in the NJUCC and the NJUFC.***

2. Doors:

i. *[The exit access travel distance in a room shall not be greater than 100 feet. (Buildings equipped with a fire suppression system may have an exit access travel distance of 150 feet.)

ii. Every room with an occupant load of more than 50 or which exceeds 2,000 square feet in area shall have at least two egress doorways leading from the room to an exit or corridor.]* ***Shelter facility doors shall be maintained in proper operating condition and comply with all the applicable provisions in the NJUCC and the NJUFC.***

Recodify existing iii. and iv. as ***ii. and iii.*** (No change in text.)

3. Stairways:

i.-iii. (No change.)

iv. Handrails and guardrails*[:

(1) Handrails shall be provided for all stairs that have three or more risers.

(2) All stairways shall have a handrail on at least one side. Stairways more than 44 inches wide shall also have an intermediate handrail dividing the stairway.

(3) Handrails shall be 30 to 34 inches above the nosing of treads.

(4) Guardrails shall not be less than 42 inches in height measured vertically above the nosing of treads.

(5) Guardrails shall be provided with intermediate guards spaced six inches apart or with screening.]* ***shall comply with all the applicable provisions contained in the NJUCC and the NJUFC.***

4. (No change.)

*[(e) Fire protection:

1. Shelter facilities shall not be located in the vicinity of high hazard areas (welding shops, paper storage areas, gasoline storage areas, etc.).

2. Boiler or furnace rooms shall be separated from the living and common areas by a minimum of a one hour fire-rated material.

3. If boiler or furnace rooms are in the basement, a furnace control switch shall be provided at the top of the stairs leading to the basement area.

4. A fresh air supply directly from the outside shall be provided in all boiler or furance rooms, when rooms are completely enclosed.

5. Buildings with a capacity of more than 12 children shall have and maintain at least one of the following:

i. A comprehensive automatic electrical fire alarm and detection system; or

ii. A comprehensive automatic sprinkler system with smoke detector units in each hallway on all floor levels and at the top of each stairwell.

6. Buildings with a capacity of 12 or fewer children shall have and maintain at least one of the following:

i. A comprehensive automatic electrical fire alarm and detection system; or

ii. A comprehensive automatic sprinkler system with smoke detector units in each hallway on all floor levels and at the top of each stairwell; or

iii. Battery powered smoke detector units as follows:

(1) One unit for each bedroom;

(2) One unit for each hallway on all floors;

(3) One unit for living room and/or indoor recreational areas; and

(4) One unit at the top of each stairwell.

7. There shall be at least one 10 B-C rated fire extinguisher provided for the kitchen area and one located directly outside or near the boiler or furnace room.

8. All floors shall be provided with at least one 2½ gallon water pressurized fire extinguisher for each 3,000 square feet of floor area.

9. All extinguishers shall be serviced at least once a year and recharged, if necessary.

10. Commercial stoves, if utilized, shall have an automatic extinguishing system installed.

11. Interior furnishings, drapes, curtains, paneling, mattresses, etc., shall be made of fire retardant materials.

12. Chimneys, flues and vent attachments shall be structurally sound, free from defects and cleaned and maintained, as necessary.

13. Storage areas containing highly flammable materials shall be segregated from areas used by the children with a minimum one hour fire-rated material.

14. Combustible materials shall be stored in non-combustible containers.]*

(e) Shelter facilities shall ensure that fire protection requirements, including those for boiler/furnace separation, electrical fire alarm systems, emergency lighting and exit signs conform to all applicable provisions of the NJUFC and NJUCC.

(f)-(i) (No change.)

*[(j) Ventilation:

1. Natural or mechanical ventilation shall be provided in all rooms used by children.

2. All required mechanical ventilation systems shall exhaust directly to the outside.

3. Rooms not having windows with an openable area of at least four percent of the floor space shall be equipped with a ventilating or air conditioning system with a capacity equal to that required for natural ventilation.

4. Corridors shall be provided with natural or mechanical ventilation equivalent to two percent of the floor area.

5. Crawl spaces and attic spaces shall be provided with a cross ventilation system.

6. All openable windows and doors used for natural ventilation shall be provided with insect screening in good condition.

7. Kitchens provided with a stove with more than four burners shall be vented with a mechanical system having a capacity of at least three cubic feet per minute per square foot of floor area and not less than 150 cubic feet per minute.

8. Bathrooms with a mechanical ventilation system shall have a minimum capacity of 50 cubic feet per minute when only one toilet is provided, or 40 cubic feet per minute per toilet when more than one toilet is provided.

9. Bathroom doors shall have at least one inch of space between the floor and the bottom of the door.]*

(j) Shelter facilities shall ensure that ventilation requirements conform to all applicable provisions of the NJUCC and the NJUFC.

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(k) Plumbing:
1.-2. (No change.)
3. The temperature of tap water shall not exceed *[125°]* ***110°*** Fahrenheit.
(l)-(q) (No change.)

10:124-5.3 State government physical facility requirements for shelter homes
(a) Fire protection:
1.-2. (No change.)
3. The shelter home shall *[have at least one five pound ABC fire extinguisher located in the building]* ***ensure that all fire extinguishers are serviced and tagged at least once a year and recharged, if necessary***.
4. (No change.)
(b)-(c) (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Administrative Corrections

Administration, Organization and Management

N.J.A.C. 10A:1-1.2 and 2.7

Take notice that, in order to comply with the State Constitution's balanced budget requirement, the Standards Development Unit along with the position of Regulatory Officer, Division of Policy and Planning, were targeted for elimination within the New Jersey Department of Corrections. Thus, the references to the Standards Development Unit and the Regulatory Officer, Division of Policy and Planning in N.J.A.C. 10A:1-1.2(d) and (e) need to be deleted. Also, the task of reviewing Form 911-II REQUEST FOR RULE EXEMPTIONS at N.J.A.C. 10A:1-2.7(e) and (f) has been reassigned to the Chief Hearing Officer, Office of the Deputy Commissioner.

By this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, the necessary changes are being incorporated into the text of N.J.A.C. 10A:1-1.2(d) and (e) and 2.7(e) and (f).

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

10A:1-1.2 Procedure to petition for a rule
(a)-(c) (No change.)
(d) When the Commissioner [and/or the Regulatory Officer, Division of Policy and Planning accept] **accepts** the petition which satisfies the requirements of (a) and (b) above, the Department of Corrections shall forthwith file the document for publication as a notice of petition for a rule in the New Jersey Register pursuant to N.J.A.C. 1:30-3.6(a).
(e) No later than 30 days after acceptance of a petition, the Department of Corrections[, Standard Development Unit] shall mail to the petitioner and file for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by (b) above. The notice of action shall include either:
1.-3. (No change.)

10A:1-2.7 Procedure for requesting rule exemptions
(a)-(d) (No change.)
(e) If the Superintendent or the administrative head of a noninstitutional operational unit approves a request for a rule exemption, he or she shall complete, in duplicate, Sections 1 through 6 of Form 911-II REQUEST FOR RULE EXEMPTION, sign and date Section 7 and submit Form 911-II to the [Regulatory Officer, Division of Policy and Planning] **Chief Hearing Officer, Office of the Deputy Commissioner.**
(f) The [Regulatory] **Chief Hearing** Officer shall review Form 911-II REQUEST FOR RULE EXEMPTIONS and submit Form 911-II to the appropriate Assistant Commissioner along with recommendations for approval or disapproval, based on the criteria at N.J.A.C. 10A:1-2.4(c).
(c)-(i) (No change.)

(b)

THE COMMISSIONER

Inmate Access to Courts

Readoption with Amendments: N.J.A.C. 10A:6

Proposed: August 17, 1992 at 24 N.J.R. 2799(a).
Adopted: October 26, 1992 by William H. Fauver, Commissioner, Department of Corrections.
Filed: October 27, 1992 as R.1992 d.470, **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. 30:1B-6, 30:1B-10 and P.L.1986, c.141.
Effective Date: October 27, 1992, Readoption;
December 7, 1992, Amendments.
Expiration Date: October 27, 1997.

Summary of Public Comments and Agency Responses:
The Department received a total of two comments from Gibbons Fellowship Program in Constitutional Interest Law and from Maceo McLaughlin, Northern State Prison.
COMMENT: The Gibbons Fellowship Program commented that substitution of the phrase "in forma pauperis" for the word "indigent" throughout subchapter 2 would preclude certain inmates who cannot afford postage and copying costs from access to courts.
RESPONSE: The Department of Corrections agrees that this result, although unintended, may occur. Therefore, the proposed amendments to N.J.A.C. 10A:6-1.3, 2.2(a)7, and 2.5(a) and (j) are being withdrawn.
COMMENT: Maceo McLaughlin commented that the use of the term "indigent" should not be eliminated from these rules since State courts use this term in granting relief from payment of fees in a pending legal action.
RESPONSE: The proposed amendments to which this comment refers are being withdrawn. If the Department of Corrections proposes similar amendments to the rules in the future, the commenter's suggestion will be taken into consideration.

Summary of Agency-Initiated Changes:
Due to the organizational restructuring resulting from the reduction in the State work force, the Department of Corrections has deleted the reference to "Regulatory Officer, Division of Policy and Planning" and the words "Division of Policy and Planning" after all references to Legal Services Coordinator. In N.J.A.C. 10A:6-2.14, the word "legal" has been deleted since legal review is a function of the Office of the Attorney General.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10A:6.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks [thus]):

10A:6-1.3 Definitions
The following words and terms, when used in the chapter, shall have the following meanings unless the context clearly indicates otherwise.
["In forma pauperis" means that an individual has been relieved of paying fees in a pending legal action, by the court, because of inability to pay.]
...
"Legal Services Coordinator" means a Department of Corrections Central Office staff person who coordinates the provision of inmate legal services by maintaining adequate legal materials in inmate law libraries and training inmate paralegals.
...

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10A:6-2.2 Inmate legal services

(a) Inmate legal services which permit inmates access to the court shall include the following:

1.-6. (No change.)

7. Payment of postage for *[mail which is related to the pending litigation for which an inmate has been granted in forma pauperis status]* ***indigent inmates***.

10A:6-2.4 Inmate law library

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

(c) The Legal Services Coordinator, *[Division of Policy and Planning,]* Department of Corrections is responsible for recommending initial purchases of legal reference materials.

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

10A:6-2.5 Legal photocopying services

(a) The Department of Corrections shall provide photocopies of legal material, as that term is defined in N.J.A.C. 10A:6-1.3, at no charge to the ***indigent*** inmate *[who has been granted in forma pauperis status]****, in accordance with the following guidelines and limitations***. *[The legal material shall be limited to that which has been prepared pursuant to pending litigation.]* Inmates who *[have not been granted in forma pauperis status]* ***are not indigent*** shall be charged in accordance with N.J.A.C. 10A:1-1.3.

(b)-(i) (No change.)

(j) The material referenced in (a) through (i) above will be copied at the inmate's expense unless the inmate *[has been granted in forma pauperis status by the Court in presently pending litigation]* ***is indigent***.

10A:6-2.6 Legal telephone calls

(a) The Superintendent shall establish written rules and regulations by which inmate paralegals and/or professional staff members may place telephone calls to the following individuals or agencies requesting assistance in legal research or preparation of legal documents:

1.-5. (No change.)

6. Ombudsman;

7. Office of Hispanic Services; and

8. The Legal Services Coordinator, *[Division of Policy and Planning,]* Department of Corrections.

(b) (No change.)

10A:6-2.11 Inmate paralegal training

(a) The Legal Services Coordinator, *[Division of Policy and Planning,]* shall be responsible for training inmate paralegals.

(b)-(f) (No change.)

10A:6-2.14 Department Review

Written correctional facility policies and procedures regarding Inmate Legal Services and any new policies and procedures related to this subject shall be submitted to the *[Regulatory Officer, Division of Policy and Planning,]* ***Office of the Deputy Commissioner*** for *[legal]* review prior to implementation.

10A:6-3.2 Amendment of correctional facility records

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

(c) The Superintendent shall also notify the following of the inmate's name change:

1. The Offender Records Unit, Central Office, Department of Corrections;

2. The Correctional Information and Classification Services (C.I.C.S.) Data Base, Garden State Reception and Youth Correctional Facility; and

3. (No change.)

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Unfair Claims Settlement Practices
Payment of Health Insurance Claims
Adopted Amendment: N.J.A.C. 11:2-17.7

Proposed: November 4, 1991 at 23 N.J.R. 3196(c).

Adopted: November 10, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: November 10, 1992 as R.1992 d.493, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29B-1 et seq., 17B:26-1 et seq., 17B:27-1 et seq., 17B:30-1 et seq., P.L.1991, c.187 (subsections 78 and 79).

Effective Date: December 7, 1992.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

This proposed amendment was published on November 4, 1991, at 23 N.J.R. 3196(c). During the comment period, which closed on December 4, 1991, the Department received a total of eight comments from Segreto Chiropractic Center, Chiropractic Alliance of New Jersey, Princeton Physical Therapy Center, P.C., New Jersey Chapter of the American Physical Therapy Association, New Jersey Chiropractic Society, Garden State Chiropractic Society, the law firm of Hayt, Hayt and Landau, and Sasso Family Chiropractic Center.

COMMENT: Several of the commenters expressed their general opposition to the extensions of time granted insurers by this amendment for the payment of health insurance claims. One commenter requested that the current 30-day limit continue despite the fact that this amendment conforms with statutory law.

RESPONSE: As the commenter noted, this amendment merely conforms the Department's rules with statutory law. It is not within the Department's discretion to continue the current time limit for payment of health insurance claims. Rather, the Department's rules are required to conform with statutory law.

COMMENT: One commenter expressed its belief that the extensions of time granted insurers are self-serving to the insurance industry and constitute an abuse of purchasers of health insurance.

RESPONSE: The Department reiterates that this amendment merely conforms Department rules to statutory law. Nevertheless, the Department disagrees that this amendment is self-serving to the insurance industry. Rather, the amendment establishes more realistic maximum time frames within which insurers will be required to pay health insurance claims. The additional time granted insurers by this amendment will enable them to properly review and investigate claims, weeding out fraudulent and other questionable claims before they are paid, and resulting in an economic benefit to the general public.

COMMENT: A few of the commenters stated that the extensions of time granted insurers by this amendment will have an adverse economic impact on health care providers, and that these delays in payment created by this amendment for services already provided will exacerbate existing cash flow problems and force many health care providers out of business.

RESPONSE: The Department again reiterates that this amendment merely conforms the Department's rules with statutory law. For this reason, the amendment in and of itself will have no economic impact on health care providers.

COMMENT: Two of the commenters suggested changing the provision in the amendment requiring insurers either to pay or deny claims for which additional information was requested within 90 days of receipt of the additional information. One commenter indicated that the Health Care Cost Reduction Act does not clearly set forth the date on which the 90 day period begins. Therefore, the commenter suggested that the amendment be changed to require the insurer, after receiving the requested additional information, either to pay or deny the claim within 90 days of the date of the original claim rather than within 90 days of receipt of the additional information. The second commenter

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suggested that insurers be required either to pay or deny the claim within 30 days of the insurer's receipt of the requested additional information.

RESPONSE: The Department rejects the suggestions of both commenters. The provisions in the Health Care Cost Reduction Act granting insurers the 90-day extension reads "A health insurer, upon receipt of the additional information requested from the insured or the insured's assignee shall pay or deny the contested claim or portion of the contested claim, within 90 days." P.L.1991, c.187, Sections 78 and 79. The Department interprets this language to mean that the insurer must pay or deny a claim within 90 days of the insurer's receipt of the requested additional information. The second commenter's suggestion that insurers pay within 30 days rather than 90 is necessarily rejected because the statutory language clearly grants insurers a 90-day extension, not 30.

COMMENT: One commenter requested that the amendment be changed specifically to include among those insurers required to comply with the amendment health and benefit plans jointly administered by employer and/or employee trustees pursuant to a collective bargaining agreement. The commenter additionally requested that the amendment's penalty provision also be made applicable specifically to these health and benefit plans.

RESPONSE: N.J.A.C. 11:2-17.2 and 17.3, respectively the Scope and Definitions sections of subchapter 17, provide an adequate description of all those insurers required to comply with the subchapter in its entirety. Accordingly, it is unnecessary for this amendment to specify one particular type of health insurer required to comply with the amendment. It should be noted, however, that certain health insurance plans are Federally regulated, and as such are not subject to this or other State insurance laws.

Summary of Agency-Initiated Changes:

1. Throughout the rule as proposed, various subsections have been codified to reflect amendments to N.J.A.C. 11:2-17.7 adopted on Feburary 18, 1992, at 24 N.J.R. 622(a).
2. In N.J.A.C. 11:2-17.7(e), the words "and the amount" have been deleted as unnecessary, to conform the rule to the statute.
3. In N.J.A.C. 11:2-17.7(e)1i, the words "or insured's assignee" and the sentence "The notice that a claim is contested shall identify the contested portion of the claim and the reasons for contesting the claim." have been added to more closely conform the rule to the statutory language in P.L. 1991, c.187, sections 78 and 79.
4. In N.J.A.C. 11:2-17.7(e)2ii, the words "If not posted pursuant to (e)2i above" have been added for clarification.

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

11:2-17.7 Rules for prompt investigation and settlement of claims

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

(d) Unless a clear justification exists, or unless otherwise provided by the policy, all life insurance claims shall be paid within a maximum payment period of 30 calendar days. The payment period is defined as the period between the date proof of loss is received by the insurer and the date of claims settlement.

*[(d)]****(e)*** Except as provided in *[(d)]****(e)***1 below, all health insurance claims shall be paid no later than 60 calendar days after the insurer receives written notice *[and the amount]* of the claim.

1. The maximum payment period for health insurance claims may be extended under the following circumstances:

i. The health insurer contests a claim, and the insurer sends written notice of such fact to the insured ***or insured's assignee*** within 45 calendar days of the insurer's receipt of the claim. ***The notice that a claim is contested shall identify the contested portion of the claim and the reasons for contesting the claim.*** If only a portion of a claim is contested, the insurer shall remit payment for the uncontested portion in accordance with *[(d)]****(e)*** above; or

ii. The health insurer requests additional information from the insured concerning a claim that the insurer is contesting. After the insurer receives the additional information requested, the insurer shall either pay or deny the claim within 90 calendar days of the insurer's receipt of the additional information.

2. Payment of a health insurance claim shall be considered to have been made either:

i. On the date a draft or other valid instrument equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope; or

ii. *[On]* ***If not posted pursuant to (e)2i above, on*** the date of delivery of a draft or other valid instrument equivalent to payment.

3. If the health insurer fails to make payment on a claim within the time limits set forth in this subsection, the insurer shall pay simple interest on the amount of the overdue payment at the rate of 10 percent per year.

*[(e)]****(f)*** If the insurer is unable to settle the claim within the time periods specified in (c) *[and (d)]* ***through (e)*** above, the insurer must send the claimant written notice by the end of the payment periods specified in (c) *[and (d)]* ***through (e)*** above. The written notice must state the reasons additional time is needed, and must include the address of the office responsible for handling the claim and the insured's policy number and claim number. This notice shall also include a telephone number which is toll free, or which can be called collect, or which is within the claimant's area code. This number shall provide direct access to the responsible claims office or shall enable the claimant to gain such access at no greater expense than the cost of a telephone call within his or her area code. An updated written notice setting forth the reasons additional time is needed shall be sent within 45 days after the initial notice and within every 45 days thereafter until all elements of the claim are either honored or rejected. This subsection shall not apply after a claimant has filed a lawsuit pursuant to his or her claim.

Recodify existing (f) as ***(g)*** (No change in text.)

*[(g)]****(h)*** Where there is a reasonable basis supported by specific information available for review by the Department of Insurance that the first party claimant has fraudulently caused or contributed to the loss by arson, or other fraudulent schemes, the insurer shall be relieved from the requirements of (c), (d)***,*** *[and]* (e) ***and (f)*** above. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(a)

DIVISION OF ADMINISTRATION

New Jersey Automobile Full Insurance Underwriting Association Claims Payment Deferral

Adopted New Rules: N.J.A.C. 11:3-2A

Proposed: October 5, 1992 at 24 N.J.R. 3480(a).

Adopted: November 10, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: November 10, 1992 as R.1992 d.494, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e) and 17:33B-3b(2).

Effective Date: December 7, 1992.

Operative Date: December 18, 1992.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The proposed new rules were published on October 5, 1992. The proposal established the date of the public hearing to be held on October 21, 1992 by the Department of Insurance ("Department") for the purpose of receiving comments on the proposal. Three persons, all attorneys, presented comments during the public comment portion of the hearing. One commenter represented the American Trial Lawyers Association of New Jersey ("ATLA-NJ"), a trustee of the New Jersey State Bar Association appeared on behalf of the Association and the third represented the Bergen County Bar Association. In acccordance with N.J.S.A. 52:14B-4(g), the hearing officer has issued a report on November 6, 1992 making recommendations to the Commissioner. The report also includes a summary of the public comments received at the

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hearing as well as the hearing officer's evaluation of the comments. The hearing officer's report is incorporated herein by reference and made a part of this rule file.

Summary of Hearing Officer's Recommendations and Agency Responses:

The Hearing Officer's Report includes a review of the events which culminated in the public hearing on October 21, 1992. It also includes a review of the Association's history and a brief review of the testimony presented by representatives of the Association's Trustee and the Department as well as comments provided by the public. The Hearing Officer noted in his report that the public comments centered on the lack of effort undertaken by the Trustee and the Department to explore alternate means of financing the Association's cash flow shortfall by a loan or bond issue. The commenters also noted some positive aspects of the rules including the fact that claims already subject to deferral will not be effected by an extended deferral and that interest will accrue on the claims to be deferred under the new program.

The Hearing Officer noted from his review of the record including the testimony at the hearing and written comments received, that no specific changes to the new rules were provided by the commenters. The Hearing Officer concluded that the extension of the current 12-month deferral plan is necessary and the proposed new 18-month deferral plan is appropriate. The 18-month deferral to be effective on December 18, 1992 and to continue until June 30, 1994 is the preferred plan, of the options examined, to assure that the Association's resources are not depleted and that the Association's ability to pay claims of higher priority, as designated in the Trustee's approved Plan of Operation, is preserved.

The Hearing Officer also concluded that the alternative methods that were suggested to finance the Association's cash flow shortfall are contrary to the FAIR Act's direction and beyond the power of the Trustee and Commissioner to accomplish and are also subject to insurmountable constitutional, legal and practical difficulties. The hearing Officer, therefore, recommended the adoption of N.J.A.C. 11:3-2A without substantive change. As discussed below, the Department adopted the rules as proposed, with a few minor changes.

The hearing record and public comments may be reviewed by contacting:

Verice M. Mason
Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, NJ 08625-0325
(609) 984-3602

The written comment period on the rule proposal closed on November 4, 1992. The Department received two written comments, both from attorneys. One commenter was Ronald D. Nicola, Esq., and the other represented ATLA-NJ.

COMMENT: One commenter representing ATLA-NJ alleged that documents have been withheld from public review by the Trustee for the New Jersey Automobile Full Insurance Underwriting Association ("Association"); the proposed rules for the deferral are not reasonable or necessary nor are they supported by the available documentation; no alternatives to the deferral were explored by the Trustee or the Commissioner; there is no jutification in the record for the deferral; and the deferral places an unconstitutional burden on those effected by the deferral. The commenter also submitted an expert report prepared on behalf of ATLA-NJ (the *Stringer Report*, which is the same analysis submitted by ATLA-NJ as a follow-up to the July 9, 1992 hearing on the current deferral program). The *Stringer Report,* which was based on the evidence available, determined that the Association would in fact experience a short-term cash shortage. It did, however, question some of the detail of the analysis. The *Stringer Report* suggested that bonding or borrowing would be viable alternatives to the deferral program.

RESPONSE: The commenter's claim that documents have been withheld from public review by the Trustee is inaccurate. At the hearing on October 21, 1992, the commenter was provided, pursuant to his telephone request a few days earlier, with a copy of the Trustee's request and two reports by the Trustee's actuarial consultant, pursuant to N.J.S.A. 47:1A-2 and N.J.A.C. 11:3-2A7. Additionally, since the time the comments were filed with the Department, the Trustee has forwarded data to this commenter, pursuant to his written request subsequent to the hearing.

The commenter's assertion that the proposed rules are not reasonable, necessary or supported by available documentation is similarly false. It is noted that this commenter was involved in a suit against the Commissioner of Insurance *In the Matter of the Order of the Commissioner of Insurance Deferring Certain Claim Payments by the New Jersey Automobile Full Insurance Underwriting Association,* 156 *N.J. Super.* 553 (App. Div. 1991). As a result of this challenge the Court required the Department to implement a deferral in accordance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Therefore, a public hearing was held for input from the public and rules were promulgated accordingly with adequate opportunity for public comment. The Department did not receive any comments which specifically addressed the rules. As established at the public hearing, and pursuant to law, N.J.S.A. 17:33B-3b(2), the deferral is reasonable and necessary. The testimony at the hearing established that the Association would run out of money as early as 1993 without the deferral, and it would therefore, be incapable of paying claims after that point.

The alternative methods of financing the Association's cash flow shortfall, proposed by the commenter, are not only contrary to the FAIR Act's direction and beyond the ability of the Trustee and Commissioner to accomplish, but are also subject to constitutional, legal and practical difficulties which appear to be insurmountable.

Finally, the commenter claimed that the deferral places an unconstitutional burden on those effected by the deferral. Notwithstanding that this issue is beyond the scope of these rules, the procedure to implement these rules was not only statutorily authorized, but was also mandated by the Court in *Matter of the Order of the Commissioner, supra.* The implementation of a deferral was the method chosen by the Legislature to deal with the Association's deficit. While the rules will undeniably impose a short term financial inconvenience on claimants, the Department believes that the rules are nevertheless constitutionally permissible.

COMMENT: One commenter objected to the deferral program based on the unfairness of delaying settlement payments to injured claimants and to the attorneys who represent them. The commenter suggested that since the State of New Jersey created the problem in the first place, the problem should be resolved with monies from the State Legislature.

RESPONSE: This comment suggests a solution far beyond the scope of these rules. The testimony at the public hearing from the Department's staff and the Association's Trustee established that the Association has insufficient funds to pay settled residual bodily injury claims and that if the current long-term deferral program were terminated in December 1992, the Association would run out of money as early as April 1993 and be unable to pay claims for medical expenses and other current economic losses. An additional 18-month deferral of residual bodily injury claim payments is, therefore, unavoidable.

The Department recognizes the hardship that claimants will bear as the result of this deferral. The Department has, therefore, developed a hardship exemption to provide for the payment of certain claims, in circumstances where an actual hardship exists.

Summary of Agency-Initiated Changes:

The procedures to apply for a hardship exemption at N.J.A.C. 11:3-2A.5(c)2 have been amended by deleting the parenthetical phrase which reads "(that is Complaint for Foreclosure)." This phrase defines the term "foreclosure notices." The provision requires that certain information be submitted in connection with an application for an exemption from the deferral, for hardship based on a threatened foreclosure action. The requirement has been relaxed by the change by permitting claimants to submit other dispositive documentation of an imminent foreclosure. For example, the Trustee shall accept a letter from a bank which indicates that a mortgage payment is delinquent and foreclosure proceedings are imminent. The letter shall contain sufficient information therein for the Trustee to verify its contents. By accepting this type of documentation, the Department and Association expect to reduce costs, such as attorneys fees and accrued interest on such claims, while expediting payments to claimants who face the threat of foreclosure.

In the same section, a typographical error has been corrected. "Foreclosures" has been amended to read "foreclosure".

The Department notes that N.J.A.C. 11:3-2A.7(a)2 provides that the Department staff evaluation and recommendation is a public record. However, a written evaluation and recommendation were not prepared in connection with the 18-month deferral. Instead, this information has been provided through the testimony of the Department's expert actuarial witness at the October 21, 1992 hearing. In lieu of a written report the Department's expert provided oral testimony which is a part of the written transcript from the public hearing and available to the public

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pursuant to N.J.S.A. 52:14B-4g. In order to clarify the rules, N.J.A.C. 11:3-2A.7(a)2 has been amended to provide that the public documents include "The ***written*** Department staff evaluation and recommendation ***, if any***". (The new language is in boldface.)

These rules will be operative on December 18, 1992 at the conclusion of the present deferral program, without lapse.

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

SUBCHAPTER 2A. NEW JERSEY AUTOMOBILE FULL INSURANCE UNDERWRITING ASSOCIATION CLAIMS PAYMENT DEFERRAL

11:3-2A.1 Purpose and scope

(a) This subchapter implements the provisions of N.J.S.A. 17:33B-3b(2) which authorizes the Trustee to defer the payment of residual bodily injury claims over a period not to exceed four years. This subchapter is intended to ensure the orderly payment of all Association claims in accordance with the priorities established by the Trustee pursuant to N.J.S.A. 17:33B-3b(2) by deferring payment of residual bodily injury claims, in accordance with certain terms, conditions and procedures.

(b) This subchapter shall apply to the Trustee, the Association, the Association's servicing carriers and claimants of the Association.

11:3-2A.2 Definitions

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

"Assets" means, but is not limited to, sources of income as enumerated in N.J.S.A. 17:30E-8 and any funds made available to the New Jersey Automobile Full Insurance Underwriting Association from the New Jersey Automobile Insurance Guaranty Fund created pursuant to N.J.S.A. 17:33B-5, monies, funds, accounts receivable, premium payments, payments and surcharges collected on any and all private passenger automobile policies, interest income, contracts, causes of action, books, records and property of the Association wherever located, including such property of the Association which may be discovered hereafter.

"Association" means the New Jersey Automobile Full Insurance Underwriting Association.

"Closing papers" means a release signed by the claimant releasing the Association and its insured(s) from liability for the claim, or a warrant of satisfaction of judgment and/or other closing documents.

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

"Covered claim" means an unpaid claim which arises out of and is within the coverage provided by the Association to an insured and is not in excess of the applicable limits of an insurance policy to which N.J.S.A. 17:30E-1 et seq., as amended, applies.

"Date of deferral" means the date upon which the Association's appropriate servicing carrier physically receives the proper closing papers associated with a residual bodily injury claim.

"New Jersey Automobile Insurance Guaranty Fund" ("NJAIGF") means the Guaranty Fund created pursuant to N.J.S.A. 17:33B-5.

"Plan of Operation" means the plan of operation promulgated pursuant to N.J.S.A. 17:33B-3b(2) by the Trustee and approved by the Commissioner.

"Residual bodily injury claim" means a liability claim for loss of any kind whatsoever, other than present economic loss, resulting from liability imposed by law for, or as a result of, bodily injury or death.

"Servicing carrier" means a member company or other entity that had or presently has a contract with the Association to underwrite, process and adjust automobile insurance policies for the Association pursuant to the New Jersey Automobile Full Insurance Availability Act.

"Trustee" means the person appointed by the Commissioner pursuant to N.J.S.A. 17:33B-3b(1) to carry out the obligations set forth in N.J.S.A. 17:33B-1 et seq. and the Plan of Operation.

11:3-2A.3 Deferral of payment for residual bodily injury claims

(a) Payments by the Association of any residual bodily injury claims, including uninsured motorist claims and underinsured motorist claims, are deferred from payment for 18 months, except such claims as may be granted exemption from deferral by the Trustee as provided in N.J.A.C. 11:3-2A.5.

(b) The deferral of claim payments provided in (a) above shall apply to all claims for which closing papers have not been physically received in the offices of the servicing carriers before December 18, 1992. Facsimile transmissons shall not constitute physical receipt by the servicing carriers.

(c) Payment of a claim which has been deferred pursuant to this subchapter shall occur on the first day of the eighteenth month following the date of deferral, that is the date upon which closing papers are received in the office of the Association's servicing carrier.

(d) The deferral of claim payments as provided in this subchapter shall continue until June 30, 1994.

(e) When claims deferred pursuant to this subchapter are paid by the Association, the payment shall include simple interest at the rate of six percent per annum beginning on the date of deferral.

(f) Payment of claims for current economic loss shall not be deferred.

11:3-2A.4 Administrative provisions

(a) In accordance with the provision of N.J.S.A. 17:33B-3b(3) and the Plan of Operation, the Trustee shall monitor the financial condition of the Association and shall issue a report to the Commissioner on a biannual basis.

(b) The Trustee shall develop, review and, where necessary, amend, uniform operating procedures necessary to implement these rules consistent with this subchapter including procedures for the implementation of hardship exemptions as provided in N.J.A.C. 11:3-2A.5; servicing carrier procedures; and the uniform handling of deferred claim payments.

1. Claims shall not be considered settled and ready for deferral until the servicing carrier physically receives the appropriate closing papers. Facsimile transmissions shall not be accepted for these purposes.

2. Deferral releases shall include the following language:

Payment: In consideration for making this Release, you have agreed to pay me a settlement of $_____ plus simple interest at the rate of 6 percent per annum for a total amount of $_____, to be paid no later than the first day of the eighteenth month after receipt of this Release by the Servicing Carrier. It is further understood that, if by further order of the Commissioner of Insurance for the State of New Jersey, the settlement amount may be released earlier, the interest will be pro-rated. I further understand and agree that I will not seek anything further including any other payments from you.

3. The date of deferral shall be deemed to be the date upon which closing papers are physically received in the office of the Association servicing carrier. Such date shall govern the period of deferral applicable to the deferred claim.

(c) Disputes regarding the date of deferral shall be resolved in the first instance by the Trustee in accordance with the following procedures:

1. A claimant who disputes the date of deferral as indicated by the servicing carrier shall notify the Trustee in writing of the factual basis for the dispute and shall include therewith all supporting documentation. The servicing carrier shall also provide all relevant documentation in opposition to the date of claim settlement alleged by the claimant.

2. The Trustee may adjust the ultimate pay-out date of a deferred claim upon a finding of inordinate delay by defense counsel or the servicing carrier in the handling or processing of the closing papers.

3. The Trustee shall establish appropriate procedures for obtaining additional information when required during the course of review.

4. The Trustee's written decision shall be mailed to the applicant by regular and certified mail, return receipt requested.

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(d) Servicing carriers shall not utilize their own funds to pay claims subject to deferral. Regardless of the source of funds utilized, the Association shall not reimburse servicing carriers for payment of claims subject to deferral made on or after the effective date of these rules.

(e) Servicing carriers shall continue their efforts to resolve all outstanding claims. During negotiations and/or other discussions with claimants or their attorneys, the servicing carrier and defense counsel shall advise all parties that payment will be deferred for 18 months.

11:3-2A.5 Hardship exemptions

(a) Notwithstanding the provisions of N.J.A.C. 11:3-2A.3, an exemption from the deferral of a claim payment shall be permitted in limited circumstances upon the filing of a written application with the Office of the Trustee which:

1. Demonstrates, through a written statement and sufficient supporting documentation, the existence of an extreme and immediate financial emergency; and

2. In which the applicant attests that the emergency cannot be resolved through use of any other reasonably available financial resources. "Reasonably available financial resources" includes, but is not limited to, resources such as reimbursement or compensation through insurance coverage, reasonable liquidation of assets to the extent that liquidation would not cause further economic hardship, or borrowing from commercial sources on reasonable commercial terms.

(b) Some examples which may constitute acceptable grounds for a hardship exemption are as follows:

1. The claimant, spouse or dependant has incurred substantial medical expenses (over $5,000) not related to the subject motor vehicle accident and not covered by insurance. Copies of all medical bills and insurance coverages must be provided.

2. The claimant, spouse or dependant cannot pay for essential food and shelter. For this exemption to apply, the applicant, spouse or dependant must face imminent eviction or foreclosure from their principal residence. A copy of the imminent foreclosure or eviction notice must be provided.

3. The claimant, spouse or dependant faces immediate removal from a nursing home, hospital or other medical care institution due to the inability to pay, although continued medical care is prescribed by medical health care providers and not related to the subject motor vehicle accident. Copies of bills for treatment and medical insurance coverages, along with an original written statement by a doctor prescribing further medical treatment and an original written statement from the medical institution advising that removal due to the inability to pay is imminent, must be provided.

4. The applicant cannot pay funeral expenses of the claimant, spouse or dependant and the death is not related to the subject motor vehicle accident. Copies of the unpaid funeral bills must be provided.

5. Such other financial emergency or situations of an unusual or emergent nature which may be deemed to be appropriate based upon information provided.

(c) Applications for a hardship exemption may be obtained from the Association's servicing carriers or by submiting a written request to the Office of the NJAFIUA Trustee, 160 Avenue at the Common, Suite 2, Shrewsbury, New Jersey 07702.

1. A hardship application shall contain the following information:

i. The name, address, social security number, telephone number and date of birth of the claimant;

ii. The claim number and policy number;

iii. The caption of the case;

iv. The name of the association insured;

v. The amount deferred and date deferred;

vi. A description of the examples which constitute a hardship as set forth at (b) above;

vii. The documents required to be appended to the application as set forth at (c)2 below;

viii. The amount of exemption being sought and the grounds for the exemption; and

ix. An appropriate certification executed by the applicant.

2. Completed applications shall be submitted directly to the Trustee at the address noted above and shall include a certified-to-be-true copy of the associated judgment or fully-executed deferral release, a copy of the written acknowledgement of receipt of the letter issued by the Association's servicing carrier, copies of all unpaid medical bills, insurance coverages, foreclosure*[s]* notices *[(that is Complaint for Foreclosure)]*, eviction notices, funeral bills and other appropriate documentation. Original documents shall be available for review upon the request of the Office of the Trustee.

(d) The amount requested and the amount released from deferral, if a hardship exemption is granted, shall not exceed the minimum amount required to meet the financial emergency, nor the net amount due the claimant.

(e) The Trustee shall establish appropriate procedures for obtaining additional information when required during the course of review.

(f) The Trustee's written decision shall be delivered to the applicant or his or her legal representative by certified mail, return receipt requested or by an express mail service of the Trustee's choice.

(g) Where an exemption is granted, the decision shall include a hardship exemption release amendment, prepared by the Office of the Trustee, to be reviewed by the applicant or his or her legal representative, executed by the applicant, and forwarded directly to the Association's servicing carrier. Additionally, where an exemption is granted, the appropriate servicing carrier shall be notified, in writing, with instructions to make the appropriate payment directly to and in the name of the claimant, upon receipt of the fully-executed hardship exemption release amendment. The servicing carriers shall proceed in accordance with procedures developed by the Trustee.

(h) Where an exemption is either denied or only partially granted, the Trustee's decision shall enclose a copy of the appropriate documents required to file an appeal.

11:3-2A.6 Appeal to the Commissioner

(a) An appeal by an applicant of the decision of the Trustee denying a request for a hardship exemption as provided in N.J.A.C. 11:3-2A.5 or from the Trustee's decision regarding a dispute about the date of receipt of a release as provided in N.J.A.C. 11:3-2A.4(c), shall be filed with the Commissioner within 20 days of receipt of the Trustee's written decision.

1. A copy of the appeal shall be simultaneously filed by the claimant with the Trustee.

2. The Trustee, upon receipt of notice of the appeal, shall forward the claimant's file to the Commissioner for his or her review.

(b) The Commissioner's final decision shall be provided to the Trustee and shall be mailed to the applicant or his or her legal representative by certified mail, return receipt requested and regular mail.

11:3-2A.7 Public records

(a) Pursuant to N.J.S.A. 47:1A-1, the following documents shall be considered public documents:

1. The Trustee's request to the Commissioner for approval of the deferral plan and the supporting analysis and data;

2. The ***written*** Department staff evaluation and recommendation***, if any***; and

3. The Commissioner's Final Decision.

(b) Interested parties may, by appointment only, review the above documents set forth at (a) above at the Offices of the Department of Insurance between the hours of 10:00 A.M. and 4:00 P.M., Monday through Friday, except holidays.

1. An appointment may be scheduled by telephoning the Department at (609) 984-3602.

(c) Interested persons may obtain copies of the documents set forth in (a) above by remitting, in advance, the following fees:

1. First page to 10th page: $.75 per page;

2. Eleventh page to 20th page: $.50 per page; and

3. All pages over 20: $.25 per page.

(d) Original documents shall not be released from the Department.

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(a)

DIVISION OF PROPERTY/LIABILITY

Eligible Person Qualifications

Adopted Concurrent Amendment: N.J.A.C. 11:3-34.4

Proposed: September 21, 1992 at 24 N.J.R. 3420(a).

Adopted: November 2, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: November 2, 1992 as R.1992 d.481, **with a technical change** not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3.)

Authority: N.J.S.A. 17:1C-6(e), 17:29D-1, 17:33B-13, and 17:33B-22.

Effective Date: November 2, 1992, Readoption of Emergency Amendment.
December 7, 1992, change upon adoption.

Expiration Date: January 4, 1996.

This amendment was adopted on an emergency basis and concurrently reproposed on September 21, 1992, pursuant to N.J.S.A. 52:14B-4(c) (see 24 N.J.R. 3420(a)). The present adoption of the concurrent reproposed amendment is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)), except for the change upon adoption, which is effective on December 7, 1992, the date of publication of this notice.

Summary of Public Comments and Agency Responses:

The proposed amendment was initially published on August 17, 1992 at 24 N.J.R. 2812(a). Subsequently, on September 21, 1992, the amendment was adopted on an emergency basis and concurrently reproposed at 24 N.J.R. 3420(a). The initial comment period closed September 16, 1992 and the comment period for the reproposal closed October 21, 1992. A total of only four comments were submitted by the public, from two insurance companies (The Prudential Property and Casualty Insurance Company of New Jersey and Selective Insurance Company of America), an insurance agency (Redden Agency) and the National Motorists Association, New Jersey State Chapter. The comments and the Department's responses are summarized below:

COMMENT: One commenter specifically noted its approval of the amendment and expressed its belief that the amendment will reduce the number of problems associated with providing quotes and billing new policies.

Another commenter agreed with the Department's interpretation that an individual should not be unduly penalized by being disqualified for coverage in the voluntary market for two years, when an automobile insurance policy is cancelled for nonpayment of premium due to mistake or inadvertence on the part of the insured.

The commenter proposed, however, that the 30-day lapse period should be increased to at least a 45-day period. The commenter indicated that the additional time would permit an insured to attend to problems resulting from the mistake which created the lapse in the first instance. The commenter suggested that this slightly longer period may enable an insured to obtain funds necessary to purchase insurance.

RESPONSE: The Department has determined that an insured should be considered an "eligible person" despite cancellation for non-payment of premium where the individual's coverage has lapsed for only a short time, which may have been the result of mistake or inadvertence. A 30-day period is reasonable and not excessive. "Eligible person" status is afforded to those individuals who have acted quickly to restore coverage. Because the period also corresponds with the time frame traditionally allowed as a grace period for the payment of premium upon renewal, it will cause little if any administrative burden to insurers. Permitting a different period may cause confusion in the market.

The intent of this amendment is to ameliorate the effects of a mistake, by preventing the good driver from being placed in the residual market. It was not, however, intended to give applicants additional time to secure funds to pay for premiums.

COMMENT: One commenter seemed to interpret the amendment as prohibiting insurers from allowing insureds to make installment premium payments where an insured's coverage has lapsed for a period less than 30 days.

RESPONSE: It appears that the commenter has misinterpreted the amendment. N.J.A.C. 11:3-34.4(a)6, as originally drafted, provided that an individual was not an "eligible person" for purposes of coverage where the individual had been cancelled for non-payment of premium with a lapse in coverage within the immediately preceding two years, unless the premium due on the individual's policy was paid in full before issuance or renewal of a policy. Upon full payment of premium, the insurer was required to issue coverage to the eligible person. The rule has been amended to clarify that individuals who have had less than a 30-day lapse in coverage after cancellation for non-payment of premium are eligible persons. Insurers are required to provide coverage to eligible persons, and where the insurers' underwriting rules permit, may allow insureds to pay premiums in installments. This amendment clarifies the definition of "eligible person"; it does not prohibit payment of premiums by installment.

COMMENT: One commenter suggested that permitting a "30-day" lapse in coverage, without requiring an individual to pay his or her premium in full prior to issuance or renewal of a policy is too long of a permissible lapse. The commenter also suggested that the 30-day lapse is arbitrary, capricious and unreasonable; in violation of the law; and the Commissoiner was without the proper authority to adopt the amendment.

RESPONSE: The Department disagrees with the commenter's assertions. After an extensive review of this matter, the Department has determined that the amendment to the definition of eligible person gives reasonable effect to the Legislature's intent. The amendment considers applicants to be eligible where there has only been a brief lapse in coverage for non-payment of premium which may have resulted either from mistake or inadvertence, and where the lapse is cured within a 30-day period.

This interpretation gives reasonable effect to N.J.S.A. 17:33B-13 and 17:29D-1 by ensuring that the placement of individuals into the residual market mechanism, known as the personal automobile insurance plan ("PAIP"), is limited to individuals whose previous insurance-related behavior and driving record warrants their disqualification from coverage in the voluntary market. Individuals who have inadvertently allowed their policies to lapse for a brief period should not be so severely penalized by being placed into the PAIP for two years.

The 30-day period chosen by the Department is not arbitrary. It is deemed a reasonable period of time because it corresponds with the period traditionally allowed by many insurers as a "grace period" for payment of premium on renewal of a policy.

Summary of Agency-Initiated Change:

A minor editorial change is made upon adoption to delete a comma that was inadvertently included in the publication of the emergency adoption and concurrent reproposal of the amendment. This change clarifies the Department's intent that the phrase beginning "with a lapse . . ." modifies both "premium" and "financed preimum," as explained in the Summary of the concurrent proposal.

Full text of the adoption follows (addition indicated in boldface with asterisks ***thus***; deletion indicated in brackets with asterisks *[thus]*).

11:3-34.4 Eligible person qualifications

(a) An "eligible person" is a person who is an owner or registrant of an automobile registered and principally garaged in this State or who is resident and holds a valid New Jersey driver's license to operate an automobile, but does not include any person:

1.-5. (No change.)

6. Whose automobile insurance policy has been cancelled for nonpayment of premiums*[,]* or financed premium with a lapse of coverage of at least 30 days within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy. For the purpose of this section, "paid in full" shall not include any transaction in which a lender obtains authority from an insured to cancel the policy and receive a refund from the insurer in the event the insured defaults on a loan used to pay the premiums;

7.-8. (No change.)

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DIVISION OF PROPERTY/CASUALTY

Producer Assignment Program

Adopted Current New Rules: N.J.A.C. 11:3-42

Proposed: September 21, 1992 at 24 N.J.R. 3421(a).
Adopted: November 2, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: November 2, 1992 as R.1992 d.482, **with substantive and technical changes** not requiring additional public comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:33B-9
Effective Date: November 2, 1992.
Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on September 4, 1992, pursuant to N.J.S.A. 52:14B-4(c). This present adoption of the concurrent reproposed new rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(e)), except for changes upon adoption, which are effective on December 7, 1992, the date of publication of this notice.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received one public comment from State Farm Mutual Automobile Insurance Company and State Farm Indemnity Company (State Farm). The Department notes that State Farm was granted an exemption from the initial producer assignment on August 10, 1992.

The Department notes that these rules were originally proposed on August 5, 1991 (see 23 N.J.R. 2297(a)) on which the Department received substantial public comment. All public comments received regarding the rules as originally proposed were addressed in the emergency adoption and concurrent reproposal of these rules (see 24 N.J.R. 3421(a)). The emergency adoption and concurrent reproposal replaced and superseded the notice of reproposal published in the August 17, 1992 New Jersey Register. To the extent comments received on the emergency adoption and concurrent reproposal of these rules raised issues or concerns previously raised and addressed, they will not be addressed again in this adoption notice. The Department believes that not only does this avoid duplication, but also promotes clarity and consistency. The reader is therefore urged to examine also the notice of emergency adoption and concurrent reproposal of these rules at 24 N.J.R. 3421(a).

COMMENT: The commenter objected to N.J.A.C. 11:3-42.1(c), which provides that assignments under the Producer Assignment Program (Program) shall cease with assignments made pursuant to the April 1, 1993 list of qualified producers, but that the Commissioner may nevertheless reactivate the assignment procedures in the event he or she determines that there are geographic areas in this State that lack sufficient representation for the placement of automobile insurance business in the voluntary market.

The commenter stated that the Program was authorized by the Fair Automobile Insurance Reform Act of 1990 (FAIR Act), at N.J.S.A. 17:33B-9c, to preserve established producers in certain geographic areas whose only market outlet was the New Jersey Automobile Full Insurance Underwriting Association (Association) or the Market Transition Facility of New Jersey (MTF) by assigning them to a voluntary insurer before the MTF ceased operation. The commenter stated that the termination date of April 1, 1993 is consistent with this purpose. However, the commenter believes that the possible reactivation of the Program is inconsistent with the purpose of N.J.S.A. 17:33B-9c. The commenter stated that producers who would qualify under a reactivated program would be producers of either withdrawing insurers or insurers relieved of their obligation to insure all eligible persons pursuant to N.J.S.A. 17:33B-15. The commenter believed that it was never the intent of the FAIR Act to "cover" such producers because these producers had voluntary markets while the Association and the MTF were writing business.

The commenter further stated that reactivating the Program for producers of withdrawing insurers or insurers who were exempted from the obligation to insure all eligible persons is contrary to other provisions in the FAIR Act. The reactivated Program could permit a withdrawing insurer to "dump" its producers and its business without any effort to secure a replacement carrier. The commenter stated that this would make withdrawal "easier," inconsistent with N.J.S.A. 17:17-10b and 17:33B-30, N.J.A.C. 11:2-29, and case law governing the withdrawal of insurers from the private passenger automobile insurance market.

With respect to an insurer exempted from its obligation to insure eligible persons, the commenter believed that the FAIR Act intended this relief to be only a temporary measure. The commenter asserted that a temporary restriction on the placement of new business is a small burden for a producer of a "troubled" insurer to bear and does not justify reactivation of the Program. Further, the commenter stated that the Program could actually harm the insurer during the temporary waiver because it would allow many of its agents to leave the insurer and permanently place all of their business with a different insurer.

The commenter therefore suggested that N.J.A.C. 11:3-41.1(c) be deleted.

RESPONSE: Upon review of the commenter's concerns, the Department has determined not to change this provision. N.J.S.A. 17:33B-9c, which requires that the Commissioner establish a producer assignment program, contains no expiration date. While the Department does not anticipate making assignments after April 1, 1993, the Department nevertheless believes that it is appropriate to ensure that all insurers are aware that no specific expiration date for producer assignments is provided by law and that therefore reactivation of the Program may occur sometime in the future. It must be noted however that if reactivation of the Program were deemed necessary, such reactivation would be pursuant to amendments to these rules which would afford all interested parties an opportunity to comment.

COMMENT: The commenter objected to the determination of inadequately serviced geographic areas as set forth in N.J.A.C. 11:3-42.5. The commenter stated that the criteria set forth in the rules do not take into account factors which impact on voluntary market penetration. Specifically, the commenter cited the following factors: expected random variation in voluntary market penetration; the failure to meet the relevant voluntary market penetration or depopulation quota percentages due to the previous refusal of certain insurers to permit their existing voluntary producers to write business in those territories; and the Producer Voluntary Placement Plan (PVPP), which has resulted in the appointment of new voluntary producers in inadequately serviced territories and the upcoming transfer of large blocks of MTF business to the voluntary market.

With respect to random variation in voluntary market penetration, the commenter stated that if the Statewide depopulation quotas had been met, the total voluntary market penetration in some territories would have been above the Statewide quota and the total penetration in other territories would have been below the Statewide quota. The commenter stated that such a variation would occur even if there were an adequate number of voluntary outlets in each territory. Specifically, the commenter stated that a variation of between 90 percent to 110 percent of the Statewide voluntary market penetration could be expected without any lack of sufficient voluntary market outlets in the territory. Moreover, the commenter stated that an earlier draft of the Producer Assignment Program and the PVPP described an inadequately serviced territory as a territory in which voluntary market penetration was less than 90 percent of the Statewide depopulation quota.

With respect to the failure to meet relative voluntary market penetration or depopulation quotas, the commenter stated that this is in part due to certain insurers in the past refusing to allow their existing voluntary producers to write automobile insurance, rather than those insurers having an insufficient number of voluntary producers. The commenter believes that the requirement that insurers provide coverage to all eligible persons beginning on April 1, 1992 as required by N.J.S.A. 17:33B-15, will solve this problem.

With respect to the PVPP, the commenter stated that many producers have obtained voluntary markets and other producers with voluntary markets are currently transferring their MTF business to their voluntary insurers as that business is renewed. The commenter therefore believes that the definition of inadequately serviced territory must take into account the new voluntary outlets and writings created by the PVPP. The commenter believes that the Department may make this determination by territory through utilization "PVPP reports."

The commenter believes that the results of utilizing any of the factors described above would probably be that any territory which had a voluntary market penetration of greater than 72 percent on March 31, 1992 (when the Statewide depopulation quota was 80 percent) would not be inadequately serviced. Moreover, the commenter believes that

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the results of combining all of the factors described above would probably mean that any territory with a voluntary market penetration of 60 percent or more on March 31, 1992 would not be inadequately serviced.

Finally, the commenter believes that a key consideration in determining whether a territory is inadequately serviced is the number of voluntary producers in that territory per in-force private passenger exposures in that territory. The commenter stated that a territory with a proportion of voluntary producers to in-force private passenger automobile insurance exposures which is not substantially less than the Statewide proportion of voluntary market producers to automobile in-force exposures would be adequately serviced.

In order to address the concerns described above, the commenter suggested that N.J.A.C. 11:3-42.5(a) and (b) be deleted and in their place provide:

(a) For purposes of the Program, the State shall be divided into geographic areas corresponding to the rating territories used by the Association/MTF to write private passenger automobile insurance. A territory is inadequately serviced if it meets both of the following criteria:

1. The territory had a proportion of voluntary market non-fleet exposures to total private passenger automobile non-fleet exposures equal to less than 60 percent on March 31, 1992 (20 percentage points less than the Statewide quota for the quota period ending March 31, 1992); and

2. The territory had a proportion of voluntary market producers per private passenger automobile non-fleet in-force exposures on March 31, 1992 that is less than 75 percent of the Statewide proportion of voluntary market outlets for private passenger automobile non-fleet exposures on March 31, 1992.

b. A territory is adequately serviced if it meets none or only one of the criteria in subsection (a) above.

RESPONSE: Upon a review of the commenter's suggestion, the Department has determined not to change this provision. The Department believes that the criteria for determining inadequately serviced territories set forth in N.J.A.C. 11:3-42.5 is reasonable and appropriate. The Department believes that it would be speculative to attempt to determine the present effect of the factors to which the commenter refers on voluntary market access. The commenter itself specifically stated that the results of utilizing any of the factors would probably be that any territory which had a market penetration of greater than 72 percent on March 31, 1992 would not be inadequately serviced. Moreover, the commenter provided no explicit support for this assertion.

Likewise, while certain insurers in the past may have refused to allow their existing voluntary producers to write private passenger automobile insurance business in certain territories, the Department believes that it would be inappropriate to speculate as to the effect such action may have had on the degree of service provided throughout the State. Moreover, while the requirement that insurers provide coverage to all eligible persons pursuant to N.J.S.A. 17:33B-15 should ultimately address this problem, it would be speculative to determine the impact this statutory provision has at present in ensuring adequate access to all eligible persons in all territories.

Further, while random variations between territories may occur through normal market forces, it would be speculative to definitively determine whether a territory is inadequately serviced because lack of access to the market, rather than for some other reason (such as random variations in penetration levels). Since such data may not be definitely ascertained, the Department believes it reasonable at this time to balance the determination in favor of ensuring that sufficient access is provided to policyholders in every territory of the State.

The Department additionally notes that while appointment of producers pursuant to the PVPP may provide adequate access in underserved territories, such access and transfer of business to the voluntary market will occur over a period of time. The Department believes that it is appropriate to base the determination of inadequately serviced territories on the results of insurers' present marketing structures. The Department believes that to the extent the appointment of producers pursuant to the PVPP ultimately increases access in inadequately serviced territories, such results will be recognized in the current Department formula set forth in the rules at the time such adequate service is provided.

The Department similarly believes that it would be inappropriate to base the determination of inadequately serviced territories on the proportion of producers per territory. As the commenter noted, some insurers, although having voluntary producers in certain territories, refused to permit those producers to write private passenger automobile insurance business. Moreover, basing a determination of inadequately serviced territories on the number of producers per territory would require that the Department undertake a detailed survey of all producers with property and casualty authority in each territory. The survey would attempt to determine whether any given producer with property and casualty authority had the authority to write private passenger automobile insurance; to what extent private passenger automobile insurance was a major portion of that producer's general business; and to which companies the producer sends business. Taking such a survey and compiling the results would be expensive and time consuming. Moreover, merely reviewing the number of voluntary producers in a given territory does not address marketing structures of insurers with centralized locations or direct writers, which do not utilize producers. The Department had determined it appropriate to consider the actual effect of an insurer's market structure to determine whether the results of that particular structure in a given territory results in average or better results than the Statewide average.

Finally, as noted in N.J.A.C. 11:3-42.9(a), the Program is intended to serve the dual goals both of protecting producers who have established businesses and of providing access to the voluntary market in inadequately serviced territories. The commenter's suggestion would reduce the number of producers qualified for assignment and thus diminish the Program's success in achieving its purposes.

It must be noted that while the commenter states that an "earlier draft" of the Program described an inadequately serviced territory in which voluntary market penetration was less than 90 percent of the Statewide depopulation quota, the determination of inadequately serviced territory set forth in these rules is the same as that set forth in the rules as originally proposed on August 5, 1991 (see 23 N.J.R. 2297(a)).

COMMENT: The commenter noted that N.J.A.C. 11:3-42.9, which sets forth the information required to be submitted by insurers filing for an exemption from the Program, requires that insurers submit a report showing the number of new business applications for private passenger automobile insurance by territory by each producer for the period October 1, 1990 to the present, and a report showing the number of new automobile insurance policies issued by the insurer by territory for the period October 1, 1990 to present. The commenter also noted that the rule sets forth the tests the Department's Automobile Residual Market (ARM) Unit shall utilize in reviewing an insurer is exemption request. These factors include:

1. Whether the insurer has met the most recent depopulation quota;

2. A comparison of the territorial distribution of the insurer with the MTF utilizing the Standardized Compliance Index;

3. Whether the insurer's rate of growth in the inadequately serviced territories equals or exceeds the rate of growth in those same inadequately serviced territories by the voluntary market as a whole; and

4. Whether the information submitted indicates that the insurer's marketing system provided reasonable market access in the inadequately serviced territories.

The commenter stated that the exemption tests should exclude from consideration any business written pursuant to the Mandatory Depopulation Assignment Plan (MDAP). The commenter stated that the writing of mandatorily assigned exposures is not evidence that an insurer's own marketing system has, in practice, provided reasonable access to persons in all areas of the State, as required under N.J.A.C. 11:3-42.9(a). Accordingly, the commenter believes that this data should not be included in an insurer's voluntary business data used by the Department to determine whether to grant an exemption.

Moreover, the commenter suggested that the Department adjust the MTF territorial distribution used in the Standardized Compliance Index to add back in all mandatorily assigned exposures, and should adjust the rate of growth in the inadequately serviced territories by the market as a whole to subtract out all mandatorily assigned exposures. The commenter believes that by so doing, the benchmark currently utilized would reflect only true voluntary market writings.

In order to effectuate the change suggested by the commenter, the commenter suggested that N.J.A.C. 11:3-42.9(a)1 should be amended to add a new subsection as follows:

iii. The reports in subsections (a)1(i)(3) and (4) shall exclude all new applications submitted and new policies issued under the mandatory assignment of exposures pursuant to any mandatory depopulation plan established by the Commissioner. Supplementary information submitted under subsection (a)1(i)(5) and (a)1(ii)(2) shall clearly segregate any writings under the mandatory assignment of exposures pursuant to any

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mandatory depopulation plan established by the Commissioner from any other voluntary writings of the insurer if data on writings is included in the supplementary information.

In addition, the commenter suggested that N.J.A.C. 11:3-42.9(a)3(ii) be amended to add two new sentences reading as follows:

For the purposes of the four tests, all mandatory assignments of exposures to the insurer pursuant to any mandatory depopulation plan established by the Commissioner shall be excluded from the insurer's in-force exposures, territorial distribution of business, growth rata and all other calculations used by the ARM Unit. Additionally, the sum of all mandatory assignments of exposures to all insurers pursuant to any mandatory depopulation plan established by the Commissioner shall be added back into the MTF distribution of business by territory used to compute a Standard Compliance Index and shall be subtracted from the figures used to determine the rate of growth in the inadequately serviced territories by the voluntary market as a whole.

RESPONSE: The Department agrees with the Commenter that business written by an insurer pursuant to the MDAP does not provide evidence that an insurer's own marketing system has provided reasonable access to persons in all areas of the State, as required by N.J.A.C. 11:3-42.9(a). The Department, however, does not believe that any revision to the rules is necessary. The tests to be applied in evaluating an insurer's exemption requests are applied by the Department based on information submitted by the insurer pursuant to N.J.A.C. 11:3-42.9(a), as well as information contained in quarterly reports submitted pursuant to section 8 of the MTF Plan of Operation. This information includes new business written by territory both voluntarily and pursuant to the MDAP. In applying this raw data to the tests, the Department will exclude business written pursuant to the MDAP where appropriate, such as in determining the rate of growth in inadequately serviced territories. However, the Department believes that it is unnecessary and inappropriate to specifically describe such application in the rules. Application of MDAP assignments represents only one step of the methodologies used in evaluating an exemption request. The analysis and decision-making process in evaluating an exemption request must be performed on a case by case basis. Therefore, it would be inappropriate, if not impossible, to specify each and every aspect of the decision-making process in these rules which would apply to every case. The Department believes that it is more appropriate to address the steps of the methodologies involved in applying the tests in the review and decision process on individual requests, as has been done for the initial assignments.

Further, the Department's ARM Unit noted in its initial decisions that information regarding the number of new business applications and number of new policies written provided by insurers was not utilized in applying the tests, as this information varied widely among insurers, making it difficult to utilize in making comparisons among insurers. Instead, the ARM Unit utilized information contained in the quarterly reports submitted by insurers pursuant to section 8 of the MTF Plan of Operation. The Department has, therefore, changed the rules upon adoption to delete the requirement in N.J.A.C. 11:3-42.9(a)1i(3) and (4) that insurers file as part of a request for exemption a report of new business applications for private passenger automobile insurance submitted by producers and the number of new automobile insurance policies issued by the insurer.

COMMENT: The commenter objected to N.J.A.C. 11:3-42.9(a)2, which requires that an insurer seeking an exemption from the Program file for such an exemption no later than 45 days prior to the end of the quota period for which assignments are being made. The commenter stated that it is arbitrary, capricious and unduly burdensome to require insurers who had received an exemption from assignments for a previous quota period to refile for that exemption before each subsequent quota. The commenter stated that its own exemption filing was voluminous and involved great amounts of time to compile. The commenter believes that the Department would also save substantial time and money by not requiring filings for each quota period which the Department would otherwise be required to review and rule upon.

In order to effectuate this change, the commenter suggested that N.J.A.C. 11:3-42.9(a)2 be amended to add a new subsection as follows:

An exemption granted by the ARM Unit or the Commissioner under this subsection (a) shall apply to all future quota periods for which assignments are being made. An insurer who has received this exemption need not refile for an exemption at any time in the future to maintain that exemption.

RESPONSE: The Department believes it appropriate to require insurers seeking an exemption from a particular assignment to file for an exemption to each assignment period. This will ensure that the Department is aware of any changes in an insurer's marketing efforts and strategies that may have occurred since the time the previous exemption was granted. This is consistent with the rules governing relief from the FAIR Act obligations (particularly assessments and surtaxes) set forth in N.J.A.C. 11:2-35. Where an obligation is cyclical, an exemption for one particular assignment should not be deemed to grant an exemption from all subsequent assignments.

Moreover, insurers that submitted exemption applications for the initial assignment of producers may incorporate by reference materials included with those requests. An insurer requesting an exemption, however, shall be required to submit documentation of continued or additional marketing and solicitation efforts between the time the original request was made and the time the present request is made. This procedure was set forth in Bulletin No. 92-25. Accordingly, an insurer which was previously granted an exemption shall file only additional information reflecting continued efforts or changes from information previously submitted. The rules have been changed upon adoption, to reflect this clarification. The Department believes that this change should alleviate any undue burden upon insurers.

COMMENT: The commenter stated that N.J.A.C. 11:3-42.9(a)1i requires an insurer requesting exemption from the Program to submit:

1. A list of the insurer's agents' names and addresses broken down by territory;
2. The insurer's marketing plans;
3. Each agent's new application production figures, broken down by rating territory; and
4. An insurer's in-force exposure figures and growth rates by territory for private passenger automobile insurance. The commenter stated that these items are the insurer's trade secrets and should be afforded confidentiality by the Department. The commenter stated that New Jersey has a public records law which might be construed to allow someone to obtain this information. The commenter stated that the Department has the power under N.J.S.A. 47:1A-2 to promulgate a rule exempting this information from disclosure.

Accordingly, the commenter suggested that N.J.A.C. 11:3-42.9(a) be amended to add a new subsection as follows: "All information filed with the Insurance Department by an insurer in applying for an exemption under this subsection (a) shall be deemed to be confidential and not subject to disclosure under the New Jersey public records law in accordance with N.J.S.A. 47:1A-2."

RESPONSE: Based upon a review of the commenter's concerns, the Department has determined that no change is required. While the commenter states that information required to be submitted as part of an exemption request are "trade secrets," it failed to support this assertion. For example, some information may already be filed with the Department in another format. Other information required to be submitted is merely "raw numbers." It is unclear how such information constitutes "trade secrets." However, to the extent an insurer believes that information submitted as part of a filing for an exemption is a trade secret, such information should be noted as part of a filing, with an explanation in support thereof. Moreover, the commenter is encouraged to provide further detail to the Department regarding the reasons for which it believes this information should be held confidential so that the Department may evaluate this information to determine whether it should propose amendments to the rules.

Summary of Agency-Initiated Changes:

1. Technical changes have been made to N.J.A.C. 11:3-42.5(d), 11:3-42.9(a)1ii(1), and 11:3-42.18(b) as a matter of form.
2. N.J.A.C. 11:3-42.9(a)1i(a)(2) has been revised as a matter of form to ensure consistency with N.J.A.C. 11:3-42.9(a)1ii(1) and 11:3-42.9(a)3ii(4).

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 42. PRODUCER ASSIGNMENT PROGRAM

11:3-42.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:33B-9c and provides for the assignment of qualified producers on an equitable basis to

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insurers writing private passenger automobile insurance in the voluntary market.

(b) This subchapter applies to all insurers licensed to transact private passenger automobile insurance in this State, unless otherwise exempt pursuant to this subchapter, and all qualified producers who seek to be assigned to insurers pursuant to the procedures set forth in this subchapter.

(c) Producer assignments under the Program shall cease with any assignments made pursuant to the April 1, 1993 list of qualified producers. Notwithstanding the foregoing, the Commissioner may reactivate the assignment procedure in the event he or she determines that there are geographic areas in this State that lack sufficient representation for the placement of automobile insurance business in the voluntary market.

11:3-42.2 Definitions

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

"Association" means the New Jersey Automobile Full Insurance Underwriting Association established pursuant to N.J.S.A. 17:30E-1 et seq.

"Automobile" is as defined in N.J.S.A. 17:30E-3b.

"Automobile insurance" is as defined in N.J.S.A. 17:30E-3c.

"Category B Association producer" means a producer who does not have a current affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance who:

1. Had such an affiliation with an insurer that was terminated by the insurer prior to December 31, 1980; or

2. Never had such an affiliation with a voluntary market company for the purposes of placement of private passenger automobile insurance.

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

"Department" means the New Jersey Department of Insurance.

"Geographic area" means any one of the 27 rating territories in this State approved by the Commissioner for use in private passenger automobile rating systems.

"MTF" means the Market Transition Facility established pursuant to N.J.S.A. 17:33B-11.

"Program" means the Producer Assignment Program established pursuant to N.J.S.A. 17:33B-9c and this subchapter.

"Voluntary market insurer" means an insurer authorized to transact private passenger automobile insurance in this State.

11:3-42.3 List of qualified producers

Except for the first assignment made under this Program, the assignment of producers shall be made on a biannual basis subsequent to the conclusion of the quota periods established pursuant to N.J.S.A. 17:33B-11, commencing with the October 1, 1992 quota. The Commissioner shall annually, on October 1 and April 1, establish a list of producers who have been determined to be qualified for assignment to voluntary market insurers pursuant to this Program.

11:3-42.4 Eligible producers

(a) For the purpose of this subchapter, "eligible producer" is a producer who:

1. Is licensed in this State as a resident insurance producer;

2. Had a valid Association producer contract in force on September 30, 1990.

3. Does not have a current affiliation with a voluntary market insurer for the purposes of placement of private passenger automobile insurance, but who had such an affiliation that was terminated by the insurer between December 31, 1980 and December 31, 1992;

4. Is located in a rating territory that is determined by the Commissioner to be inadequately serviced, as defined in N.J.A.C. 11:3-42.5; and

5. Has derived not less than $7,500 in commission income from Association or MTF policies combined in calendar year 1990.

i. A producer may also use any voluntary market private passenger automobile insurance commission income he or she received during 1990 to meet the $7,500 threshold.

(b) For the purpose of this section, a producer who does not have a current affiliation with a voluntary market insurer for the purposes of placement of private passenger automobile insurance shall include the appointed representatives of insurers that have been:

1. Exempted from meeting the requirements of N.J.S.A. 17:33B-15, provided that the producer was appointed before the exemption Order and wrote at least 10 policies for the insurer during the year preceding the application for assignment;

2. Ordered by the Commissioner to cease the writing of automobile insurance; or

3. Permitted by the Commissioner to cease writing automobile insurance pursuant to a plan of orderly withdrawal approved pursuant to N.J.A.C. 11:2-29.

11:3-42.5 Designation of geographic areas

(a) For the purposes of the Program, the State shall be divided into geograhic areas corresponding to the rating territories used by the Association/MTF to write private passenger automobile insurance. Each rating territory shall be designated as either adequately serviced or inadequately serviced. For the initial producer assignment to be made under this Program, the determination of whether a territory is inadequately serviced shall be as follows:

1. A territory shall be designated as adequately serviced if the proportion of voluntary market private passenger automobile non-fleet exposures to total private passenger non-fleet exposures in that territory meets or exceeds both the aggregate Statewide quota established pursuant to N.J.S.A. 17:30E-14b(2), for the quota period ending on September 30, 1990 and the aggregate Statewide quotas established pursuant to N.J.S.A. 17:33B-11c(5), for the quota periods ending March 31, 1991 and September 30, 1991.

2. A territory shall be designated as inadequately serviced if the proportion of voluntary market private passenger automobile non-fleet exposures to total private passenger non-fleet exposures in that territory is less than the aggregate Statewide quota established pursuant to N.J.S.A. 17:30E-14b(2), for the quota period ending on September 30, 1990 or pursuant to N.J.S.A. 17:33B-11c(5), for the quota periods ending March 31, 1991, or September 30, 1991.

(b) For quota periods ending after September 30, 1991, the Commissioner shall review the status of each rating territory at the conclusion of each quota period established pursuant to N.J.S.A. 17:33B-11c(5). A rating territory shall be determined by the Commissioner to be inadequately serviced:

1. If the proportion of voluntary market private passenger automobile non-fleet exposures to total private passenger automobile non-fleet exposures in that territory is below the aggregate Statewide quota for the quota period; or

2. If the territory is adequately serviced based on the criteria established in (b)1 above, but the volume of exposures insured in the voluntary market was not achieved in the territory substantially through the voluntary writing of exposures but was achieved through the mandatory assignment of exposures pursuant to any mandatory depopulation plan established by the Commissioner.

(c) Notwithstanding the foregoing, the Commissioner, in his or her discretion, may find that specific areas within a rating territory are inadequately serviced although the territory as a whole has been determined to be adequately serviced. The Commissioner's determination shall set forth the basis for his or her finding in such instances.

(d) Except as may be otherwise permitted by the Commissioner, producers shall be deemed to be located and servicing business in a single rating territory for the purposes of this Program. The producer shall be assigned to the rating territory in which the producer's principal business office is located, as reflected by the *[records of the]* Department's licensing records.

(e) The Commissioner shall annually, on May 15 and November 15, establish a list of those rating territories or, if applicable, areas within rating territories that are determined to be inadequately serviced based on a review of the results of the immediately preced-

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ing quota periods, that is, April 1 and October 1, respectively. Notice thereof shall be provided to all Association producers by bulletin.

11:3-42.6 Application procedures

(a) Any producer who is eligible for assignment to a voluntary market insurer pursuant to this Program shall make application to the Department on a form prescribed and furnished by the Department, incorporated herein by reference as Appendix A. The Department shall provide the form upon written request, within five working days of receipt of such request.

(b) All applications and accompanying documents shall be submitted to the Department. Applications premised on the May 15 list of inadequately serviced territories shall be filed with the Department no later than July 1 and applications premised on November 15 list shall be filed no later than January 1.

(c) In the event an application is not fully completed, or the information provided is inadequate or required documentation is missing, the application shall be disapproved and the producer so notified, in writing, within 10 working days of receipt of the application by the Department. The producer shall be afforded a reasonable opportunity to cure any deficiencies in the application, provided, however, that such deficiencies are cured and a completed application is filed with the Department by the filing dates specified in (b) above.

(d) The Department shall review each application to determine whether the producer meets each of the criteria established by the Commissioner pursuant to N.J.S.A. 17:33B-9c and shall advise the applicant, in writing, as to whether he or she is qualified for assignment under this Program. Disapproval of an application shall be made as provided in N.J.A.C. 11:3-42.8.

(e) Notifications to producers applying pursuant to the May 15 list of inadequately serviced territories shall be issued by the Department on or before September 1; notifications premised on the November 15 list of inadequately serviced territories shall be issued by the Department on or before March 1.

(f) Completed applications and other information required to be submitted pursuant to this subchapter shall be submitted to the Department at the following address:

ARM Unit/PAP
Department of Insurance
CN 325
Trenton, New Jersey 08625

11:3-42.7 Review of applications

(a) In determining whether a producer is qualified for participation in this Program, the Department's review shall include, but need not be limited to, the following:

1. Any records concerning the termination of the producer's affiliation with any voluntary market insurer(s) to determine whether:

i. The producer was terminated on or after December 31, 1980 (as provided at N.J.S.A. 17:33B-9c(3));

ii. The producer has violated any of the insurance laws of this State or rules promulgated pursuant thereto; and

iii. The reason for termination adversely reflects on the producer's competency, efficiency and effectiveness in servicing insurance business or otherwise indicates that the producer should not be qualified for this Program due to unworthiness, bad faith, lack of integrity, financial irresponsibility, dishonesty or other criteria deemed relevant by the Commissioner;

2. Any records relating to the appointment of the producer to act as an Association or MTF producer, his or her performance as an Association or MTF producer, any bona fide complaints filed against the producer with the Association, the MTF or any servicing carrier of these entities and any corrective or disciplinary action taken by the Association or MTF with respect to the producer;

3. Any records of bona fide complaints filed against the producer with the Department or any administrative action instituted by the Department (that is, issuance of an Order to Show Cause, issuance of an Order pursuant to N.J.S.A. 17:22A-20d etc.) with respect to the producer that has resulted in the imposition of fines or suspension or revocation of license privileges, including the imposition of such sanctions based on a Consent Order; and

4. Upon disclosure on the application or any other document reviewed by the Department of such administrative actions, any records relating to administrative actions instituted by any licensing authority of this or any other state or the Federal government with respect to the producer that has resulted in the imposition of fines, or suspension or revocation of license privileges.

11:3-42.8 Producer qualification standards

(a) An application for qualification under this Program shall be disapproved if, based on the Department's review as set forth in N.J.A.C. 11:3-42.7:

1. The producer is determined not to meet the eligibility criteria set forth in N.J.A.C. 11:3-42.4;

2. The producer has failed to comply with insurance laws and regulations and/or the producer performance standards established by the Association Plan of Operation, at Part III Operating Principles, Section 4: Producer Performance Standards, subsection 1, Performance Standards—General, or the MTF Plan of Operation, at Part III, Operating Principles, Section 4: Producer Performance Standards, subsection 1, Performance Standards—General;

3. The producer's affiliation with any voluntary market insurer has been terminated for reasons that adversely reflect on the producer's competency, efficiency or effectiveness in servicing insurance business or that otherwise indicate that the producer should not be qualified for this Program due to unworthiness, bad faith, lack of integrity, dishonesty, financial irresponsibility or other criteria deemed relevant by the Commissioner. This standard shall apply to all terminations of affiliation, including, but not limited to, agency appointments, brokerage arrangements and limited insurance representative appointments, any termination of an appointment made pursuant to the Producer Voluntary Placement Plan and any termination of an assigned appointment made under this Program;

4. The producer failed to file a completed application with the ARM Unit within the Department as provided in N.J.A.C. 11:3-42.6(c);

5. The producer knowingly withheld material information on the application or any accompanying document or intentionally made or caused to be made any false, deceptive or fraudulent statement during the application process, or otherwise qualified or attempted to qualify for this Program by fraud or material misrepresentation; or

6. The producer has been excluded from the Producer Voluntary Placement Plan or has previously been excluded from the Producer Assignment Program as provided in N.J.A.C. 11:3-42.18.

(b) An otherwise eligible producer whose application has been disapproved may reapply for the Program in a subsequent period except where such disapproval is for cause. For the purpose of this provision the term, "for cause," shall mean any willful and/or repeated violation of insurance laws or regulations, or Association or MTF performance standards, or any conduct that demonstrates unworthiness, lack of integrity, bad faith, dishonesty, financial irresponsibility or incompetency to transact business as an insurance producer.

(c) When the ARM Unit within the Department disapproves an application for assignment, the disapproval notice shall:

1. Include a written statement specifying the reasons for the rejection; and

2. Inform the producer of the his or her ability to request a review of the disapproval by the Commissioner, within 10 days of receipt of the disapproval.

i. A request for review by the Commissioner shall be in writing and made within 10 days of receipt of the disapproval and shall be accompanied by all supporting documentation, if any, disputing with specificity, the reasons for disapproval. A response to this request may be made by the ARM Unit within five days thereafter.

ii. The Commissioner shall issue a written decision with reasons upholding or reversing the decision of the ARM Unit within 30 days from receipt of the last written request or response whichever is later.

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11:3-42.9 Exemption from program

(a) The Program is intended to address the dual goals of protecting producers who have built businesses and developed expertise serving the residual market and of encouraging auto insurance sales and service in inadequately served territories. Therefore, assignment of producers on an equitable basis should consider whether an insurer's own marketing system has, in practice, provided reasonable access to persons in all areas of the State. When an insurer has demonstrably provided such access, it may be exempt from assignments under the Program.

1. Requests for an exemption on this basis must be supported by the following information:

i. For an insurer utilizing producers to transact private passenger automobile insurance in this State:

(1) A report showing the distribution of producers by territory within the State of New Jersey for the period between October 1, 1990 to the present. The report should specify the appointment dates of any newly appointed producer during the report period, as well as the termination date of any producer terminated during the report period;

(2) A narrative and supporting documentation demonstrating that the insurer was actively soliciting private passenger automobile insurance in inadequately serviced territories***, especially the most inadequately serviced territories,*** for the period between October 1, 1990 *[and April 1, 1992]* ***to the present***. The narrative and supporting documentation should also include data reflecting the results of the solicitation efforts;

*[(3) A report showing the number of new business applications for private passenger automobile insurance by territory submitted by each producer for the period from October 1, 1990 to the present. For the purposes of this report, applications rejected by the insurer should be included;

(4) A report showing the number of new business private passenger automobile insurance policies issued by the insurer by territory for the period from October 1, 1990 to the present;]* and

*[(5)]***(3)*** Any other supplemental information that the insurer may consider relevant to the request for an exemption.

ii. For insurers who conduct business as direct writers:

(1) A narrative and supporting documentation showing that the insurer was actively soliciting private passenger automobile insurance in the inadequately serviced territories, especially the most inadequately serviced territories, for the period from October 1, 1990 *[and]* to the present. The narrative and supporting documentation should also include data reflecting the results of the solicitation efforts; and

(2) Any other supplemental information that the insurer may consider relevant to its request for an exemption.

2. Requests for exemptions from this Program must be received by the Department no later than 45 days prior to the end of the quota period for which assignments are being made. Failure to submit a complete application by the due date may result in a denial of the insurer's request for exemption from assignments for that assignment period. ***An insurer that previously submitted an application for an exemption pursuant to this section may incorporate by reference information included with the previous request. However, the insurer shall submit documentation of continued or additional marketing and solicitation efforts between the time the original request was made and the time the present request is made.***

3. The review of requests for exemptions from this Program shall be conducted by the ARM Unit within the Department. The ARM Unit shall review the request and shall notify the insurer in writing as to its decision within 45 days of receipt of a complete exemption request.

i. In evaluating an insurer's application for an exemption, the Department shall apply four tests. Each test shall be weighted equally so that passing or failing one test shall not automatically result in the denial of an exemption. A passing result on each test carries a score of one, and, therefore, the maximum possible score is four. A score of three or better results in the granting of an exemption.

ii. The four tests are as follows:

(1) Whether the insurer met the most recent depopulation quota;

(2) Whether the insurer's distribution of business among all the rating territories for the most recent data available matches the distribution of business in the MTF on that same date. The Department uses a Standard Compliance Index for this measurement. A compliance index of 1.000 or more demonstrates a good match between the insurer's and MTF's distributions;

(3) Whether the insurer's rate of growth in the inadequately serviced territories as defined at N.J.A.C. 11:3-42.5 between September 30, 1990 and the most recent available quarterly report information equals or exceeds the rate of growth in those same inadequately serviced territories by the voluntary market as a whole; and

(4) Whether the information submitted by the insurer pursuant to this subsection indicates that the insurer, through its system of marketing insurance and efforts at solicitation of business, provided reasonable market access in the inadequately serviced territories, especially the most inadequately serviced territories.

4. When the ARM Unit rejects an exemption request, the notice of rejection shall:

i. Include a statement in writing specifying the reasons for the rejection; and

ii. Inform the insurer of the right to request a review of the rejection by the Commissioner, no later than seven days after receipt of the notice of rejection.

(1) A request for review by the Commissioner shall be made in writing no later than seven days after receipt of the notice of rejection and shall be accompanied by all supporting documentation, if any, disputing, with specificity the reasons for rejection. A response to this request may be made by the ARM Unit within five days thereafter.

(2) The Commissioner shall issue a written decision with reasons upholding or reversing the decision of the ARM Unit within 30 days from receipt of the last written request or response whichever is later. In deciding requests for review, the Commissioner may consider such additional information submitted by the insurer that shall promote the express intention of N.J.S.A. 17:33B-9c to assign qualified producers to insurers on an equitable basis.

(b) An insurer may also be exempted from this Program:

1. As part of relief from insurer obligations under the Fair Automobile Insurance Reform Act having been granted, pursuant to the requirements of N.J.A.C. 11:2-35;

2. In accordance with a plan of orderly withdrawal from the State which has been approved pursuant to N.J.A.C. 11:2-29;

3. If the insurer had fewer than 1,000 voluntary private passenger automobile exposures in-force on December 31, 1983 and September 30, 1988; or

4. If the insurer has, as a condition of providing coverage, uniform membership requirements which have been filed and approved by the Department pursuant to N.J.S.A. 17:29A-46 and N.J.A.C. 11:3-35 and the insurer is not prohibited from using its membership requirements by N.J.S.A. 17:33B-26. Notwithstanding the foregoing, if the insurer is a member of a group that includes other insurers that are authorized to transact private passenger automobile insurance in this State, but do not have approved membership requirements as a condition of providing coverage, producer assignments shall be made to the group.

(c) An insurer that has been exempted from this Program pursuant to (b)1 or 2 above or qualifies for exemption under (b)3 or 4 above shall notify the Department at least 45 days prior to the promulgation of the lists of qualified producers.

11:3-42.10 Apportionment of producers; credits

(a) Each insurer authorized to transact the business of private passenger automobile insurance in this State shall be subject to the assignment of qualified producers pursuant to the procedures and requirements set forth in this Program. Producer assignments shall be apportioned among insurers based upon each insurer's apportionment share as determined for purposes of depopulation pursuant to N.J.S.A. 17:30E-14 and 17:33B-11(c)5, subject to any exemptions as set forth in N.J.A.C. 11:3-42.9.

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(b) Any insurer that has, pursuant to the Producer Voluntary Placement Plan, appointed eligible Association producers as defined in N.J.A.C. 11:3-42.4 shall receive credit against any producer assignments to be made under this Program on a one-for-one basis. The one-for-one credit shall be premised on a calculation of the insurer's apportionment share of the total number of producers who otherwise would have been eligible for assignment under this Program in the absence of any voluntary agreements entered into by those companies subject to assignment.

1. In the event that an insurer appoints sufficient eligible Association producers to meet or exceed the insurer's apportionment share of such producers for that assignment period, the insurer shall not be subject to producer assignment during that assignment period and the excess shall be credited against any subsequent assignments made by the Commissioner.

2. The excess shall not be credited against subsequent assignments to the extent that the insurer has terminated any appointments of producers prior to the next assignment period.

3. Credits against future assignments shall apply irrespective of whether the territory where a producer is located continues to be designated as inadequately serviced pursuant to N.J.A.C. 11:3-42.5.

(c) Any insurer that has, pursuant to the Producer Voluntary Placement Plan, appointed Category B Association producers who are located in territories that have been determined by the Commissioner to be inadequately serviced pursuant to N.J.A.C. 11:3-42.5, shall receive credits against any producer assignments based on the credit allowance set forth in (d) below.

1. In the event that an insurer appoints sufficient Category B Association producers to meet or exceed the insurer's apportionment share of eligible producers for that assignment period, the insurer shall not be subject to producer assignment during that assignment period and the excess shall be credited against any subsequent assignments made by the Commissioner.

2. The excess shall not be credited against subsequent assignments to the extent that the insurer has terminated any producer appointments prior to the next assignment period.

3. Credits against future assignments shall apply irrespective of whether the territory where a producer is located continues to be designated as inadequately serviced pursuant to N.J.A.C. 11:3-42.5.

(d) The credit allowance specified in (c) above shall be calculated so as to ensure the Commissioner's ability to provide assignments for all or substantially all producers on each list of qualified producers as set forth in N.J.A.C. 11:3-42.3. The credit allowance shall be reviewed and adjusted, if necessary, on a periodic basis. For the initial implementation of this Program, an insurer shall receive one credit toward a producer assignment for every four Category B producers appointed who are located in inadequately serviced territories.

(e) In calculating any insurer's apportionment share of any producer assignments made pursuant to this Program, the following procedures shall govern:

1. The apportionment shares of producer assignments of any insurers that are subject to exemption under the Program, pursuant to N.J.A.C. 11:3-42.9, shall be calculated and such shares redistributed among the remaining carriers in the proportion that each of the remaining insurers' market shares bears to the total market share of all such insurers;

2. Credits against an insurer's apportionment share of producer assignments earned pursuant to (b) above shall be calculated and the producers redistributed among the remaining insurers in the proportion that each of the remaining insurers' producer assignments (after application of the one-for-one credit) bears to the total number of such assignments; and

3. Credits against an insurer's apportionment share of producer assignments earned pursuant to (c) above shall be calculated and the producers redistributed among the remaining insurers in the proportion that each of the remaining insurers' producer assignments (after application of any credits under (c) above) bears to the total number of such assignments.

(f) In calculating credits under this section, the Department shall utilize the number of voluntary agreements that are in force at the end of the April 1 and October 1 quota periods, as applicable. Any credits that are earned by an insurer for a given assignment period that are premised on an appointment that is subsequently terminated shall be removed and adjustments made to the insurer's apportionment share in the next assignment period.

11:3-42.11 Producer assignments

(a) Each insurer subject to the assignment of producers pursuant to this Program shall be notified by Order subsequent to the Commissioner's establishment of each list of qualified producers as set forth in N.J.A.C. 11:3-42.3. Except as provided in (a)1 and 2 below, qualified producers shall be assigned to the insurers subject to assignments on a random basis.

1. No insurer whose total private passenger automobile in-force exposures at the end of the last quota period is greater than 1,000 will be assigned a producer whose eligible book of business is greater than 25 percent of the total private passenger automobile exposures of that insurer.

2. No insurer whose total private passenger automobile in-force exposures at the end of the last quota period is less than 1,000 will be assigned a producer whose eligible book of business is greater than 15 percent of the total private passenger automobile exposures of that insurer.

3. The Department shall consider the total in-force exposures of the insurer at the end of the last quota period in making assignments under this Program.

11:3-42.12 Appointment

(a) Any producer assigned to an insurer under this Program shall be appointed by the insurer as an agent of the company pursuant to N.J.S.A. 17:22A-15 and notice thereof provided to the Department as provided in N.J.A.C. 11:17-2.9. Contracts between the insurer and the assigned producer(s) shall be executed no later than 30 days following issuance of the Order specified in N.J.A.C. 11:3-42.11.

1. With respect to insurers that are members of a group, the notice to the Department shall specify the member companies to which the producer is appointed as an agent. Where the group utilizes different member insurers for the purpose of writing standard and nonstandard risks, the producer shall be appointed as an agent for all such companies. Insurers that are members of a group are not required to appoint the producer as an agent of all the companies in the group provided that the producer is appointed to one or more companies that have approved standard and non-standard rating plans.

(b) Pursuant to N.J.S.A. 17:22-6.14a(1)e, an insurer may use an insurance marketing system that provides for its agents to be compensated on a salary basis without commission or provides for its agents to represent the company exclusively. Such as insurer may utilize this system for producers assigned to it under this Program or may appoint such producers as independent agents.

11:3-42.13 Transfer of MTF business

(a) The insurer shall offer the same or equivalent automobile insurance coverage that was afforded under the MTF to each MTF insured serviced by the producer who is determined by the insurer to qualify as an eligible person pursuant to N.J.A.C. 11:3-34. Where the insurer does not have rates and rules filed and approved by the Department for the same or equivalent coverage presently afforded the insured under the MTF policy, the insurer shall offer to the insured the next broadest coverage for which the insurer has rates and rules filed and approved by the Department. The insurer is expressly prohibited from offering less coverage to the insured than the coverage afforded to such insured under the MTF policy. Examples of coverages that may be offered is set forth in Appendix B to this subchapter, incorporated herein by reference. In determining whether the MTF insured qualifies as an eligible person, insurers shall comply with N.J.A.C. 11:3-8.4. An insurer also may determine to make an offer of coverage to an insured who does not qualify as an eligible person.

(b) The transfer of the producer's MTF policies to the assigned insurer shall be accomplished through completion by the producer of a new business application and a coverage selection form for the

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insured. Pursuant to mutual agreement between the insurer and the producer, the new business application may be unsigned. However, a coverage selection form signed by the insured shall be submitted to the insurer.

(c) An insurer receiving assignments under this Program may make independent agreements with the servicing carriers for the exchange of electronic information or other arrangements involving the transfer of policies from the MTF to the insurer. An outline of the terms of any agreement and any copies of any written material that will be sent to insureds must be submitted in advance of its implementation to the Department. The MTF shall have no responsibility to provide coverage for insureds as a result of the failure of the servicing carrier to perform under the terms of the independent agreement.

11:3-42.14 New business

The producer shall be authorized to solicit, negotiate and effect new contracts of automobile insurance in accordance with all applicable laws and regulations and the insurer's underwriting guidelines, consistent with procedures applicable to the insurer's other representatives.

11:3-42.15 Producer compensation; company rates

(a) Where an insurer determines to use its own rates for former MTF insureds transferred to the insurer and/or new business written through the producer, the contract shall provide for the producer to be compensated based on the insurer's current schedule of commissions or other formula used to provide compensation to its agents. Policies transferred from the MTF shall be considered as new business with respect to providing producer compensation, for the assigned insurer's initial policy period.

(b) Where an insurer's compensation schedule contemplates support services, such as office space, equipment or advertising, or other employee benefits, and such services or benefits are not provided to the producer, the compensation schedule shall be adjusted to reflect accurately the value of such services or benefits so that the producer shall receive compensation that is equivalent to the compensation paid to, or on behalf of, the company's agents who receive such services or benefits.

1. For the purpose of this provision, the term "agent" shall be construed to have the broadest possible meaning, including, but not limited to, exclusive agents or independent agents.

2. Where an insurer has more than one schedule of commissions for its agents, it shall negotiate in good faith with producers assigned pursuant to this Program to determine the commission to be paid.

(c) In the case of companies that are direct writers, expenses for a direct marketing department and related support staff shall be considered in determining the commission paid to the assigned producer under (a) above.

1. The commission agreed to by any direct writer and an assigned producer under (a) above shall be comparable to the compensation paid to independent agents by insurers that utilize such agents.

2. Where an insurer that is a direct writer also maintains, through a subsidiary company or otherwise, a mechanism to accept business from producers who are not the normal, exclusive agents of the direct writers, the commission schedule applicable to such producers shall be utilized consistent with (a) above.

11:3-42.16 Producer compensation; MTF rates

Where the insurer is authorized by law to use MTF rates, rules and forms for policies written through the producer, it shall pay the producer the same commission paid by the MTF.

11:3-42.17 Duration and terms of producer assignment

(a) Any termination of an appointment of a producer assigned to an insurer pursuant to this Program shall be prohibited for two years following the date of contract, except where such termination is for cause. A termination for cause must be based on the producer's insolvency, abandonment, gross and willful misconduct or failure to pay over to the companies monies due to the company after his or her receipt of written demand therefor, or after revocation of the agent's license by the Commissioner. In addition, an appointment may be terminated for cause if the producer violates the written underwriting guidelines of the insurer in such a manner or with such frequency as to substantially affect the company's ability to underwrite or provide coverage.

1. Insurers shall provide producers with at least 45 days written notice of a termination for cause. The notice of termination shall include a detailed written explanation of the reasons for termination. A copy of the notice shall also be sent to the Department.

2. A termination for cause shall result in the exclusion of the producer from further participation in the Program. Producers may contest a termination notice pursuant to the procedures in N.J.A.C. 11:3-42.18(d).

3. In the case of a termination for cause, the insurer may reassign the producer's book of business to another active agent of the company or service it directly.

(b) At the conclusion of the two year period, the producer and insurer shall negotiate in good faith to do one of the following:

1. Irrespective of the marketing system customarily used by the insurer, appoint the producer as an independent agent, the termination of which appointment is governed by N.J.S.A. 17:22-6.14a(1)(d);

2. Where the insurer, pursuant to N.J.S.A. 17:22-6.14a(e), uses an insurance marketing system that provides for its agents to be compensated on a salary basis without commission or provides for its agents to represent that company exclusively, the insurer may appoint the producer under this system; or

3. Buy out the producer by paying to him or her an amount equivalent to at least one year's commission based on the book of business at the end of the two year assignment period.

(c) If the insurer and the producer cannot reach an agreement under (b) above, the producer shall be deemed a terminated agent who is subject to the provisions of N.J.S.A. 17:22-6.14a(d) and (i), notwithstanding N.J.S.A. 17:22-6.14a(l)e or the mode of appointment of the producer under this Program (that is, exclusive agent or independent agent).

11:3-42.18 Exclusion from program

(a) Any producer who refuses an assignment under this Program, that provides for his or her appointment as the assigned company's agent on fair and equitable terms, shall be excluded from further participation in this Program.

(b) Any producer who is terminated within the two year period set forth in N.J.A.C. 11:3-*[42.16(a)]****42.17(a)*** above shall be excluded from further participation in this Program.

(c) Insurers shall immediately provide notice of any refusal of assignment as provided in (b) above, respectively, in writing, to the Department in the format set forth in Appendix C to this subchapter, incorporated herein by reference. A copy of the notice shall be simultaneously delivered to the affected producer.

(d) A producer who has received a notice of termination for cause or a Notice of Refusal of Appointment may file a written response with the Department. Such response shall be made within 10 days of the insurer's notice. The Commissioner shall issue a written decision with reasons within 30 days.

11:3-42.19 Initial implementation of program

For the initial implementation of this Program, in-force voluntary agreements that are established by insurers with eligible Association producers and Category B producers located in inadequately serviced territories between October 1, 1990 and February 29, 1992 shall be used to determine any credits under N.J.A.C. 11:3-42.10.

11:3-42.20 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

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APPENDIX A

Date Stamp Application Number

PRODUCER ASSIGNMENT PROGRAM (PAP)
Producer Application

Producer License Reference # Name of Applicant (must be same as on license)

Contact Person if Applicant is Corp. or Partnership (_____) Telephone Number

Main Business Address of Applicant—No. & Street (no Post Office Box #)

City NJ Zip

Rating Territory of Main Business Address _____ SS or Tax ID#_____

Does the applicant have a valid New Jersey producer license? Yes _____ No _____

Did the applicant have a valid Association producer contract on 9/30/90? Yes _____ No _____

Does the applicant have a current appointment with a voluntary market insurer for the placement of automobile insurance?
Yes _____ No _____

Did the applicant have an appointment with a voluntary insurer for the placement of automobile insurance that was terminated by the insurer after 12/31/80? Yes _____ No _____ If yes, list the insurers with the date and reason for termination below.

Insurer Date Reason for Termination

Insurer Date Reason for Termination

Insurer Date Reason for Termination

Total commission income earned by applicant from JUA/MTF business in 1990? $_____

Total commission earned on voluntary market auto insurance policies, if any? $_____
Attach copies of IRS 1099 forms.

If the answer to any of the questions below is YES, attach copies of relevant documents and explain in the Remarks section below. Add additional sheets if necessary.

Has the applicant or any officer, partner, director or owner of 5% or more have any unsatisfied judgments against them? Yes _____ No _____

Has the applicant or any officer, partner, director or owner of 5% or more ever been indicted or convicted of a crime, misdemeanor or disorderly persons offense in this State, other state or by the federal government? Yes _____ No _____

Has the applicant or any officer, partner, director or owner of 5% or more ever been the subject of any administrative action initiated by the Department of Insurance of this State or any other licensing authority of this or any other state, that resulted in the revocation or suspension of license privileges? Yes _____ No _____

Certification—I/We hereby certify that:

1. I/We give the Department of Insurance permission to verify any information supplied with any federal, state or local government agency, insurance company, JUA or MTF.
2. All the information submitted on this application and all attachments are true and complete. I am/We are aware that submitting false information in connection with this application is grounds for exclusion from the Producer Assignment Program and may subject me/us to administrative including revocation of license.

Signature of Applicant or Officer of Corporation

Print Name

Return to: NJ Department of Insurance
ARM Unit/PAP Applications
20 W. State Street CN 325
Trenton, NJ 08625

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APPENDIX B

COVERAGE DETERMINATION EXAMPLES

The following examples are provided for illustration purposes only:

Example 1: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. However, the member company only writes combined single limit of liability coverage and only has rules and rates filed and approved by the Department for this type coverage. Therefore, the member company must offer the MTF policyholder a combined single limit of liability coverage which is equal to the bodily injury occurrences limit and the property damage occurrence limit added together or the next broadest available coverage (for example, $75,000, but in no event less than $60,000).

Example 2: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. The member company only writes combined single limit of liability coverage and offers $100,000 combined single limit of liability coverage as the minimum coverage to its voluntary insureds. However, the member company has rates and rules filed and approved by the Department for combined single limit of liability coverage for amounts less than $100,000. Therefore, the member company must offer the MTF policyholder a combined single limit of liability coverage which is equal to the bodily injury occurrence limit and the property damage occurrence limit added together or the next broadest available coverage, but less than $100,000 (for example, $75,000, but in no event less than $60,000).

Example 3: The MTF policyholder presently has $25,000/$50,000/$10,000 split limits of liability coverage. The member company only writes combined single limit of liability coverage and offers $100,000 combined single limit of liability of coverage as the minimum coverage to is voluntary insureds. The member company does not have any rates and rules filed and approved by the Department for amounts of combined single limit of liability coverage less than $100,000. Therefore, the member company must offer the MTF policyholder $100,000 combined single limit of liability coverage.

Example 4: The MTF policyholder presently has $75,000 combined single limits of liability coverage. The member company writes both split limits and combined single limit of liability coverage and has rates and rules filed and approved by the Department for both types of coverage. Therefore, the member company must offer the MTF policyholder $75,000 combined single limit of liability coverage and not a split limits policy.

Example 5: The MTF policyholder presently has $100,000 combined single limit of liability coverage. The member company only writes split limits of liability coverage and only has rates and rules filed and approved by the Department for this type of coverage. Therefore, the member company must offer the MTF policyholder split limits of liability coverage with a bodily injury per person limit equal to the combined single limit of liability coverage or the next broadest available coverage (for example, $100,000/$300,000/$50,000). (Note: All conversions of combined single limit of liability coverage should be handled in the same manner, except a $35,000 combined single limits policy. In this particular case, the member company shall offer $15,000/$30,000/$5,000 split limits of liability coverage.)

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APPENDIX C

PRODUCER ASSIGNMENT PROGRAM—REFUSAL OF PRODUCER APPOINTMENT
(Please print or type)

---------- Company Information ----------

_____ _____
Name of Company or Group NAIC #

Address: _____

_____ _____
Company Contact Person Title

Phone No.: (____)_____ FAX No.: (____)_____

---------- Producer Information ----------

_____ [ ][ ][ ][ ][ ][ ][ ][ ][ ]
Name of JEA/MIF Contractholder DOI Producer Reference No.

Contact Person: _____
Individual Licensee if above is Partnership or Corporation

_____
Main Business Address—No. and Street (P.O. Box not permitted)

_____ NJ _____ (____)_____
City Zip Phone

---------- Refusal Information ----------

Date of Refusal of Appointment: Mo. _____ Day _____ Yr. _____

Comment: _____

_____

_____

_____

_____

CERTIFICATION

I certify that the above information is correct to the best of my knowledge information and belief. I understand that if I have knowingly made any false statements I will be subject to penalties.

_____ _____
Signature of Company Representative Print Name

_____ _____
Title Date

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(a)

DIVISION OF PROPERTY CASUALTY

Commercial Lines Insurance

Readoption with Amendments: N.J.A.C. 11:13

Proposed: August 17, 1992 at 24 N.J.R. 2830(a).
Adopted: November 10, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: November 10, 1992 as R.1992 d.492, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29AA-1 et seq.
Effective Date: November 10, 1992, Readoption;
December 7, 1992, Amendments.
Expiration Date: November 10, 1997.

Summary of Public Comments and Agency Responses:

Six public comments were received from insurance companies (American International Group, Inc., and Selective Insurance Company of America), an insurance trade association (American Insurance Association), producer trade associations (Independent Insurance Agents of New Jersey and Professional Insurance Agents of New York, New Jersey, Connecticut, Inc.) and an insurance agency (Pashley Insurance Agency, Inc.).

COMMENT: Two commenters objected to N.J.A.C. 11:13-6.5(a). This provision provides that no commercial insurance policies for which rates shall be filed pursuant to N.J.S.A. 17:29AA-5 shall be eligible for application of premium modification except as follows:

1. Commercial auto: Annual policy minimum premium of $5,000 covering at least five insured vehicles.
2. Commercial .other than automobile: Annual policy minimum premium of $2,500.
3. Business owner's policy: Annual policy minimum premium of $1,500.

The first commenter argues that the limitations of this provision discriminate against small business owners, those who most need to be able to seek out the lowest available premium. The commenter states that business owners who otherwise could earn credits by running a clean, well managed operation do not have the same opportunity as their larger competitors to benefit from good management through their insurance costs. Additionally, the commenter objects to what he believes is a lack of aggressive enforcement of this provision by the Department. The commenter asserts that in the absence of vigorous enforcement by the Department, insurance companies which try to abide by the State's regulations are being hurt by their less cautious competitors. The commenter states that this creates an unfair situation where the offenders are benefitting and the companies which comply cannot compete for the good small risks. The commenter suggests that the Department delete N.J.A.C. 11:13-6.5(a).

The second commenter asserts that there is no reason why these benefits should be restricted through the regulatory process to those businesses whose premiums exceed the Department's arbitrary thresholds. The commenter states that small businesses continue to be excluded from the risk modification process without justification, or small businesses may have to pay higher premiums than necessary because of the rule.

The second commenter further states that as a result of this rule it was required to withdraw its "mini-fleet" policy, which offered competitive rates to small business and recognized the individuality of each risk.

RESPONSE: The Department notes that the thresholds set forth in the rule are similar to thresholds in a majority of the commercial rating plans filed prior to the adoption of these rules. The thresholds in these rules were less restrictive than the thresholds in the neighboring state of New York, which has a similar rule.

Based on comments received since this rule was adopted and those of the present commenters, the Department has found that these rules have had an unintended adverse effect on the insurance market. The Department has decided to delete subsection (a) of N.J.A.C. 11:13-6.5, which sets minimum premium standards. The Department is readopting the other provisions of this section. The Department notes that as a result of the deletion, insurers may file commercial rating plans with broader eligibility requirements that permit premium modification for smaller risks than previously permitted. This deletion will permit insurers greater flexibility in their rating systems. The deletion of subsection (a) does not, however, require insurers to make any additional filing. Insurers may choose to continue to apply their current minimum premium standards or a higher standard in their own filings. The Department intends to review these rules in the near future to determine if any other amendments may be necessary.

COMMENT: Two commenters objected to N.J.A.C. 11:13-6.5(a)1 which sets forth standards that must be met before commercial auto policies can be eligible for application of premium modifications. The commenter states that eligibility is contingent upon a five vehicle and $5,000 premium minimum. The commenter asserts that medium and smaller risks, for example three or four vehicles, practice loss and safety control and deserve to be rewarded. The commenter therefore urges the Department to change the standard for eligibility to allow credits for three or four vehicle risks.

The second commenter states that the requirement of a minimum premium of $5,000 and five vehicles before premium modification can be applied is too high. The commenter asserts that if the figure was lowered it would stimulate competition.

RESPONSE: The Department has decided to delete this provision, as set forth in the response to the previous comment.

COMMENT: One commenter suggests that the Department add rules requiring companies to provide loss run information to commercial policy named insureds upon request. The commenter states that this information is important in obtaining quotations from prospective markets, and without it, its members cannot shop for the best combination of coverage and price for their clients. The commenter notes that some states require this information to be provided upon request within a certain timeframe. The commenter further notes that in New Jersey, policyholder's rights depend solely upon the contract language. The commenter provided the following examples from New York's and Connecticut's law and suggests that the Department incorporate similar requirements and timeframes in its rules. The sections of the New York and Connecticut law follow:

New York subsection 3426(g):

(1) Every [nonrenewal] notice mailed by an insurer pursuant to this section shall advise the first-named insured and such insured's authorized agent or broker of the availability of loss information consistent with paragraph two of this subsection.

(2) Upon written request by the first-named insured or such insured's authorized agent or broker, the insurer shall mail or deliver the following loss information covering a period of years specified by the superintendent by regulation or the period of time coverage has been provided by the insurer, whichever is less, within twenty days of such request:

(A) Information on closed claims, including date and description of occurrence, and any payments;

(B) Information on open claims, including date and description of occurrence, and amounts of any payments; and

(C) Information on notice of any occurrences, including date and description of occurrence.

[(g)(3) allows an insurer to charge a reasonable fee for this information in certain cases, and (g)(4) allows certificate holders under a group policy to obtain their individual loss information.]

Subsection 38a-326(b) of Connecticut's Public Act 92-75, requires a similar disclosure request:

An insurer shall provide, upon request by a principal named insured, a summary of policy claim information on a policy for commercial automobile insurance or general liability insurance for a period commencing not more than four years prior to the date of the request. Such information shall include the following: (1) each policy number; (2) each period of coverage; (3) the number of claims; (4) the paid losses of all loss information; and (5) the date of each loss. For purposes of this subsection, 'principal named insured' shall not include any additional named insured.

RESPONSE: Although the Department agrees that such a provision may be valuable, the Department cannot make the change suggested on adoption. The Department will, however, in accordance with the Administrative Procedures Act, propose an amendment to these rules in the near future, which will provide the general public with the opportunity to comment on this suggested change.

COMMENT: One commenter suggested that the Department should modify N.J.A.C. 11:13-7.3. The commenter states that this section contains restrictions on the extent to which defense costs may reduce the limits of a lawyer's professional liability insurance policy. Additionally,

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the commenter states that N.J.A.C. 11:13-7.3 prohibits the use of a "defense within limits" in conjunction with any commercial insurance policy which must be filed pursuant to N.J.S.A. 17:29AA-6.

RESPONSE: The Department disagrees with the commenter. The Department's rules were modeled after those in other states and the commenter's objections were addressed when the rule was adopted. See 23 N.J.R. 2340(a).

COMMENT: One commenter suggests that the Department discontinue the commercial lines rating rules. The commenter states that although the intent of the rules was to produce efficient rating and increase competition, the commenter argues that it has done just the opposite. The commenter further states that many consumers have in effect realized rate increases of up to 25 percent this year, because their policies no longer qualify for credits as a result of the minimum premium requirements. Additionally, many insurance companies lost their competitive products, because the premiums no longer qualified for credits either because of the arbitrary method of calculating the minimum premium or because of the arbitrary method of classifying a risk.

RESPONSE: The Department disagrees with the commenter that N.J.A.C. 11:13-6 should be deleted entirely. This subchapter generally provides appropriate standards for such rating plans. The Department believes that if the experience of this type of insurer for this type of risk indicates that lower rates are appropriate, either a rate decrease or downward deviation, as applicable, should be filed with the Department.

The Department has deleted the minimum premium standards of N.J.A.C. 11:13-6.5(a), which may address the commenter's most pressing concern.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 11:13.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

11:13-6.5 Standards for commercial insurance rating plans

*[(a) No commercial insurance policy for which rates shall be filed pursuant to N.J.S.A. 17:29AA-5 shall be eligible for application of premium modification except as follows:

1. Commercial auto: Annual policy minimum premium of $5,000 covering at least five insured vehicles.

2. Commercial other than automobile: Annual policy minimum premium of $2,500.

3. Business owner's policy: Annual policy minimum premium of $1,500.]*

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

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS

Notice of Administrative Correction

Professional Fees and Investments, Prohibition of Kickbacks

N.J.A.C. 13:35-6.17

Take notice that the Board of Medical Examiners has discovered an error in the text of N.J.A.C. 13:35-6.17(a)5, as currently published in the New Jersey Administrative Code. The paragraph text does not correspond to that adopted by the Board at 24 N.J.R. 626(a). Through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, this error is rectified.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

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

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

1.-4. (No change.)

5. "Significant beneficial interest" means any financial interest [comprising: five or more percent of the whole, or $5,000, whichever is less. This interest does not include ownership of a building or component thereof wherein the space is leased to a person at the prevailing rate under a straight lease agreement (that is, a fixed fee for a fixed term), or any interest held in securities publicly traded in the United States. A significant beneficial interest shall be deemed to include an interest] including an equity or ownership interest in a practice or in a commercial entity holding itself out as offering health care services as defined in (a)1 above. This interest does not, however, include ownership of a building or component thereof wherein the space is leased, in writing, to a person or entity at the prevailing rate under a straight lease agreement (that is, a fixed fee for a fixed term), or any interest held in securities publicly traded in the United States.

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

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Advertising; Endorsements; Referral Fees

Adopted Amendment: N.J.A.C. 13:44-2.11

Adopted Repeal: N.J.A.C. 13:44-2.7

Adopted Repeal and New Rule: N.J.A.C. 13:44-2.5

Proposed: September 8, 1992 at 24 N.J.R. 3017(a).

Adopted: October 23, 1992 by the Board of Veterinary Medical Examiners, Thomas Sanquini, V.M.D., President.

Filed: November 2, 1992 as R.1992 d.478, **without change.**

Authority: N.J.S.A. 45:16-3.

Effective Date: December 7, 1992.

Expiration Date: August 7, 1994.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:44-2.5 Referral fees

It shall be professional misconduct for a licensee to pay, offer to pay, or to receive from any person any fee or other form of compensation for the referral of a patient. The prohibition in this section shall not prohibit the division of fees among licensees engaged in bona fide employment, partnership or corporate relationship for the delivery of professional services.

13:44-2.7 (Reserved)

13:44-2.11 Advertising

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

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

1.-2. (No change.)

3. Any statement or claim or implication arising therefrom that licensee is a specialist where Board certification in the claimed area exists and the licensee does not possess such certification. Where Board certification in an area of claimed expertise does not exist, the use of the term "specialist" or its substantial equivalent shall not be utilized provided, however, that nothing herein shall prohibit truthful and non-deceptive statements concerning a licensee's experience or training in a particular area of veterinary practice.

4. (No change.)

5. An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to com-

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ment upon. An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and the failure to do so, if required by the Board, may be deemed professional misconduct.

6.-8. (No change.)

(d) The board may require a licensee to substantiate the truthfulness of any objective material claim or misrepresentation set forth in an advertisement. Failure of a licensee to provide factual substantiation to support that representation or claim shall be deemed professional misconduct.

(e)-(j) (No change.)

(k) Copies of all printed advertisements and video or audio tapes of every advertisement communicated by electronics media shall be retained by the licensee and made available for review by the Board or its designee upon request for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

(a)

DIVISION OF CONSUMER AFFAIRS

Per Diem Compensation for Members of Professional and Occupational Licensing Boards

Readoption with Amendments: N.J.A.C. 13:44B

Proposed: September 8, 1992 at 24 N.J.R. 3019(a).

Adopted: October 28, 1992 by Robert J. Del Tufo, Attorney General, and October 29, 1992 by Samuel Crane, State Treasurer.

Filed: November 2, 1992 as R.1992 d.480, **without change.**

Authority: N.J.S.A. 45:1-2.5

Effective Date: November 2, 1992, Readoption
December 7, 1992, Amendments.

Expiration Date: November 2, 1997.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed readoption with amendments. The official comment period ended on October 8, 1992. Announcement of the opportunity to comment on the proposed readoption appeared in the New Jersey Register on September 8, 1992 at 24 N.J.R. 3019(a). Announcements were also forwarded to the Star Ledger, the Bergen Record, the Asbury Park Press, the Trenton Times, all professional and occupational licensing boards, the Consumers League of New Jersey and to various professional groups and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting Emma N. Byrne, Director, Division of Consumer Affairs, Post Office Box 45027, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Comments from two licensing boards were received during the 30-day comment period.

The Board of Cosmetology and Hairstyling stated that it supports the proposal to the extent it will allow Board members to continue to receive some per diem compensation. However, the Board feels the existing per diem rate is grossly inadequate and objects to the fact that members of the Board of Medical Examiners and the Real Estate Board are compensated at higher rates. The Board of Accountancy stated that the regulation was discriminatory because Medical Board members are compensated at a higher rate. The Accountancy Board suggested the per diem rate should be reviewed to put all Board members on equal footing.

Statutory amendments in 1985 and 1989 specified the dollar amount of per diem compensation for members of the Board of Medical Examiners and the annual rate for the Real Estate Commission (not, as mistakenly suggested by the commenter, the Board of Real Estate Examiners). Accordingly, while the Attorney General has authority to set a compensation rate not to exceed $100.00 per diem or $2,500 annually for all other professional and occupational licensing boards, the setting of compensation rates for the Medical Board and the Real Estate Commission is not within the discretion of the Attorney General under N.J.S.A. 45:1-2.5. While there is broad support for an increase in the per diem compensation rate, the current fiscal climate in the State precludes any change at this time.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:44B.

Full text of the adopted amendments follows.

13:44B-1.1 Per diem rates for members and officers of a board or commission designated in N.J.S.A. 45:1-2.1

(a) Except as set forth in (c) below, each member and officer of a Board or commission designated in section 1 of P.L. 1971, c.60 (N.J.S.A. 45:1-2.1) shall be paid as follows:

1. For a full day of services: $50.00;
2. For less than a full day of services: $25.00.

(b) For the purpose of (a) above, a full day of services shall constitute not less than five working hours.

(c) The per diem payment schedule set forth in (a) above shall not apply to members of the New Jersey Real Estate Commission, who shall be paid pursuant to N.J.S.A. 45:15-6, or to members of the State Board of Medical Examiners, who shall be paid $150.00 for a full day of services and $75.00 for less than a full day of services.

PUBLIC UTILITIES

(b)

BOARD OF REGULATORY COMMISSIONERS

Notice of Administrative Correction

Rules of Practice

Procedures of Board on Filing of Petition

N.J.A.C. 14:1-5.4

Take notice that the Board of Regulatory Commissioners has discovered an erroneous cross-reference in the text of N.J.A.C. 14:1-5.4(c). The cross-reference in that subsection to N.J.A.C. 14:1-5.6 and 5.7 predates recent significant amendments to the chapter (see 23 N.J.R. 2487(a) and 24 N.J.R. 2063(c)). These amendments included the elimination of N.J.A.C. 14:1-5.7 and the modification and recodification of N.J.A.C. 14:1-5.6 as N.J.A.C. 14:1-4.5. In order to maintain the proper cross-reference to the rule on service of pleadings, the current reference to N.J.A.C. 14:1-5.6 and 5.7 is corrected through this notice to N.J.A.C. 14:1-4.5. This notice of administrative correction is published in accordance with 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]):

14:1-5.4 Procedures of Board on filing of petition

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

(c) Unless otherwise directed by the Board, petitions and subsequent pleadings shall be served by the parties as provided for in N.J.A.C. 14:1- [5.6 and 5.7] **4.5.**

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

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TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Route N.J. 38 in Burlington County

Adopted Amendment: N.J.A.C. 16:28A-1.27

Proposed: October 5, 1992 at 24 N.J.R. 3492(b).
Adopted: November 6, 1992 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: November 10, 1992 as R.1992 d.495, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, and 39:4-198.
Effective Date: December 7, 1992.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.27 Route 38

(a) The certain parts of State highway Route 38 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing along both sides from the Hainesport Township-Lumberton Township corporate line to the easterly curb line of South Pemberton Road (end of State jurisdiction), including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act and N.J.A.C. 1:30, in the following municipalities in Burlington County:

i. In Lumberton Township; and

ii. In Mount Holly Township.

2. No stopping or standing along both sides for the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedures Act and N.J.A.C. 1:30, in the following municipalities in Burlington County:

i. In Maple Shade Township; and

ii. In Mount Laurel Township.

(b) The certain parts of State highway Route 38 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-2. (No change.)

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Corporation Business Tax Recycling Tax Credit

Adopted Amendment: N.J.A.C. 18:7-3.18

Proposed: August 17, 1992 at 24 N.J.R. 2809(a).
Adopted: November 2, 1992 by Leslie A. Thompson, Director, Division of Taxation.
Filed: November 2, 1992 as R.1992, d.479, **without change.**
Authority: N.J.S.A. 54:10A-27.
Effective Date: December 7, 1992.
Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The State Taxation Committee of the New Jersey Society of CPAs, in responding to the proposed changes to N.J.A.C. 18:7-3.18, stated that they believe that the term "cost of recycling equipment" should include direct and peripheral costs associated with the equipment and that the proposed changes are arbitrary and are incorrectly interpreting the applicable statute. For the reasons cited below, they respectfully requested that the term "cost of recycling equipment" include all costs included in the basis used for Federal income tax purposes.

Expenditures such as installation, construction labor, engineering and freight costs are not "peripheral" or "indirect" since they are all directly crucial and necessary to the construction and operation of the equipment.

Since neither the statute nor the existing regulations provide any explicit guidance as to what type of expenditures are deemed to be included in "cost" for purposes of computing the credit, we have cited the following relevant authorities to support the position that these expenditures should be included in the tax base:

1. **N.J.A.C. 18:7-3.18**—In the example provided in this regulation, the credit is to be computed using the "Federal cost basis". Pursuant to Sec. 1016 of the Internal Revenue Code, the cost basis of equipment must be determined by including any expenditures that are properly chargeable to a capital account. Expenditures for construction, engineering, installation and freight are properly chargeable to the capital account. Since the example in the New Jersey regulation allows the Federal cost basis and since the federal statute includes these expenditures in the cost basis, these expenditures should be allowed in determining the "cost" of the equipment for purposes of the credit. Taxpayers who have relied on the "Federal cost basis" definition and have purchased equipment with an expectation of receiving the full credit will be unjustly penalized.
2. **Instructions to Schedule W**—The instructions to calculating the recycling tax credit clearly allows for the use of the Federal income tax basis. The proposed changes would be inconsistent with the instructions.
3. **Senate Committee Statement**—In determining the legislative intent for the credit, the Senate Revenue, Finance and Appropriations Committee Statement, Senate No. 1478 and Assembly No. 1781—L.1987, c.102 gives guidance in this area. In this statement, the Committee refers to the credit as an "investment tax credit". The term "investment tax credit", which is a federal tax concept that includes costs such as construction, engineering costs, installation and freight costs in computing the investment credit, would include these expenditures. See Treasury Regulation 1.46-3(c). Therefore, for taxpayers who purchase recycling equipment, the New Jersey legislators intended to determine the asset cost basis in a manner similar to that allowed for Federal tax purposes. Furthermore, these costs are considered expenditures which are "invested" in the equipment. Thus, looking to the common definition of "investment", one would include these types of expenditures.
4. ***Futurevision Cable Enterprises, Inc. v. Taxation Division Director,*** Tax Court of New Jersey, December 7, 1983. The court held,

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in this case, that a cable television company's capitalized labor and overhead costs associated with the installation of its cable on utility poles were properly included in the cost of the cable subject to tax. Although the issue in *Futurevision* was related to whether similar expenditures were included in the cost basis for personal property tax purposes, the rationale used in that case should be equally applicable in this situation. In *Futurevision,* the taxpayer maintained that labor and overhead costs incurred in installing its cable should not be included in the personal property tax base because the statute did not mandate such inclusion. Similar to N.J.S.A. 54:10A-5.3(a) (the CBT statute governing the recycling tax credit) the statute related to the business personal property tax did not define what expenditures are to be included in "cost". However, the applicable regulation, N.J.A.C. 18:9-4.2, provided that the cost of business personal property acquired by purchase is the actual cost in money of that property to a taxpayer resulting from an arm's-length transaction and includes not only the entire purchase price but also all the expenditures necessarily incurred in the preparation and installation of the property for operational use in the business. Typical expenditures, according to this regulation, include any installation charges, freight charges, insurance in-transit, sales tax and other charges related to the asset and usually capitalized for Federal income tax purposes.

Before considering the issue of whether the director had sufficient authority to prescribe this regulation or whether this regulation exceeded the statutory intent, the court decided that the term "cost" should include the capitalized labor and overhead costs "since the expenditures incurred in the placement of plaintiff's cables for operational use and additionally because plaintiff admittedly has capitalized on its books and in its records, and for federal income tax purposes, the costs in issue here". This case illustrates that in determining "cost", these general principles should be used irrespective of whether there is a regulation.

Therefore, since expenditures such as on-site construction, engineering costs, installation, and freight are required to build the equipment and have the recycling equipment ready for operational use are required to be capitalized for financial reporting purposes and are required to be capitalized for federal income tax purposes, such expenditures should properly be included in the "cost" of the equipment in computing the recycling credit.

Also, in both the personal property tax and the CBT tax, the Director issued guidelines interpreting the cost basis (i.e. the regulation for the personal property tax and the instructions for the CBT tax).

5. **Equity and Fairness**—Under the Division's proposed interpretation of the term "cost", taxpayers who contract with a third party for a "turn-key" project (i.e. purchasing the equipment with all costs included in a lump sum price) would obtain the full benefit of the credit since that taxpayer would not incur any separate expenditures, such as construction labor, engineering costs, installation and freight, beyond the agreed upon price. However, if a taxpayer were to purchase the components of the equipment and separately contract for installation, construction, or fabrication, such costs would not qualify for the credit as presently interpreted by the State. This result seems inconsistent and unevenly applied. In the scenario presented above, a taxpayer may be inclined to contract for the finished equipment, thus making the entire cost (which would include the expenditures in the lump sum price) eligible for the credit. The mechanics of this transaction should not govern whether the expenditures are eligible for the credit. Taxpayers that obtain the same type of recycling equipment should be awarded the same amount of credit based on their total respective costs.

These expenditures are necessary to perform the recycling function to which the equipment relates. The equipment would be inoperative and worthless without the necessary expenditures. Therefore, the credit base should include these total expenditures incurred in building the equipment and making the equipment ready for recycling. In light of the need to recycle and reduce waste before reaching our landfills, the DEP has formulated incentives and objectives to encourage recycling. To reach these objectives, the term "cost" should not be so narrowly defined since the tax incentive element could be nonexistent for those taxpayers who are considering self-constructing or self-fabricating recycling equipment.

In summary, based on the aforementioned reasons, we respectfully request that "cost" be defined to include all expenses necessary to build the equipment and make it functional.

RESPONSE: Prior to making the rule proposal, the Division of Taxation carefully reviewed the legislative history of the statute.

The essential language of the recycling tax credit is embodied in N.J.S.A. 54:10A5-3a:

> A taxpayer who *purchases* recycling equipment . . . shall be entitled to a credit . . . in an amount equal to 50% of the *cost of the recycling equipment*. [Emphasis added.]

The recycling tax credit was proposed as a result of a progress report on New Jersey's funding of recycling programs issued by the New Jersey Department of Energy and the New Jersey Department of Environmental Protection entitled *Recycling in the 1980s*, October 1984. (The New Jersey Recycling Act, N.J.S.A. 13:1E-92 et seq., was originally passed in 1981 to establish a recycling fund to assist municipalities in promoting recycling programs.) Included in the recommendations to the Legislature, the joint report emphasized that, in order to promote a successful statewide mandatory recycling program, various tax incentives should be explored. One proposal included a 20% investment tax credit for those industries that invested "in recycling transportation, processing, manufacturing equipment and structures." (*Recycling in the 1980s* pp. 51-53.)

The initial legislative proposals seeking to enact the recycling tax credit, Senate Bill 2820 (1985) and Assembly Bill 3382 (1985), contained a provision for a 20 percent investment tax credit. In the course of public hearings held in May 1985, however, several groups representing the recycling industry urged that the tax credit be raised to 50 percent of the cost of the recycling equipment, with a ten-year carryover period. (See Public Hearing Before Assembly Agriculture and Environment Committee, May 2, 1985, p.75.)

The recycling tax credit proposals were reintroduced in the 1986 legislative session as part of Senate Bill 1478, which focused on statewide, mandatory recycling of solid waste. This bill granted the previously recommended recycling tax credit of 50 percent of the cost of eligible equipment against a corporation's franchise tax liability but limited the total credit of 50 percent to a 20 percent per year write-off. Statement by the Senate Revenue, Finance and Appropriations Committee, June 19, 1986. At that time, the Senate Committee noted that the fiscal impact of such a recycling tax credit would be a loss in corporate tax revenue of approximately $7 million per year and, consequently, recommended that the tax credit provision apply to taxable years beginning on or after October 1, 1987 and expire on December 31, 1996. The mandatory recycling program, including the recycling tax credit, became effective April 20, 1987. On that same date, a news release from the Office of the Governor characterized the recycling tax credit of 50 percent as applicable solely to the "purchase price of certain recycling equipment to [sic] any person who buys equipment for use in the State." (See "News Release," Office of the Governor, April 20, 1987.)

In construing specific terms of a statute, certain guiding principles must be followed. One such principle is that, absent an explicit definition by the Legislature, "words in a statute are to be given their ordinary and primary meaning." *Kingsley v. Hawthorne Fabrics, Inc.*, 41 *N.J.* 521 (1964). ("The legislature is presumed to know the common usage of phrases and, in the absence of intent to the contrary, to have employed them in their natural and ordinary meaning." *Clark v. Degnan,* 163 *N.J. Super.* 344, 372, (Law Div. 1978), mod. and aff'd 83 *N.J.* 393 (1979)). "Cost" is defined as "the amount or equivalent paid or charged for something: price." Webster's Ninth New Collegiate Dictionary (1988). Since the Legislature did not attribute any special or technical meaning to the term "cost" in the statute, the Division holds the view that, under the "plain meaning" rule, the "cost" is the actual price paid for the recycling equipment, machinery, or apparatus exclusive of any peripheral costs associated with the purchase, installation, or construction of the eligible equipment.

Accordingly, the Division has concluded that "cost" should be defined narrowly to include only the "purchase price" or "invoice cost" of the eligible equipment and should not be defined more broadly as the commenters have urged.

The quotations to relevant authorities were submitted because the commenters believe that neither the statute nor existing regulations provide any explicit guidance as to what type of expenditures are deemed

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to be included in "cost." The response to the specific points raised are made in the context of the overriding significance of the legislative analysis set forth above.

1. It should be noted that the rule adoption published at 20 N.J.R. 2319 (September 6, 1988) deleted at N.J.A.C. 18:7-3.18(d) the phrase "the same basis as used for Federal tax purposes" and replaced it with the term "cost." The present rule proposal gives explicit guidance to taxpayers for purposes of calculating the recycling credit. Thus, as noted in the summary to the proposal at 24 N.J.R. 2810 (August 17, 1992), based upon the amendatory language in 1988, taxpayers and their representatives would have been on notice that the Federal cost basis is not used under the credit.

2. The instructions to Schedule W do not bind the Division's regulatory position. In the course of reviewing and updating forms, the Division will revise and correct the instructions to Schdule W as needed.

3. With regard to the reference to the statement of Senate Bill 1478 and Assembly Bill 1781, the issue of legislative interpretation of Senate Bill 1478 has been addressed earlier in this letter; notice is taken of the news release from the Governor's Office which refers to "purchase price."

4. The letter refers to the discussion in *Futurevision Cable Enterprises, Inc. v. Taxation Div. Dir.*, 6 *N.J. Tax* 149 (1983) dealing with sales and use tax and business personal property tax. It is of note that in that case and a pertinent general principle "is that exemptions from taxation are to be strictly construed against the claimant, because they represent a departure from the proposition that everyone should bear his just and equal share of the public burden of taxation" at p. 161, and see cases cited therein. As the letter points out, the taxpayer in that case was challenging an existing rule, N.J.A.C. 18:9-4.2, and Judge Andrew concluded that the rule was statutorily authorized and that taxpayer, plaintiff, did not meet its burden of establishing that the rule is arbitrary, capricious, unduly onerous or otherwise unreasonable. The Division notes that it is not bound by this prior determination.

5. Equity and Fairness. The commenters make the point that taxpayers who contract with a third party for a turnkey project (that is, purchasing the equipment with all costs included in a lump sum price) would get a larger credit than those taxpayers which purchase components of equipment and separately contract for installation, construction, or fabrication. In analyzing this factual issue, the Division believes that the words of the statute refer to a taxpayer being the purchaser of the recycling equipment, not that a contractor, third party, be the purchaser of such equipment later to be resold to the taxpayer. The Division believes that fairness would be achieved in this instance if a purchaser of a turnkey contract valued this contract on a "cost plus" basis whereby the credit related only to the invoice cost of the recycling equipment itself and not to installation charges, etc. or other value added by the contractor. This would produce equity between the direct purchaser of the equipment and a turnkey purchaser in the context of the rule.

COMMENT: Paul R. Murphy, Esq., commented in behalf of the Taxation Section of New Jesey State Bar Association, more particularly, its Corporate and Individual Taxation Committee as follows:

> We have reviewed the proposed Amendments to N.J.A.C. 18:7-3.18 which were published in the New Jersey Register on August 17, 1992. In addition, we have had an opportunity to review a letter to you from the New Jersey Society of Certified Public Accountants dated September 2, 1992.
>
> We concur with the comments set forth in the letter from the New Jersey Society of Certified Public Accountants. We are especially concerned that the proposed change to the definition of "cost of recycling equipment" is wholly inconsistent with the legislative intent. We believe that the proposed change fails to recognize the nature of the equipment at issue. This equipment is not "bought off the shelf." It requires substantial design engineering to tailor the installation to the taxpayer's needs. Accordingly, if the legislative intention to encourage the installation of such equipment is to be fulfilled, the taxpayer must be given credit for the entire cost of designing and installing the equipment. The definition of "cost": under Section 1016 of the Internal Revenue Code should be used.

RESPONSE: The Division refers Mr. Murphy to its response to the New Jersey Society of Certified Public Accountants, above, and notes that, in the absence of further clarification from the legislature, the Division believes that it is constrained to restrict the meaning of "cost" to the invoice cost of the equipment, exclusive of peripheral costs associated with installation or construction. With regard to legislative intent, the Division would note that, although the purpose was to encourage the recycling industry, the legislature expressed concern about the fiscal impact of the credit by providing for its expiration in 1996 and by confining the scope of the credit to a narrow class of recycling equipment. The statute also places a "cap" on the amount of the credit allowable each year and limits the carryover period of the credit. In general, there is nothing in the legislative history to suggest that the term "cost" should be interpreted to mean anything other than its plain meaning of purchase price.

The credit, finally, does not appear to have been modeled on Federal credit provisions and is not related to the CBT defintion of "entire net income," so the Division would not be required to follow the definition of cost under I.R.C. section 1016 or other Federal provisions. Accordingly, the Division declines to make the changes proposed by the Tax Section of the Bar Association at this time.

COMMENT: Robert A. Woodford, writing on behalf of the New Jersy Business and Industry Association, states that the definition of "cost of recycling equipment" proposed in N.J.A.C. 18:7-3.18 appears to be excessively narrow and not in accord with what we perceive to be the Legislature's intent to provide a credit measured by the purchaser's actual acquisition cost of recycling equipment. Because a purchaser cannot acquire such equipment without payment of shipping costs and sales tax, those costs should be included in "cost of recycling equipment." He noted that the Legislature selected the term "cost" in lieu of any narrower term. He agrees that "design and engineering costs," "installation" and "site preparation" are properly excluded because these expenses are not costs of acquiring recycling equipment.

RESPONSE: The Division has evaluated this comment, and those of the other two commenters, and has concluded that "cost" should be defined narrowly to include only the "purchase price" or "invoice cost" of the eligible equipment and should not be defined more broadly. The Division refers Mr. Woodford to its response to the NJSCPA, above.

Full text of the adoption follows:

18:7-3.18 Recycling tax credit

(a) As used in this section:

"Cost of recycling equipment" means the "invoice cost" or "purchase price" of the eligible equipment itself. The term does not, for example, include peripheral or indirect costs associated with the purchase, installation or construction of the eligible equipment. Ineligible costs include, but are not limited to, sales tax, shipping costs, design and engineering costs and site preparation.

(b)-(f) (No change.)

(g) The equipment must be used in New Jersey during the year to be eligible for the tax credit.

Example: XYZ Corporation begins to use qualified recycling equipment in this State on January 2, 1990. The cost of the equipment, excluding sales tax, shipping and installation, is $100,000 and the taxpayer did not receive any loans from the recycling fund to help with the purchase of the equipment. The taxpayer receives an enterprise zone employee tax credit of $5,000 and their corporate tax liability after the credit is $30,000. The credit for the taxpayer is the lesser of $10,000 ($100,000 cost × 50 percent (total credit allowable) × 20 percent maximum yearly credit), or $15,000 (50 percent of the tax liability after the enterprise zone tax credits). In this case the allowable credit for XYZ Corporation is $10,000, the lesser of the two amounts.

(h) (No change.)

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OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Official Zoning Map

Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: May 4, 1992 at 24 N.J.R. 1690(b).

Adopted: November 5, 1992 by the Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Filed: November 6, 1992 as R.1992 d.487, **with substantive and technical changes** not in violation of N.J.A.C. 1:30-4.3.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Effective Date: December 7, 1992.

Expiration Date: May 26, 1993.

The proposed amendment to the Official Zoning Map of the Hackensack Meadowlands District was to rezone 286 acres of property in North Bergen and Jersey City from the Light Industrial and Distribution A Zone to the Heavy Industrial Zone. The adopted amendment to the Official Zoning Map of the Hackensack Meadowlands District consists of a change in the zoning designation of the following Blocks and Lots from the Light Industrial and Distribution A Zone to the Public Utilities Zone.

BLOCK/LOT	MUNICIPALITY
485	North Bergen
442	North Bergen
446A/2	North Bergen
446/1	North Bergen
446/B2C2	North Bergen
446/B1C1	North Bergen
446/A	North Bergen
1000/1	Jersey City
1000/6 (portion)	Jersey City
1000/13 (portion)	Jersey City
1000/12	Jersey City
1000/2	Jersey City
1000/4	Jersey City
1000/8	Jersey City
1000/9	Jersey City
1000/10	Jersey City
1000/11	Jersey City
1001/1	Jersey City
1001/8	Jersey City
1001/2	Jersey City
1001/6 (portion)	Jersey City
1001/7	Jersey City
1050/1	Jersey City
1050/2	Jersey City
1050/3	Jersey City
1050/4	Jersey City
1050/5	Jersey City
1050/6	Jersey City
1050/9	Jersey City
1002/1	Jersey City

Summary of Revisions Between Proposal and Adoption:

The differences between the proposed amendment and the adopted amendment are the direct result of public comments made during the public hearing. The area of rezoning has been **reduced** in size from 286 acres to 155 acres; these acres have been rezoned to the Public Utilities Zone, a **more restrictive** zone than the requested change to the Heavy Industrial Zone. A reverter clause was also adopted by the Commission which requires the affected properties to revert to their former Light Industrial and Distribution A Zone designation upon any termination of use of the properties for intermodal or rail usage.

This rezoning was adopted with these changes due to the following determinations:

1. **Size:** The entire 286 acre tract that was the subject of the rezoning application is **not** needed for development of an intermodal facility. No reason was put forth by the applicant to support a change in the rezoning of properties beyond the 155 acres that are actually contemplated for development of the rail facility. A determination was also made that warehouse facilities, which the applicant testified would be developed within close proximity to any intermodal facility, are not permitted in the Heavy Industrial Zone. They are, however, permitted in the Light Industrial and Distribution A Zone. These determinations supported a decision to reduce the size of the rezoning.

2. **Zone Change:** The change from the requested Heavy Industrial Zone designation to the Public Utilities Zone places greater restrictions on the development of the properties than was requested. As stated during the public hearing, permitted uses in the Heavy Industrial Zone include contractor and construction yards, auto storage and repair garages, and resource recovery systems, uses to which strenuous objections were delivered by municipal officials. The Public Utilities designation does **not** permit these uses. All other yard and lot requirements are the same in both zones. In a different vein, it was pointed out during the public hearings that warehouse facilities, which the applicant testified would be developed within close proximity to any intermodal facility, are not permitted in the Heavy Industrial Zone. They are, however, permitted in the Light Industrial and Distribution A Zone. These determinations supported a decision to retain the current Light Industrial and Distribution A Zone designation in a portion of the tract.

3. **Reverter Clause:** This rezoning decision was based upon, among other reasons, the fact that the subject area is at the southern terminus of the New York Susquehanna and Western Railway. This tract, therefore, is uniquely suited to the particular proposed use. The rezoning is, consequently, appropriate for **that** specific use, and not others. The Commission decision, therefore, includes a reverter clause which states that upon any termination of the use of this property for an intermodal or rail use, the affected properties revert to their former Light Industrial and Distribution A Zone designation. This determination is in further support of the comments made at the public hearing regarding the appropriateness of uses within the subject tract.

It is for these reasons that the Commission adopted the revised rezoning and believes that this adoption can be made without need for any new public hearings.

Summary of Hearing Officer's Recommendations and Agency Response:

A public hearing was held on May 21, 1992, and continued on May 28, 1992, at the Commission's Offices in Lyndhurst. These hearings were chaired by Thomas Marturano, PE, PP, the Director of Solid Waste and Engineering. There were approximately 30 people in attendance, including government officials and members of the general public. An opening statement explaining the proposed rezoning request was read into the record and the applicant proceeded to make his presentation. The applicant was represented by Lee Cohen, Esq. of DeCotiis and Pinto, Hackensack, New Jersey. The following individuals testified on behalf of the applicant in support of the rezoning:

Malcolm Kasler, P.P.
David Soule
Walter Gardiner
Richard Hensel, P.E.
Cliff Marks, P.E.
Mario Cammarano, P.E., RA

A copy of the transcript of the public hearing, as well as copies of all submitted exhibits, may be reviewed or obtained from the HMDC, One DeKorte Park Plaza, Lyndhurst, New Jersey 07071.

No recommendations were made by the hearing officer at the time of the public hearings.

Summary of Public Comment and Agency Responses:

The following is a list of people who raised concerns regarding the proposed rezoning either during the public hearing or in subsequent letters forwarded to the Commission, their comments, and the agency response.

Comments received during the public hearing:

COMMENT: Anthony Just, Mayor of Secaucus, spoke in opposition to the application due to the potential for increased traffic congestion in an area that is already inundated, the impact that this project would have on Secaucus in addition to other proposed projects such as Allied Junction, and a potential negative tax ratable impact of the proposed

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rezoning from Light Industrial to Heavy Industrial Zoning.

RESPONSE: The Commission is of the opinion that the rezoning, as adopted, will not result in increased traffic congestion for the area. Traffic in the area will increase, whether it is developed in accordance with the present zoning, or the recommended zoning. The benefit that development in accordance with the recommended zoning will bring is that the truck traffic will be off peak, therefore not bringing traffic to the area during currently congested peak hours. The Secaucus Road grade crossing discussed at the public hearings as another traffic impediment, will be the subject of future public hearings held by various agencies, including the New Jersey Department of Transportation, at which time the specific traffic impacts of the grade crossing will be discussed. The applicant will also be required to pay his fair share of the proposed traffic improvements to Secaucus Road and Tonnelle Avenue which can only result in the hastening of these improvements to the area.

Commission staff is also of the opinion that this project will not have a negative impact on Secaucus, either in conjunction with other projects, such as Allied Junction, that are proposed in Secaucus, or on tax ratables. As discussed above, the adopted rezoning will not result in traffic increases during the peak hours of Allied Junction traffic. Allied Junction is also not designed as, nor are provisions made for, the facility to serve as a junction point for large numbers of peak hour, non mass transit users of local roads. The access roads to both of these projects will be designed adequately to insure that traffic congestion in the area is not further impaired. While tax impacts are not normally discussion points of a rezoning, it is important to realize that tax impacts, due to the Hackensack Meadowlands Development Commission Tax Sharing Formula, are not endemic to municipalities in which the development occurs. In the same manner that the intermodal operation will serve as a benefit to the Meadowlands region, so too those benefits, which will be in the form of increased importance and utilization of the Meadowlands warehouse and distribution centers, will be positive tax ratable impacts to the Meadowlands District communities.

COMMENT: Joseph Auriemma, Township Manager of North Bergen; Albert Manzo, Chairman of the North Bergen Planning Board; and Perry Maher, Vice Chairman of the North Bergen Planning Board, spoke in opposition to the proposed rezoning, citing the failure by the applicant to present a convincing argument to prove that the subject area is best served by a rezoning from Light Industrial to Heavy Industrial. The development of warehouse and hybrid terminal buildings and support facilities, which is a rationale for the proposed rezoning, are already permitted in the present zoning, and the proposed rezoning would allow the citing of recyling or solid waste transfer facilities, and other heavy industrial uses which are not permitted in the present zoning and would not be desired by the Township. They also stated that the rezoning will result in increased traffic in the area from the proposed use and the proposed grade crossing on Secaucus Road; these uses will need additional municipal services without generating any real growth to the Township's ratable base, and potential negative wetland impacts.

RESPONSE: The Commission concurs with the opinion that the Heavy Industrial Zone is not the appropriate zone for the subject area and has instead rezoned a small portion of the subject tract to the Public Utilities Zone, rather than the requested Heavy Industrial Zone. This is a more restrictive zone than the Heavy Industrial Zone. While it does permit the intermodal facility, it does not permit the other uses to which the North Bergen officials stated their opposition to siting. The remainder of the subject tract, which is located in North Bergen, will retain its current Light Industrial and Distribution A Zone designation. This will allow the warehouse and support facility development that is expected accessory to the intermodal operation and result in growth in the region's ratable base. The traffic impacts have been reviewed by Staff and it has been determined that the grade crossing issue will be dealt with at future public hearings which will be geared to discussions of specific traffic impacts of the crossing and precautions and safety measure that should be adhered to by the applicant. Staff has also recommended that potential wetland impacts be discussed within the confines of the Special Area Management Plan (SAMP) that is being developed by Federal, State and local officials to review wetland impacts on a regional level. The SAMP hearings will be a format in which to discuss impacts on wetlands.

COMMENT: Mary Ann Bucci-Carter, Senior Planner of the Jersey City Planning Board, read a statement from Acting Mayor Roman citing the realization by Jersey City of the evolving needs of the rail transport industry and the positive potential the proposed facility at this location could have on economic activity for the area and the entire region. Concerns were raised with the project and rezoning as proposed regarding the at grade rail crossing, potential traffic increases, air quality, drainage, the appropriateness of the Heavy Industrial Zone due to the many undesirable uses that would be permitted, and the potential for the zone to actually hinder contemplated development as warehouses, wholesale establishments and other storage facilities are not permitted. The most appropriate action in this matter would seem to be the creation of a new zone that would better control impacts of the proposed railroad use and other compatible uses.

RESPONSE: The Commission concurs with the numerous findings and concerns raised by the Jersey City Planning Board and has investigated each one of them during the review of the application. Staff's response to concerns regarding traffic impacts, the grade crossing, and the appropriateness of the requested Heavy Industrial Zone are as indicated in the above two responses to North Bergen and Jersey City officials. Regional air quality impacts are believed to be positive from this development, as truck traffic will be reduced due to the increased competitiveness and efficiency of freight movement by rail. Drainage concerns will be addressed at the site design stage during the zoning certificate process. Commission staff has also responded favorably to the recommendation of the creation of a new zone more suited to rail development and the control of its impacts by recommending the change from the proposed Heavy Industrial Zone to the Public Utilities Zone, which is a more restrictive zone created for a limited number of uses, including rail facilities.

COMMENT: John Lane, PP of the Hudson County Department of Planning and Economic Development, spoke in opposition to the application as submitted, due to the targeting of Secaucus Road by Hudson County for a widening project, in order to add capacity to the local road network and reduce congestion, and the counter-productive proposal by the applicant to add an on-grade crossing on Secaucus Road. The proposed grade crossing would also negate some of the public benefits of the proposed grade separation on Secaucus Road over the existing Northern Branch of the NYS&WRW crossing by the New Jersey Department of Transportation. Any cancellation of the Secaucus Road grade separation by NJDOT because of the installation of a new grade crossing would be viewed as a major setback for local residents and the business community of Hudson County. The three current intermodal facilities in the area have also indicated that they are far greater traffic generators than the rail freight yards that they are replacing and while perhaps an increase in efficiency, are major new competitors for space on an already congested network. Any developer along a County Road would be expected to pay their fair share to the costs of any planned drainage or roadway improvement. A need has also been recognized by the County to have proper on-site facilities for receiving incoming vehicles at intermodal facilities as the present failure of other facilities to provide this has resulted in the creation of congestion on other County roads.

RESPONSE: The Commission staff concurs with the concerns raised by the Hudson County Department of Planning and Economic Development, and thoroughly reviewed each one during the review of the application. It does not agree, however, that the best response to these concerns is a denial of the application. The rezoning as adopted by the Commission contained herein represents a reduction of the area to be rezoned, as well as a change to a more restrictive zone. These measures will serve to mitigate a number of the concerns raised by the Department. The grade crossing will be more fully discussed at public hearings held by agencies with jurisdiction, including the New Jersey Department of Transportation, and the HMDC. Appropriate conditions and developer requirements can then be placed on the applicant. The publicly funded proposed grade separation and Secaucus Road widening projects will also be the subject of future discussions, and the applicant is expected to be required to pay their fair share of the costs of these projects. On site facilities for receiving incoming vehicles at intermodal facilities will be a site design review item during the zoning certificate process. Staff looks forward to input from the County as to the provision of these facilities during that review.

COMMENT: Edward Pyskaty, of CEG Realty, an owner of adjacent property on Penhorn Avenue, questioned why the application did not include the Penhorn Avenue area and why the applicant did not request a use variance rather requesting a rezoning.

RESPONSE: The Penhorn Avenue area was not included in the area to be rezoned as development has been proceeding along this road in accordance with the Light Industrial and Distribution A Zone rules and Penhorn Creek would serve as a natural boundary between the zones.

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The HMDC recommended to the applicant that they request a rezoning rather than a use variance as the hearing proceedings are basically the same for each and the size of the request made a rezoning request more appropriate.

COMMENT: Mark Zoldessy, Esq., of Walsh Trucking, an owner of approximately 90 acres of property within the subject area, but not an applicant, supported the application as it will complement the Walsh use of the property. He also stated that Walsh has no intention now or ever to use any of these properties for a resource recovery or for any waste facility.

RESPONSE: Staff notes the comment and is of the opinion that the recommended rezoning advances Mr. Zoldessy's statement, as the retention of the Light Industrial and Distribution A Zone will allow the development of other facilities that will complement the intermodal facility, and the Public Utilities zone does not permit Resource Recovery or other waste facilities.

COMMENT: Jenss Finsen, of the Maersk Lines, noted that they are a trucking operation that currently operates out of Croxton Yards, and they would support the application, as it would improve competitiveness in the area.

COMMENT: Carmine Ruggerio, Operations Manager for Hanson Shipping, spoke in favor of the application, as it would give the firm more flexibility and allow them to bring in more containers into the New York-New Jersey area. There is not at present adequate land area for the firm to operate properly. There is also the hope that it will bring in more jobs for the area.

COMMENT: Edmund Baughan, of the Norfolk Southern Railway, stated that the subject area is currently being developed very nicely in a Heavy Industrial area, just as the area along Penhorn Avenue is being developed in a very nice light industrial manner. The NYS&WRW is the only access into the New York-New Jersey area that allows competition via rail. Present customers of the Norfolk Southern had to go elsewhere because of the lack of room at Resource's facility. It is ironic that the property adjacent to the NYS&WRW trackage is zoned in a manner where commerce from that railroad cannot be accommodated. The present situation is an impediment to the business of the corporation. The area for which the rezoning has been requested is the only area that is feasible for rail growth up and down the NYS&WRW trackage. NJDOT has designated the NYS&WRW as a core line, for service to the constituents in the State of New Jersey, and to provide competitive access into the market. This proposal at this location can relieve a lot of the truck traffic congestion in the Meadowlands distribution area.

RESPONSE: Staff accepts the comments in favor of the application and notes that support the recommendation to rezone the area because, among other reasons, an intermodal facility will benefit the Meadowlands Industrial community, it advances the State Rail Plan, and traffic congestion will not be impaired.

Written comments received before or after the public hearing:

COMMENT: Eric S. Martindale, Jr., the Hackensack Meadowlands Coordinator of The North Jersey Group of The Sierra Club; Eric Calder, William Green, Phyliss Mazier, Jerry Cooke, Sandra Miller, Jim McGeorge, Eva Kasten, Tim Franz, Pat Franz, B. Karcheski, Nadine Sperduto, Virginia Calder, and Jill Knowles, all of The Sierra Club, submitted letters in opposition to the application, due to the potential loss of almost 100 acres of wetlands that would have to be filled for the development of the rail facility.

RESPONSE: Staff also recognizes the importance of wetlands and has thus recommended that any wetlands concerns be addressed through the SAMP process. The SAMP process is a joint attempt by Federal and State regulators, with input from environmentalists, property owners, elected officials, public interest groups and members of the general public to develop a regional, planning response to wetland development pressures and the need for preservation. Staff believes that this is the forum under which wetland impacts should be discussed, rather than a rezoning request. Staff also notes that the rezoning application itself does not propose the filling of any wetlands and such activity will be reviewed under the auspices of the Clean Water Act rules and regulations.

COMMENT: Lillian C. Liburdi, Director of the Port Department of The Port Authority of New York and New Jersey, submitted a letter in support of the application, as it will provide the Port with additional competitive rail, trucking and warehousing service and jobs for the import/export community.

RESPONSE: Staff notes receipt of the comment in support of the application and notes that its general comments are in agreement with the rationale behind the recommendation to rezone the area for rail use due to its potential benefits to the Hackensack Meadowlands District industrial community.

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

19:4-6.28 Official Zoning Map

LIST OF PROPERTIES BY LOT AND BLOCK NUMBER *[PROPOSED FOR REZONING TO THE HEAVY INDUSTRIAL ZONE]* ***WHICH HAVE BEEN REZONED TO THE PUBLIC UTILITIES ZONE***

Block/Lot	Municipality	Present Zoning
*[449/A1-2A	North Bergen	Light Industrial/Distribution A
449/17B	North Bergen	Light Industrial/Distribution A
449A/A1-2B	North Bergen	Light Industrial/Distribution A
449A/A1-1	North Bergen	Light Industrial/Distribution A
449A/2-1	North Bergen	Light Industrial/Distribution A
449A/6A2	North Bergen	Light Industrial/Distribution A
449A/6B1	North Bergen	Light Industrial/Distribution A
449A/5	North Bergen	Light Industrial/Distribution A
449A/4	North Bergen	Light Industrial/Distribution A
449A/3-1	North Bergen	Light Industrial/Distribution A
449A/3-2	North Bergen	Light Industrial/Distribution A
449A/1-2	North Bergen	Light Industrial/Distribution A
449A/1-1	North Bergen	Light Industrial/Distribution A
449A/1B	North Bergen	Light Industrial/Distribution A
485	North Bergen	Public Service Electric & Gas R.O.W.]*
442	North Bergen	Public Service Electric & Gas R.O.W.
*[449-A 2-2	North Bergen	Light Industrial/Distribution A
449/6A	North Bergen	Light Industrial/Distribution A
449/10	North Bergen	Light Industrial/Distribution A
449/7	North Bergen	Light Industrial/Distribution A
449/8	North Bergen	Light Industrial/Distribution A
449/9	North Bergen	Light Industrial/Distribution A
449/B2	North Bergen	Light Industrial/Distribution A
449/C1	North Bergen	Light Industrial/Distribution A
449/C2	North Bergen	Light Industrial/Distribution A
449/C3	North Bergen	Light Industrial/Distribution A
449/C4	North Bergen	Light Industrial/Distribution A]*
446A/2	North Bergen	Light Industrial/Distribution A
446/1	North Bergen	Light Industrial/Distribution A
446/B2C2	North Bergen	Light Industrial/Distribution A
446B1C1	North Bergen	Light Industrial/Distribution A
446/A	North Bergen	Light Industrial/Distribution A
1000/1	Jersey City	Light Industrial/Distribution A
1000/6 (portion)	Jersey City	Light Industrial/Distribution A
1000/13 (portion)	Jersey City	Light Industrial/Distribution A
1000/12	Jersey City	Light Industrial/Distribution A
1000/2 (portion)	Jersey City	Light Industrial/Distribution A
1000/4 (portion)	Jersey City	Light Industrial/Distribution A
1000/8 (portion)	Jersey City	Light Industrial/Distribution A
1000/9 (portion)	Jersey City	Light Industrial/Distribution A
1000/10 (portion)	Jersey City	Light Industrial/Distribution A
1000/11 (portion)	Jersey City	Light Industrial/Distribution A
1001/1	Jersey City	Light Industrial/Distribution A
1001/8	Jersey City	Light Industrial/Distribution A
1001/2 (portion)	Jersey City	Light Industrial/Distribution A
1001/6 (portion)	Jersey City	Light Industrial/Distribution A
1001/7 (portion)	Jersey City	Light Industrial/Distribution A
1050/1	Jersey City	Light Industrial/Distribution A
1050/2	Jersey City	Light Industrial/Distribution A
1050/3	Jersey City	Light Industrial/Distribution A
1050/4	Jersey City	Light Industrial/Distribution A
1050/5 (portion)	Jersey City	Light Industrial/Distribution A

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1050/6 (portion)	Jersey City	Light Industrial/Distribution A
1050/9 (portion)	Jersey City	Light Industrial/Distribution A
1002/1	Jersey City	Light Industrial/Distribution A

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, N.J. 07071

Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, N.J. 07071

(a)

CASINO CONTROL COMMISSION

Rules of the Games

New Games; Requirements and Procedures for Application; Declaratory Ruling; Test or Experiment; and Final Approval of New Authorized Game

Adopted Amendment: N.J.A.C. 19:40-1.2
Adopted New Rule: N.J.A.C. 19:47-8.4

Proposed: September 21, 1992 at 24 N.J.R. 3223(a).
Adopted: October 29, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: November 2, 1992 as R.1992 d.474, **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. 5:12-63(c), 69(a), 70(f), 99(a)16 and 100(e).

Effective Date: December 7, 1992.
Expiration Date: August 24, 1994, N.J.A.C. 19:40;
April 28, 1993, N.J.A.C. 19:47.

Summary of Public Comment and Agency Response:

COMMENT: Greate Bay Hotel and Casino, Inc. supported the proposal, and pointed out that the game of Sic Bo appears in N.J.S.A. 5:12-5, and should also be included in the list of authorized games contained in N.J.A.C. 19:40-1.2.

RESPONSE: Accepted. Although the addition of the game of Sic Bo to N.J.A.C. 19:40-1.2 is a substantive change, it is a minor one, and merely brings the rule into conformance with the statute; no additional public notice or comment is necessary to effect the change.

COMMENT: The Division of Gaming Enforcement indicated that it supports the adoption of this proposal.

RESPONSE: Accepted.

COMMENT: The National Football League requested that the proposed rules be modified to make it clear that the Commission cannot approve any kind of sports betting as an "authorized game."

RESPONSE: Rejected. The requested modification of the proposal is unnecessary. The Casino Control Act, N.J.S.A. 5:12-5, clearly defines an "authorized game," and there is no need to clarify or further embellish the statutory definition in this instance.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

19:40-1.2 Definitions

All words and terms which are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) are used in these rules and regulations as defined in that Act. The following words and terms, when used in these rules and regulations, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Authorized game" or "authorized gambling game" means roulette, baccarat, blackjack, craps, big six wheel, slot machines, minibaccarat, red dog, pai gow, ***sic bo*** and any variations or composites of such games, as well as any other games compatible with the public interest, authorized by the Commission pursuant to N.J.S.A. 5:12-5, provided that such games and variations or composites are found by the Commission to be suitable for casino use after an appropriate test or experimental period under such terms and conditions as the Commission may deem appropriate.

. . .

19:47-8.4 New games; requirements and procedures for application, declaratory ruling, test or experiment, and final approval of new authorized game

(a) Interested persons such as casino licensees, casino service industries, and owners, licensees, lessees or franchisees of the rights to a proposed new game, may petition the Commission for approval of the game.

(b) A petition for approval of a proposed new game must include as a petitioner at least one casino licensee who has agreed in writing to participate in a test or experiment of the game in its casino. All petitioners shall be jointly and severally liable for payment of all regulatory review costs and other related expenses incurred by the Commission and the Division of Gaming Enforcement in the review, testing and approval of the game.

(c) A proposed new game may be a variation of an authorized game, a composite of authorized games, or any other game compatible with the public interest and suitable for casino use, pursuant to N.J.S.A. 5:12-5.

(d) A petition for a proposed new game shall be in writing, signed by the petitioners, and shall include the following information:

1. The names and addresses of petitioners;

2. Whether the game is a variation of an authorized game, a composite or authorized games, or another game which is compatible with the public interest and is suitable for casino use;

3. A complete and detailed description of the game for which approval is sought, including:

i. A summary of the game, including the objectives of the game, the method of play and the wagers offered;

ii. The draft of proposed rules describing the equipment used to play the game, and the proposed rules of the game, drafted in a format similar to that found in N.J.A.C. 19:47 and in accordance with the Rules for Rulemaking at N.J.A.C. 1:30, if approved;

iii. The true odds, the payout odds, and the house advantage for each wager;

iv. A sketch or picture of the game layout, if any; and

v. Sketches or pictures of the equipment used to play the game;

4. Whether the game, its name, or any of the equipment used to play it is covered by any copyrights, trademarks or patents, either issued or pending;

5. An assurance that the game has been offered initially to all casino licensees;

6. An agreement, satisfactory in form and content to the Commission, releasing and indemnifying the Commission and the State of New Jersey from all copyright, trademark, patent or other claims of petitioners and any other persons;

7. A request for a declaratory ruling, pursuant to N.J.A.C. 19:42-9.1, that the proposed new game is a variation of an authorized game, a composite of authorized games or is compatible with the public interest, as required by N.J.S.A. 5:12-5;

8. A request for a test or experiment of the game, if approved, under sections 5 and 69(e) of the Act; and

9. Any other pertinent information or material requested of specific petitioners by the Commission or the Division of Gaming Enforcement.

(e) In making a determination whether a proposed new game is an acceptable variation of an authorized game or a composite of authorized games, or is compatible with the public interest, the Commission may consider rules and method of play; true and payout odds; wagers offered; layout; equipment used to play the game; personnel requirements; game security and integrity; similarity to other authorized games or other games of chance; other variations or composites of the game previously approved as authorized games; as well as any other relevant factors. Any such determination shall

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be subject to a condition that the game must undergo a successful test for suitability of casino use under sections 5 and 69(e) of the Act, as provided below.

(f) If the proposed new game is preliminarily approved by the Commission in accordance with section (e) above, petitioners shall submit the following in connection with any proposed test of the game pursuant to sections 5 and 69(e) of the Act:

1. For any petitioner that is not a casino licensee or a casino service industry (CSI) licensee:

i. A completed application for the appropriate type of CSI license, together with the applicable non-refundable license application fee; and

ii. An application for a transactional waiver, pursuant to the Act and rules of the Commission, if required; and

2. A test submission, which shall include, at a minimum:

i. The names of the casinos where the test of the proposed new game will take place;

ii. The dates and times when the test will take place, and the gaming tables or other gaming equipment that will be involved;

iii. The proposed signage to be posted at the entrances to the casinos where the test is to be conducted;

iv. The criteria proposed for use in determining the success of the test, and the methods proposed for documenting it, including any necessary forms; and

v. Any other materials or information requested of specific petitioners by the Commission or the Division of Gaming Enforcement.

(g) A test of the new game pursuant to sections 5 and 69(e) of the Act shall take place at such times and places, and under such conditions, as the Commission may require. The rules of the game and the test may be modified at any time during the test period if the Commission deems it necessary to do so. No final approval of a new game shall be granted until:

1. The Commission has determined that the game is suitable for casino use pursuant to sections 5 and 69(e) of the Act;

2. Any necessary regulatory amendments have been adopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and have become effective.

3. All necessary CSI license applications have been filed, and all necessary transactional waivers have been issued; and

4. All regulatory review costs and other related expenses incurred by the Commission and the Division of Gaming Enforcement in the review, testing and approval of the game, have been paid in full.

(h) Nothing in this section shall be construed to restrict or limit the Commission in any way from proposing new games or game variations on its own initiative, at any time.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Procedure for Opening, Counting and Recording Contents of Drop Boxes and Slot Cash Storage Boxes
Slot Machines and Bill Changers; Identification; Signs; Meters; Other Devices
Adopted Amendments: N.J.A.C. 19:45-1.33 and 19:46-1.26

Proposed: September 21, 1992 at 24 N.J.R. 3253(a).
Adopted: October 29, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: November 2, 1992 as R.1992 d.475, **without change**.
Authority: N.J.S.A. 5:12-69(a), 70(i) and 99(a)10.
Effective Date: December 7, 1992.
Expiration Date: March 24, 1993, N.J.A.C. 19:45;
April 28, 1993, N.J.A.C. 19:46.

Summary of Public Comment and Agency Responses:

COMMENT: The Division of Gaming Enforcement, Resorts International Hotel, Inc., Adamar of New Jersey, Inc. and Greate Bay Hotel and Casino (the "Sands") support the adoption of the proposed amendments.

RESPONSE: Accepted.

COMMENT: The Sands also suggests that slot cash storage boxes should carry a unique identification number different from the asset number. The Sands claims that this would reduce the number of replacement boxes, and thereby provide a savings in both space allocation and the cost of purchasing unneeded replacement boxes.

RESPONSE: Rejected. The Sands' comment is beyond the scope of the present proposal. The Commission will consider and evaluate these suggestions in the near future.

Full text of the adoption follows:

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

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

(h) Procedures and requirements for conducting the count shall be the following:

1.-8. (No change.)

9. As the contents of each slot cash storage box are counted, one count team member shall record on the Slot Cash Storage Box Report or supporting documentation the following information:

i. The asset number of the bill changer to which the slot cash storage box contents correspond;

ii.-v. (No change.)

10.-11. (No change.)

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

19:46-1.26 Slot machines and bill changers; identification; signs; meters other devices

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each bill changer shall have the following identifying features:

1. An asset number that is permanently imprinted, affixed or impressed on the outside cabinet of the bill changer or the slot machine to which it is attached. The asset number must be conspicuous and easily visible to persons involved in removing or replacing the slot cash storage box in the bill changer, and it must correspond to the asset number affixed to the slot machine in accordance with (a) above. The size and location of the asset number must be approved in advance by the Commission;

2.-4. (No change.)

(c)-(i) (No change.)

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PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session Wednesday, January 20, 1993

Take notice that the following agenda items are scheduled for Notice of Proposal in the December 21, 1992 or January 4, 1993 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, January 20, 1993 from 3:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, January 15, 1993.

Rule Proposals:

N.J.A.C. 6:8-9, Educational Improvement Plans for Special Needs Districts (amendments).

N.J.A.C. 6:9, State Facilities Education Act Rules (new rules).

Please note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the December 2, 1992 monthly public meeting.

CORRECTIONS

(b)

THE COMMISSIONER

Notice of Receipt of and Action on Petition for Rulemaking

Reestablishment of an Inmate Liaison Committee

Petitioner: Wali K.A. Muhammad, New Jersey State Prison.
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 10A:1-1.2.

Take notice that on September 14, 1992, the New Jersey Department of Corrections received a petition for rulemaking from Wali K.A. Muhammad, an inmate at the New Jersey State Prison. The petition seeks rulemaking concerning the reestablishment of an Inmate Liaison Committee to be known as the Prisoner Representative Committee (P.R.C.) in order that the Committee can:

1. Act as a liaison between the correctional facility administration and the inmate population;
2. Act as a referral in assisting inmates;
3. Provide the opportunity for inmates, through the Committee representatives, to voice complaints on problems or issues; and
4. Provide the opportunity for inmates, through the Committee representatives, to make recommendations on problems and issues.

Since the inception of the Department of Corrections in 1976, the Department has recognized that there must be a means of communication between the correctional facility administration and the inmate population in order to provide the opportunity for inmates to voice complaints, make recommendations and receive assistance on problems and issues. Accordingly, each correctional facility has developed procedures to achieve this purpose by use of either a centralized Inmate Liaison Committee, or by a means other than the formalization of an Inmate Liaison Committee, such as a decentralized plan where designated correctional facility administrative personnel meet regularly with inmate housing representatives to discuss issues, problems and grievances. These procedures, implemented by correctional facility administrators, are based on, but not limited to, the consideration of security levels of the correctional facility, custody status of inmates, inmate population growth and the physical plant. Therefore, the Department of Corrections finds it inappropriate to develop formal binding rules that apply to all correctional facilities regarding the establishment of Inmate Liaison Committees. The petition for formal rule making is accordingly being denied.

ENVIRONMENTAL PROTECTION AND ENERGY

(c)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Public Meeting

Approval of Annual Budget for Fiscal Year 1994

Take notice that, pursuant to N.J.A.C. 7:60-1.4(b), the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board will hold its annual meeting to approve the budget for Fiscal Year 1994, July 1, 1993, through June 30, 1994. The **public meeting** will be held on Thursday, January 7, 1993, in the 10th Floor Conference Room at Station Plaza III, 44 South Clinton Ave., Trenton, New Jersey. The public meeting will begin at 9:30 A.M. At the public meeting, the Board will take comments on the proposed budget. A **copy** of the proposed budget may be obtained from the NJ Low-Level Radioactive Waste Disposal Facility Siting Board, CN 410, Trenton, NJ 08625-0410, or call (609) 777-4247.

(d)

DIVISION OF PARKS AND FORESTRY

Notice of Public Hearing

Proposed Granting of Easement Comprising Part of Allaire State Park

Take notice that the State of New Jersey, Department of Environmental Protection and Energy by the Division of Parks and Forestry will hold a public hearing to seek comments on the proposed easement of the following State-owned Allaire State Park lands to allow for construction of a sewer forced main line and meter pit on the abandoned portion of Route 524.

Permanent Easement Description

All that certain land at Allaire State Park containing approximately .288 acres designated as a portion of Block 47.02, Lot 25 on the current Tax Map of the township of Howell of County of Monmouth, State of New Jersey. This easement is required to provide for construction of a sewer forced main and meter pit. This easement shall be granted to the Department of Human Services for its sewer connection from the Arthur Brisbane Child Treatment Center.

The easement documents will be available for review Monday through Friday between the hours of 9 A.M. to 4 P.M. at the Allaire State Park Office located on County Route 524, Farmingdale, New Jersey.

The proposed easement land and adjacent State-owned lands serve as recreational lands for active and passive public use. The granting of this easement will not interfere with or affect the use of State-owned lands for this stated purpose.

The **public hearing** will be held on:

Friday, January 8, 1993 at 10 A.M.
at the Allaire State Park Office
Route 524, Farmingdale, NJ 07727

Persons wishing to make oral presentations are asked to limit their comments to a three to five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing record will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

Anyone in need of special assistance to participate in the public hearing should please contact Superintendent Nick DeMicco at (908) 938-2371.

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Interested persons may submit written comments until January 15, 1993 to:

Gregory A. Marshall, Director
Division of Parks and Forestry
Department of Environmental Protection
and Energy
CN 404
Trenton, New Jersey 08625

(a)

WASTEWATER FACILITIES REGULATION PROGRAM BUREAU OF MUNICIPAL DISCHARGE PERMITS OFFICE OF REGULATORY POLICY ENVIRONMENTAL REGULATION

Notice of Public Hearing and Statement of Basis in the Matter of:

Shops at Primrose Brook
Mount Kemble Avenue and Baxter Farm Road
Harding, New Jersey 07976

Draft NJPDES Permit No. NJ0069035

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) proposes a draft New Jersey Pollutant Discharge Elimination System (NJPDES) Permit No. NJ0069035 to restrict and control the discharge of pollutants from the **Shops at Primrose Brook** in accordance with the provisions of the New Jersey "Water Pollution Control Act" (N.J.S.A. 58:10A-1 et seq.) and its implementing regulations (N.J.A.C. 7:14A). The NJDEPE is also seeking public comment on a proposed amendment to the Northeast Water Quality Management (WQM) Plan for this facility.

Implementation of the NJPDES requirements is the regulatory mechanism by which pollutant discharges are brought into conformance and compliance with laws, regulations and standards. The pollution control requirements are those conditions necessary to restrict the discharge of pollutants and protect the public health and the environment.

The Shops at Primrose Brook is a proposed retail shopping center covering approximately 40,000 square feet and containing a 50 seat restaurant. The facility will generate a sanitary wastewater design flow volume of 6,125 gallons per day of which approximately 4,225 gpd will be treated and recycled. Only approximately 1,900 gpd of the wastewater shall be discharged from the facility. The sanitary wastewater treatment system shall consist of a Wastewater Recycling and Treatment System that will treat the 1,900 gpd of discharge wastewater to the following limits:

Flow <2,000 gpd
pH = 5-9 S.U.
Total Nitrogen (Nitrate + Ammonia Nitrogen) = 3 mg/l
Coliform Bacteria = 2 colonies/100 ml
Phosphorus = 0.16 mg/l

The discharge limits were based on ambient surface water quality of Primrose Brook as described in the *Great Swamp Water Quality Monitoring Study Data Report* (January, 1988), and a ground water dilution model provided by the permittee. The limits were developed in order to prevent the ground water discharge from contravening the water quality of Primrose Brook pursuant to N.J.A.C. 7:9-6.4(f).

After treatment, the effluent will be discharged to ground water via a subsurface disposal bed. Several ground water quality monitoring wells shall be installed hydraulically downgradient of the disposal bed and in close proximity to Primrose Brook to monitor the effect the ground water discharge may have on ambient surface water quality.

The amendment to the Northeast WQM Plan for the Shops at Primrose Brook was noticed in the March 4, 1991 New Jersey Register. Due to comments received during the public comment period, the Department withheld action on the amendment pending the NJPDES permit process. The amendment is for an on-site groundwater disposal system to serve the facility described above. The projected wastewater flow and square footage specified in the amendment for this facility have been revised to reflect the figures identified in the draft NJPDES permit.

Take further notice that a **public hearing** has been requested for the NJPDES permit and the amendment to the Northeast WQM Plan and therefore a nonadversarial public hearing has been scheduled for Thursday, January 7, 1993, at 5 P.M. in the Marian S. and Allan P. Kirby Municipal Building, Blue Mill and Sand Spring Road, Harding Township, New Jersey 07976, to afford the public an opportunity to be heard on the proposed actions by the Department. The hearing shall be held before a hearing officer designated by the Department. The permittee and other interested persons will have the opportunity to present and submit information and comment on the proposed terms and conditions contained in the draft permit and the information included in the amendment to the Northeast WQM Plan. In accordance with N.J.A.C. 7:14A-8.3(b) and N.J.A.C. 7:15-3.4(g)7, the **public comment period** for both the NJPDES permit and the amendment shall end 15 days following the public hearing (which is on or before January 22, 1993). In response to this notice, any persons may submit by certified mail written comments concerning the NJPDES permit to Dennis Hart, Administrator of the Wastewater Facilities Regulation Program at the address cited above. Written comments concerning the amendment to the Northeast WQM Plan should be submitted to Barry Chalofsky, Assistant Administrator of the Office of Regulatory Policy at the address cited above.

All persons, including applicants, who believe that any condition of these draft documents is inappropriate or that the Department's tentative decision to issue these draft documents as final agency actions is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All comments submitted by interested persons in response to this notice, within the time limit, will be considered by the NJDEPE with respect to the requirements being applied to this facility. After the close of the public comment period, the Department will make final decisions. The Department will respond to all significant and timely comments when final decisions are made. The discharger and each person who has submitted written comments will receive notice of NJDEPE's final decisions.

The draft NJPDES permit and pertinent data may be examined at the Central File room of the NJDEPE at the address cited above. An appointment to inspect the documents may be arranged by calling the Central File room at (609) 292-0400.

All information dealing with the proposed amendment is located at the Office of Regulatory Policy at the address cited above. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

(b)

WATER SUPPLY ELEMENT

Notice Request for Public Input
New Jersey Statewide Water Supply Master Plan Update
Interested Party Review

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 58:1A-13.

Take notice that the New Jersey Department of Environmental Protection and Energy is proposing the adoption of an update to the New Jersey Statewide Water Supply Master Plan (NJSWSMP), pursuant to the authority of the 1981 Water Supply Management Act. The NJSWSMP is the primary water supply planning document of the Department. Pursuant to the Water Supply Management Act and the 1981 Water Supply Bond Act, only projects included within the NJSWSMP are eligible for appropriations from the Water Supply Bond Fund of $350 million.

The Department is proposing two additional allocations for Water Supply Bond Fund appropriations. First, the allocation for the Water Supply Infrastructure Rehabilitation Loan Program would be increased from $100 million to $120 million to provide loans for applications received during Fiscal Years 1993 and 1994. Second, the allocation for Ground Water Studies would be increased from $18.35 million to $19.35 million to provide funds for mapping of the state's aquifer recharge areas at a map scale of 1:100,000.

The Department is seeking public comment on the draft update prior to formal adoption. The **full draft proposals** are available for public review and comment by writing to:

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Bureau of Water Supply Planning and Policy
Water Supply Element
Department of Environmental Protection
and Energy
CN 029
Trenton, New Jersey 08625

A **public hearing** on the update will be held on:
Wednesday, January 6, 1993 at 10 A.M.
Public Hearing Room, 1st Floor
Department of Environmental Protection
and Energy
401 East State Street
Trenton, New Jersey

Submit written comments by January 20, 1993 to:
Administrative Practice Officer
Department of Environmental Protection
and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

(a)

ENVIRONMENTAL REGULATION

Notice Concerning Areawide Water Quality Management Plans

Invalidation of Restrictions on Development in Freshwater Wetlands

Take notice that the Attorney General's Office has advised the Department of Environmental Protection and Energy that the existing provisions in 12 Water Quality Management Plans that restrict development in freshwater wetlands have been rendered ineffective by the judicial decisions in *New Jersey Chapter of the National Association of Industrial and Office Parks v. New Jersey Department of Environmental Protection,* 241 *N.J. Super.* 145, *certif. den.* 122 *N.J.* 374 (1990). The text of these freshwater wetlands provisions is found at 22 N.J.R. 253(a). The 12 Water Quality Management Plans are for the following areas: Atlantic, Cape May, Lower Delaware, Lower Raritan/Middlesex, Mercer, Monmouth, Northeast, Ocean, Sussex, Tri-County, Upper Delaware, and Upper Raritan. This determination reflects that the current provisions of the plans restrict all development in all wetlands without any evaluation of the water quality impacts that filling the wetlands would have. Since the freshwater wetlands provisions in these Water Quality Management Plans have been rendered ineffective by the above cited decision and thus have no regulatory force, the Department will not enforce these provisions in the administration of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., or other statutes.

The statements in the preceding paragraph apply only to the freshwater wetlands provisions in the 12 Areawide Water Quality Management Plans. The Department is not expressing any judgements about the effect of the decision's impact on other Department programs. In addition, the Department believes that the filling of wetlands which **has an adverse impact on water quality** can be addressed under the Water Quality Management Plans, if regulations are promulgated that specifically establish a link between wetlands filling and a decrease in water quality.

In light of the above, as well as a belief that other changes may be necessary to incorporate the variety of legislative, regulatory, and policy changes that have occurred since the plans were first drafted in the 1970's and early 1980's, the Department is evaluating the Water Quality Management Plans in their entirety. During 1993, the Department will be reviewing the current plans, meeting with local government representatives and other interested people, and holding public workshops to determine what types of changes to these plans are needed. By December 1993, the Department plans to propose any rule changes that may be necessary to move forward with the results of this reexamination.

Accordingly, the Department invites **public comments** on the need to revise 208 Plans and their regulatory framework. Please indicate if you would like to be notified of meetings on this subject and submit any written comments you have at this time to:

Martin A. Bierbaum, Administrator
NJDEPE—Office of Regulatory Policy
CN 423
Trenton, NJ 08625

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth 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 Monmouth County Water Quality Management (WQM) Plan. This amendment would adopt a Wastewater Management Plan (WMP) for the Manasquan River Regional Sewerage Authority (MRRSA). The WMP addresses wastewater management planning for the MRRSA district of Freehold and Farmingdale Boroughs, Howell Township, the majority of Freehold Township, and a portion of western Wall Township.

The WMP delineates all of the planning area, with the exception of a portion of Wall Township, as existing and future sewer service area. The portion of Wall Township not included in the sewer service area is designated as being served by individual subsurface sewage disposal systems. The Wall Township WMP adopted December 5, 1989, is incorporated by reference with the following changes: The site of the State of New Jersey Arthur Brisbane Child Treatment Center is removed from the individual subsurface sewage disposal area and included in the sewer service area to allow for the abandonment of the existing on-site wastewater treatment plant. Additionally, portions of Allaire State Park including the park office, maintenance facility, leased homes along Monmouth County Route 524, and the Spring Meadow Golf Course restaurant, office and maintenance facility are removed from the individual subsurface sewage disposal area and added to the sewer service area. Wall Township retains WMP responsibility for the entire Township.

The site in Freehold Township of La Mirage Dine is added to the MRRSA sewer service area and deleted from the service area of the Western Monmouth Utilities Authority (WMUA). The site remains in WMUA's WMP area.

The WMP modifies the planning area line between the Ocean County WMP area in the North Branch of the Metedeconk River drainage basin and the MRRSA WMP area within the MRRSA district in the Manasquan River drainage basin by means of a voluntary transfer. This modification will more closely follow roadway alignments rather than topographical divides.

Wastewater conveyance facilities are shown extended into Wall Township at two locations along Belmar Boulevard and Hurley Pond Road.

The WMP designates the site of the Lone Pine Landfill in Freehold Township as within the sewer service area (Operable Unit No. 1) and also as the service for a treatment facility greater than 20,000 GPD discharging to groundwater (Operable Unit No. 2). This second unit may ultimately discharge to the MRRSA.

A wastewater flow for the WMP area for the year 2010 of 12.727 gallons per day (GPD) is projected. If the second unit at Lone Pine Landfill discharges to MRRSA this flow projection is increased to 12.871 GPD.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-423, 401 East State Street, Third Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4 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 amendment to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. A copy of the comments should be sent to Franklin O. Williamson, Jr., Executive President, Killam Associates, 27 Bleeker Street, Millburn, New Jersey 07041-1008. All comments must be submitted within 30 days of the date of this public notice. All comments

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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 or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Ed Frankel at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the date of the public hearing.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth 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 Monmouth County Water Quality Management (WQM) Plan. This amendment, proposed by the Township of Colts Neck, would adopt a Wastewater Management Plan (WMP) for the Township. The WMP addresses wastewater management planning for the Township. The Township will retain WMP responsibility for the municipality.

The WMP delineates the site of Saddlebrook at Colts Neck as part of the sewer service area of the Manasquan River Regional Sewerage Authority (MRRSA). Wastewater from this site will be collected by MRRSA and treated at the Ocean County Utilities Authority's Northern Water Pollution Control Facility. The WMP delineates the areas served by existing NJPDES-permitted on-site treatment facilities and delineates proposed areas to be served by on-site treatment facilities discharging to groundwater. The remainder of the Township is designated as being served by individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-423, 401 East State Street, Third Floor, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4 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 amendment to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. A copy of the comments should be sent to Robert Lawrence, Schoor & DePalma, Inc., Justin Corporate Center, P.O. Box 1149, Manalapan, New Jersey 07726. 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 or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Ed Frankel at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the date of the public hearing.

(b)

ENVIRONMENTAL REGULATION

Small Business Stationary Source Technical and Environmental Compliance Assistance Program Notice of New Jersey's Draft Plan as Required by the Federal Clean Air Act Amendments of 1990

Take notice that the New Jersey Department of Environmental Protection and Energy (DEPE) is required under the Federal Clean Air Act Amendments of 1990, particularly 42 U.S.C §7661f, to establish a small business stationary source technical and environmental compliance assistance program. To that end the DEPE is submitting for public comment and review the following draft plan for establishing its Small Business Stationary Source Technical and Environmental Compliance Assistance Program. When this plan is finalized, the Department will promulgate any specific rules necessary to implement the plan.

The **public comment period** will extend until December 24, 1992. A **public hearing** will be held on December 14, 1992 in the first floor hearing room of the DEPE building, 401 East State Street, Trenton from 9 A.M. until 11 A.M., or until everyone has had an opportunity to speak. Formal statements and submissions will also be welcome. Submit written comments by December 24, 1992 to:

Richard McManus, Esq., Director
Office of Legal Affairs
Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625-0402

Anyone wishing to obtain a copy of the draft plan should contact the Office of Permit Information and Assistance at (609) 292-3600.

The agency plan follows:

Small Business Stationary Source
Technical and Environmental
Compliance Assistance Program

I. Introduction

II. Federal Requirements for State Programs

III. New Jersey's Proposed Small Business Program

A. Small Business Ombudsman
1. Authorized Functions
2. Structure and Administration

B. Compliance Advisory Panel
1. Authorized Functions
2. Structure and Administration

C. Small Business Assistance Program
1. Federal Requirements
2. General Objectives
3. Specific Methods

D. Eligibility for the Program

E. Legal Authority

I. Introduction

The Federal Clean Air Act, 42 U.S.C. 7401 et seq. (CAA), as amended by the Clean Air Act Amendments of 1990, imposes many new requirements on potential air pollution sources. Because small businesses frequently lack the technical expertise and financial resources necessary to evaluate and determine appropriate mechanisms for compliance with air pollution regulations, section 507 of the CAA, codified at 42 U.S.C. §7661f, requires states to establish a small business stationary source technical and environmental compliance assistance program (small business program) to ensure that small businesses will have access to the technical expertise and compliance information necessary to comply with the laws. The small business program will be submitted to EPA as a revision to the State Implementation Plan (SIP).

The Program will consist of three key components: the Small Business Assistance Program (SBAP), which will provide direct compliance assistance to small businesses; the Small Business Ombudsman, which will provide oversight to the SBAP and will assist small businesses in working with regulators; and the Compliance Advisory Panel (CAP), which will render advisory opinions on the overall effectiveness of the SBAP, submit

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reports to the United States Environmental Protection Agency (EPA), and review materials prepared by the SBAP to ensure that the materials are clearly written and understandable to the general public.

The small business program will be supported by permit fees obtained through the operating permit program authorized by Title V of the CAA. Under section 507 of the CAA, the state may reduce fees for small business stationary sources based on their financial resources, in order to diminish any burdens on small business and assist them to comply with the CAA. No fee reductions may be granted which would impair the effectiveness of the small business program.

II. Federal Requirements for State Programs

In January of 1992 the EPA issued guidelines detailing the required elements of a state small business program. The state program must be operative no later than November 15, 1994. The federal requirements are summarized here briefly, with the proposed New Jersey small business program following. Under the guidelines, states must establish a program which includes the following activities:

1. Development, collection, and coordination of information on compliance methods and technologies for small business stationary sources.
2. Assistance to small business stationary air pollution sources on methods of pollution prevention and accidental release prevention and detection, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.
3. Designation of a state office to serve as an Ombudsman for small business in implementing the requirements of the CAA.
4. Establishment of a small business compliance assistance program for determining applicable requirements and for providing aid to obtain permits.
5. Adequate mechanisms for notifying small business stationary sources on a timely basis of their rights under the CAA.
6. Adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including a program for referring sources to qualified auditors or for the state, at its option, to provide for audits of the operations of such sources to determine compliance with the CAA.
7. Procedures to respond to requests from small business stationary sources for modification of any work practice or technical method of compliance, or schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. No such modifications may be granted unless it is in compliance with applicable requirements of the CAA including the requirements of the SIP.
8. Creation of a Compliance Advisory Panel.

III. New Jersey's Proposed Small Business Program

As stated above, New Jersey's small business program will consist of three key elements: the Small Business Ombudsman, the Compliance Advisory Panel, and the Small Business Assistance Program. The specifics of each of these elements are as follows:

A. Small Business Ombudsman

As required by the CAA, the Ombudsman will have the following authorized functions and structure:

1. Authorized Functions
   a. To request information from other state agencies that assist small businesses;
   b. To testify before the Legislature regarding the small business program and small business concerns;
   c. To conduct independent evaluations of all aspects of the SBAP;
   d. To review and provide comments and recommendations to EPA and state/local air pollution control authorities on the development and implementation of air quality regulations affecting small businesses;
   e. To facilitate and promote the participation of small business stationary sources in the development of new regulations that have an impact on small businesses;
   f. To assist in providing reports to higher authorities and the public about the applicability of the requirements of the CAA to small businesses;
   g. To aid in the dissemination of information (i.e. upcoming air regulations, control technologies, etc.) to small businesses and other interested parties;
   h. To participate in and sponsor meetings and conferences with state/local air regulatory officials, industry groups, and small business representatives;
   i. To aid in investigating and resolving complaints and disputes from small businesses against the state/local air pollution control authorities;
   j. To review the work and services provided by the SBAP with trade associations and small business representatives;
   k. To operate a telephone hotline to provide confidential help on individual source problems and grievances;
   l. To refer small businesses to the appropriate specialists in the SBAP where they may obtain information and assistance on affordable alternative technologies, process changes, and products and operational methods to help reduce air pollution and accidental releases;
   m. To publish and assist in the preparation of guideline documents by the SBAP to ensure that the language is readily understandable by the general public;
   n. To work with trade associations and small businesses to bring about voluntary compliance with regulations under the CAA;
   o. To work with regional and state offices of the Small Business Administration, the US Department of Commerce, and other state and federal agencies that may have programs to assist small businesses in need of funds to comply with environmental regulations;
   p. To work with private sector financial institutions to assist small businesses in locating sources of funds to comply with state and local air pollution control requirements;
   q. To conduct studies to evaluate the impacts of the CAA on the state's economy, local economies, and small businesses.
   r. To communicate the concerns of small businesses to the Governor's Office, the Commissioner of the DEPE, the Commissioner of the Department of Commerce and Economic Development and other officials.
2. Structure and Administration
   a. The Ombudsman's office will be located within the NJ Department of Commerce and Economic Development, in the Office of Business Advocacy, Mary G. Roebling Building, CN 820, Trenton, NJ 08625-0820.
   b. The Ombudsman's office will be provided an adequate staff that includes appropriate personnel to assist in meeting the requirements under section 507.
   c. The Ombudsman's office will be provided adequate funding from Title V operating permit fees to maintain this office.

B. Compliance Advisory Panel (CAP)

1. The authorized functions of the CAP will be as follows:
   a. To determine the effectiveness of the small business program, the difficulties encountered by small businesses in meeting the mandates of the CAA, the impacts of enforcement on the operation of small businesses, and the effectiveness of enforcement in helping small businesses meet CAA requirements;
   b. To prepare periodic reports to EPA on the small business program's compliance with the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act; and
   c. To work with the Small Business Ombudsman to review information developed by the SBAP for small business stationary sources to assure such information is understandable by the general public and to suggest changes as necessary.
2. Structure and Administration
   a. The Compliance Advisory Panel will be established no later than November 15, 1994 as required by the CAA in section 507.
   b. The CAP structure will be consistent with CAA requirements and will use the following selection method for panel members:
      i. The Governor of New Jersey will select two members representing the general public who are not owners or representatives of owners of small business stationary sources.

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ii. The Commissioner of the DEPE will select one member to represent the DEPE.
iii. The NJ Senate will select two members who own, or represent owners of, small business stationary sources (1 member each by the majority and minority leadership).
iv. The NJ Assembly will select two members who are owners or represent owners of small business stationary sources (1 member each by the majority and minority leadership).

c. The CAP will generally meet quarterly, but will meet at least semiannually.
d. The Small Business Assistance Program will serve as staff for the CAP to develop and disseminate reports and advisory opinions.
e. The Ombudsman will provide the necessary resources and other assistance as deemed necessary for the panel to fulfill its functions.

C. Small Business Assistance Program (SBAP)

1. The EPA guidelines require that the SBAP provide the following services:
   a. Developing, collecting and coordinating information on compliance methods and control technologies;
   b. Providing assistance with pollution prevention and accidental release prevention and detection;
   c. Providing assistance for determining applicable requirements under the CAA and providing aid to obtain permits;
   d. Determining adequate mechanisms for notifying small business stationary sources of their rights under the CAA on a timely basis;
   e. Determining adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including a program for referring sources to qualified auditors or for the state, at its option, to provide for such audits to determine compliance with the CAA; and
   f. Developing procedures for considering requests from small business stationary sources for modifications of work practices or technological methods of compliance or compliance procedures.
2. The general objectives of New Jersey's small business program are as follows (detailed methods for fulfilling these objectives are set forth below at 3.):
   a. To conduct evaluations of all aspects of the SBAP to determine the program's effectiveness and to improve the program's design;
   b. To review and provide comments and recommendations to the Small Business Ombudsman's office, the Compliance Advisory Panel, USEPA, and state and local air pollution authorities about the development and implementation of regulations that have an impact on small businesses;
   c. To facilitate and promote the early participation of small businesses in the development of all regulations and policies that have an impact on small businesses;
   d. To assist in providing to other State and local authorities, associations, educational institutions, environmental groups, and the general public information regarding the applicability of the requirements of the CAA to small businesses;
   e. To promote and assist in the dissemination of information (i.e. upcoming regulations, control technologies, etc.) to small businesses and other interested parties;
   f. To participate in and sponsor meetings and conferences;
   g. To survey small businesses and other users of the SBAP to determine if the work and services provided by the SBAP to trade associations and small business representatives are adequate;
   h. To operate a telephone hotline to provide technical and compliance assistance on individual source problems;
   i. To refer small businesses to appropriate technical specialists in the DEPE and the community where they may obtain information and assistance on affordable alternative technologies, process changes, products, and operational methods to help reduce air pollution and accidental releases;
   j. To arrange for and assist in the preparation of guideline documents to ensure that the technical and compliance information is available and is readily understandable by the general public;
   k. To work with trade associations and small businesses to bring about voluntary compliance with federal and NJ air regulations;
   l. To work with regional and state offices of the SBA, US Department of Commerce, or state and federal agencies that financially assist small businesses in need of funds to comply with environmental regulations and develop information so that it is readily available to the small business community;
   m. To communicate with private sector financial institutions to assist small businesses in locating sources of funds to comply with State and federal air pollution control requirements;
   n. To conduct studies to evaluate the impacts of NJ regulations and the CAA on the state's economy, local economies, and small businesses, and support similar studies conducted by the Small Business Ombudsman's office.
3. Specific methods by which small business assistance may be provided are as follows:
   a. The SBAP will be located in the DEPE within the Office of Permit Information and Assistance located at 401 East State Street, CN 423, Trenton, NJ 08625-0423.
   b. Information dissemination methods to be used by the SBAP are as follows:
      i. An electronic bulletin board will be available during normal work hours of state offices (8AM-5PM, Monday-Friday, excluding state holidays) to provide guidance on applicable rules and regulations, a calendar of events, a listing of public hearings and workshops, and a menu of directories that include federal, state, and private environmental hot lines and technology centers. The electronic bulletin board can also be used to request application forms, instructions, brochures and other technical and compliance information. Up-to-date state and federal (as provided by EPA) regulations implementing CAA requirements will be available. This electronic bulletin board will be available by computer modem (phone line) directly on the small business site or at a variety of locations within the state (to be identified and advertised).
      ii. The SBAP will mail a semiannual newsletter and other information, as requested, outlining the rights of small businesses and how those rights can be exercised.
      iii. The SBAP will make every effort to use public service announcements by mass media methods such as newspapers, radio, and television, as available.
      iv. Semi-annual area seminars will be conducted by the DEPE alone, or in conjunction with other agencies, groups, etc.
      v. A telephone hot line will receive technical and compliance information requests.
      vi. A clearinghouse will be established that will handle all incoming inquiries (electronic bulletin board, phone, letter, walk-ins, etc.) from small businesses. All business machines and equipment necessary to handle such inquiries will be available to the SBAP. All information developed by the SBAP will be available through the clearinghouse, as well as any appropriate materials necessary for compliance with the CAA.
   c. Small businesses will be provided with assistance with pollution prevention and accidental release detection and prevention in the following ways:
      i. The SBAP will provide information concerning different technologies, process changes, products, and methods of operation that help reduce air pollution.
      ii. The SBAP will also refer small businesses to technical personnel from the DEPE for pertinent information.
      iii. The SBAP will coordinate information relating to pollution prevention and accidental release prevention and detection from all appropriate federal, state, and local agencies with environmental jurisdiction.
      iv. The SBAP clearinghouse and electronic bulletin board will include information on pollution prevention, and accidental release prevention and detection. As part of the normal inspections, DEPE inspectors will also

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educate operators/owners on self inspection and compliance requirements.

v. A directory of contacts will be compiled and made available listing technical experts in the areas of pollution prevention, accidental release prevention and detection, and non-polluting manufacturing materials.

d. The SBAP will provide assistance in determining applicable requirements and in obtaining permits through the following methods:

i. Information packages will be developed and made available to small businesses that will include information on rules, permit requirements, time frames, testing, record keeping, and compliance information, as well as self-audit procedures and pollution prevention methods.

ii. Inspectors from DEPE will be given inservice training on how to teach small business operators/owners to conduct self-inspections and understand compliance requirements.

iii. Whenever a new CAA policy or rule is promulgated by EPA or DEPE, the SBAP will use newsletters, press releases, and public service announcements (as possible) to inform and educate the small business community on appropriate compliance methods and procedures.

e. Methods for Notifying Small Businesses of their Rights under the CAA in a Timely Manner

The SBAP will use the following methods to meet the CAA requirements:

i. The SBAP will develop a database that will list small business stationary sources and associations and will coordinate with appropriate agency staff to notify affected sources of changes of rules and regulations that affect them (upon timely notification from EPA).

ii. Public notification procedures will be developed and implemented DEPE-wide to ensure timely notice to small businesses of their rights and obligations under the CAA (i.e. semiannual newsletter, press releases, public service announcements, etc.).

iii. The SBAP will work with trade/business associations, local agencies, educational facilities, large businesses, environmental groups, and community leaders to establish environmental partnerships to bring about voluntary compliance with the CAA regulations through participation and educational activities.

f. Establishment of an Audit Program

i. The public notification procedures described above will be used to inform small business stationary sources of their obligations under the CAA. To further assist, DEPE will refer sources to qualified auditors (process for identifying and compiling a list of auditors to be developed by November 1994) or, at DEPE's option, DEPE will provide auditors to determine if such sources are within the rules of the CAA.

g. Establishment of procedures for considering requests from small business stationary sources for modifications of work practices or technological methods of compliance

i. The SBAP will provide a system for collecting and coordinating information on compliance methods and technologies. Databases and experts in different areas will provide definitive guidance information.

ii. The SBAP will develop procedures to respond to requests from small business stationary sources for modification of any work practice, technical methods of compliance, or schedule of milestones for implementing such work practice or method of compliance, based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of the CAA.

D. Small Business Eligibility for the Program

1. The small business stationary sources eligible for inclusion in the NJ small business technical and environmental compliance program will be those set forth in the CAA. This will include any stationary source which:

a. is owned or operated by a person that employs 100 or fewer individuals;

b. is a small business as defined in the federal Small Business Act, 15 U.S.C. §631 et seq.;

c. is not a major stationary source;

d. does not emit 50 tons or more per year of any regulated pollutant; and

e. emits less than 75 tons per year of all regulated pollutants.

2. Upon petition by a source, New Jersey may, after notice and opportunity for public comment, include as a small business stationary source for the purposes of this section any stationary source which does not meet the criteria above in #3, 4, 5, but which does not emit more than 100 tons per year of all regulated pollutants.

3. In consultation with EPA and the Small Business Administration, and upon notice and opportunity for public comment, NJ may exclude from eligibility those categories of small businesses that the state has determined to have sufficient technical and financial capabilities to comply with the requirements of the CAA.

E. Legal Authority

1. New Jersey currently has the legal authority to implement all aspects of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program except for the Compliance Advisory Panel component. New Jersey's Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and DEPE's general enabling statute, N.J.S.A. 13:1D-9, authorize DEPE to collect and disseminate information and conduct educational programs concerning environmental and pollution issues. In addition, the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., provides specific authority for assistance to small businesses. However, additional legislation will be needed to fully establish the CAP.

2. Any amendments or additions to New Jersey rules required to implement Section 507 of the CAA will be developed as needed and promulgated no later than November 15, 1994. Notice and opportunity for comment will be provided on any such rules.

SCHEDULE FOR IMPLEMENTATION OF SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM

11/92-12/92	Notice of Public Hearing and Comment Period
12/14/92	Public Hearing on Draft SBAP Program
Early 1/93	Submit Draft SBAP Program with Public Comments to EPA
1/15/93	Submit Final SBAP Program to EPA
3/93	Ombudsman named
2/94	CAP appointed
4/94	CAP holds first meeting to begin recommendation process on the operation of the Program to Ombudsman, SBAP and DEPE air programs.
6/94	Program refined per panel recommendations (Development of specific procedures for audit program and modification of practices or technical methods of compliance program)
9/94	Submit final Program to EPA
11/15/94	Full implementation and operation of Program.

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HEALTH

(a)

OFFICE OF HEALTH POLICY AND RESEARCH

Notice of Correction

Draft State Health Plan: Preventive and Primary Care Chapter with Local Public Health Delivery System Subchapter

Take notice that an error was made in the text of the Notice of Draft State Health Plan, Prevention and Primary Care Chapter, Local Public Health Delivery System Subchapter, Problem Identification as published in the November 16, 1992 issue of the New Jersey Register (see 24 N.J.R. 4184). The text of the ninth paragraph of Problem Identification incorrectly referred to "preventive and primary care," instead of "primary care." The corrected paragraph follows:

Almost no New Jersey local health departments provide primary care services; their personal health activities are limited to preventive health services, and no services are provided for persons with acute illness. Only the Atlantic City, Camden County, Morristown, and Newark health departments operate primary care clinics.

(b)

CERTIFICATE OF NEED PROGRAM

Invitation for Certificate of Need Applications

Public Notice

Take notice that in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Bruce Siegel, M.D., M.P.H., Acting Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the following types of health care activities:

1. The transfer of ownership of an entire acute care hospital, as referenced at N.J.A.C. 8:33-3.3 and N.J.A.C. 8:33A-1.17.
2. The transfer of ownership of licensed acute care hospital beds, services or equipment that is the subject of an adopted health planning regulation, as referenced at N.J.A.C. 8:33-3.3(a) and N.J.A.C. 8:33A-1.17.
3. The discontinuance of a component service of a hospital, as referenced at N.J.A.C. 8:33-3.2(d), or the discontinuance of all services offered by an acute care hospital, as referenced at N.J.A.C. 8:33-3.2(c).
4. The closure of a acute care hospital, as referenced at N.J.A.C. 8:33-3.2(c).

Such certificate of need applications will be received in the Department of Health on the first day of any month in 1993 and will be processed in accordance with full review procedures as set forth in N.J.A.C. 8:33.

Geographic area to be served: Applications will be received from anywhere in the State of New Jersey.

Date Application is due: Applications are to be received in the offices of the New Jersey Department of Health's Certificate of Need Program, Room 603, CN 360, Trenton, New Jersey 08625 on the first day of any month in 1993.

Date completeness review decision issued: Six weeks after submission of the application.

Date Local Advisory Boards will review the applications and submit recommendations to the Commissioner and the State Health Planning Board: In accordance with the time-frames set forth in Subchapter 4 of N.J.A.C. 8:33.

Date State Health Planning Board will review applications and submit recommendations to the Commissioner: In accordance with the time-frames set forth in Subchapter 4 of N.J.A.C. 8:33.

Applications may be requested from and must be filed with:

Certificate of Need Program
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625-0360
Telephone: 609-292-6552
FAX: 609-292-3780

Copies of the applicable rules are also available from the Certificate of Need Program. There is a fee for duplication and mailing.

Applications must also be filed with: Local Advisory Board(s) serving the region of the subject health planning service or facility.

HUMAN SERVICES

(c)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds

Foster Care Enrichment/Expansion Services—FY '93 State Aid

Essex County Foster Care Enhancement Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Division of Youth and Family Services (DYFS) hereby announces the availability of the following grant program funds.

A. Name of program: Essex County Foster Care Enhancement Program.
B. Purpose: This community-based program will address the needs of siblings and other children in foster care in Essex County by providing a 12-bed children's shelter facility, developing 12 specialized foster homes and providing support services for 20 DYFS foster homes.
C. Amount of available funding for the program: $700,000 Grant-in-Aid (State Aid).
D. Organizations which may apply for funding under this program: Public or private not-for-profit social service agencies serving Essex County.
E. Qualifications needed by an applicant to be considered for funding: An applicant shall have experience in providing comprehensive social services including the operation of a shelter, group home or other similar program and have the ability to provide an array of support services required by the targeted population.
F. Procedure for eligible organizations to apply: Submit 10 copies of completed Request for Proposals application to address below.
G. Address to which applications must be submitted:
New Jersey Division of Youth and Family Services
Upper Central Regional Office
153 Halsey Street—2nd Floor
Newark, New Jersey 07101
H. Deadline by which applications must be submitted: 4:00 P.M., January 11, 1993.
I. Date the applicant is to be notified of acceptance or rejection: January 22, 1993.

REQUEST FOR PROPOSALS
ESSEX COUNTY FOSTER CARE ENHANCEMENT PROGRAM
DEPARTMENT OF HUMAN SERVICES
DIVISION OF YOUTH AND FAMILY SERVICES
UPPER CENTRAL REGIONAL OFFICE

Purpose

The New Jersey Division of Youth and Family Services (DYFS), Upper Central Regional Office is seeking to enhance and strengthen the present foster care services provided in Essex County. Due to the increasing number of sibling groups requiring out-of-home placement, DYFS would like to expand services in an effort to keep siblings living in out-of-home placement together to lessen the negative effects and problems caused by separation from their families. Such a living arrangement will assist in the preparation of a smooth transition from foster care to reunification with biological parents/relatives, adoption or other permanent plan.

Although the first priority as to target population for this initiative is sibling groups in foster care, it is envisioned that this program will serve other foster children who are high-risk due to a history of multiple placements. Many of those children may have exhibited acting out behavior and are in need of specialized care.

This community-based program will address the needs of siblings and other children in foster care between the ages of five and thirteen years. In an effort to keep sibling groups together, special approval may be given by the Regional Administrator or his designee to raise and/or lower the age criteria on an individual case basis.

Scope

This request for proposals from public or private not-for-profit agencies envisions the development and operation of a comprehensive service delivery system in collaboration with DYFS field staff that will improve

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the quality of care and permanency planning for sibling groups and other children requiring foster care in Essex County. An agency submitting an application shall have the ability to provide all of the service components of this program as stated below.

1. Children's Shelter Facility:
   The agency awarded the contract shall develop and operate a 12 bed, 24-hour-a-day children's shelter facility in Essex County. The shelter facility will serve larger sibling groups and other children in foster care. The agency will be responsible for locating/furnishing a facility, staffing the program, providing supervision and case management and other appropriate services necessary to meet the needs of the children in residence. The length of stay in the shelter facility shall be a maximum of 30-60 days. The shelter facility shall be approved by the Division's Bureau of Licensing.
2. Specialized Foster Care Homes:
   The agency awarded the contract shall develop and supervise the operation of 12 specialized foster homes caring for 30 children (siblings or at-risk children in foster care). These homes shall be located in Essex County and function on a 24-hour-a-day basis. The agency shall be responsible for the recruitment, training and supervision of specialized foster parents. In addition, the agency shall provide needed support services for the specialized foster parents.
3. Support Services:
   The agency awarded the contract shall provide support services for 20 DYFS foster homes in Essex County. The support services may include, but are not limited to 24-hour-a-day crisis intervention, transportation, education, recreation, counseling, training, and respite services.

Program Goals

1. To increase the number of sibling groups who stay together during a period of out-of-home placement.
2. To reduce the number of temporary placements children experience before achieving a permanent placement.
3. To reduce the number of foster parents leaving the foster care system by providing additional supports to alleviate stress.
4. To increase the number of foster parents serving children in Essex County.
5. To shorten timeframes for the development and institution of permanent plans for children in foster care.
6. To strengthen and enhance the foster care system in caring for more difficult, at-risk children.
7. To reduce the average length of stay of children in foster care in Essex County.

Amount of Funds Available

State Aid funding of $700,000 a year is available for this program. This funding will be continuous. Matching funds are not required.

Funding Proposal Requirement

Each proposal submitted shall contain the following:

1. The funding proposal cover sheet "Appendix A" (attached);
2. The applicant's mission and goals—a brief description of the applicant's history, purpose, goals and objectives;
3. A need justification—a description of the basis for concluding that each of the proposed services is needed in the community and the factors that make the applicant the most capable to provide the service(s), including the following:
   a) The nature of the problems;
   b) Existing services;
   c) Statistics;
   d) Relevant discussions of studies within the community;
   e) The applicant's capability to provide the same or similar services as those existing in the community and/or the applicant's capability to provide a new type of service not currently available in the community;
   f) The target population and characteristics; and
   g) The geographic areas to be serviced;
4. Service goals and objectives including specification of the service goals and objectives, the impact on the target populations to be served and how the services will affect the cause of the problems;
5. An indication of those services that will require a sub-contract for provision of the services requested. List the sub-contracts, if known;
6. Program approach, including the following:
   a) Based on the parameters set forth in this RFP, a description of how the services will be implemented and the time frames involved. The narrative shall address client population and geographic areas served;
   b) An overview of the total service package. For each component of the program package, the following information shall be provided:
      (1) A definition of each service to be provided, including the purpose and goal of each;
      (2) A description of the service activities or methods that staff will employ to achieve the service objectives;
      (3) An indication of the number, qualifications, and skills of the staff that will perform the above service activities, as well as the use of any volunteers. Include a table of organization for administration and personnel and job descriptions for each position;
      (4) A description of the management and supervision methods that will be utilized in the operation and the monitoring of the effective performance of the service activities; and
      (5) The methods to be used to measure and evaluate the quality of service;
      (6) A description of fees for service (if any), sliding fee schedules and waivers of fees; and
      (7) A description of client data to be recorded, the use of this data by the applicant, the means of maintaining confidentiality of client records and data, and the retention schedule of client records and schedule for destruction;
7. Accessibility of services, including the following:
   a) The hours and days that each service will be available to clients, including how emergencies are handled, for example, closing, client crisis, after-hours contacts;
   b) A list and description of the location(s) where each service will be provided to clients; and
   c) A description of transportation options for clients in obtaining each service;
8. Eligibility requirements and referral processes:
   a) Procedures for accepting clients into the program and the procedures to be followed to ensure that all clients meet the eligibility requirements for admission;
   b) An explanation of intake procedures; and
   c) An explanation of referral mechanisms and processes (formal and informal) and community outreach procedures;
9. Termination procedures, including description of termination procedures (client and program initiated), appeals process, and follow-up services, as appropriate. Include a list of the various reasons for termination;
10. Level of Service including the following:
    a) An indication of the level of service anticipated throughout the contract period; for example, number of clients to be serviced; and
    b) A definition of each unit of service;
11. Service coordination, including the following:
    a) A description of the relevant services and ancillary agencies that will be frequently utilized in combination with the service being proposed for funding, including any already existing relationships and agencies which will be referral sources for these services;
    b) A description of how formal coordination and referral agreements with other community agencies will be accomplished, and where appropriate, specification of those agencies;
12. Community participation, including a description of how community members and clients will participate in the functioning of the applicant's organization including the delivery of services, planning for service provisions, and the evaluation of services;
13. Description of activities and timetable for implementation of services;
14. Current programs managed by the applicant and the funding sources, identification of current programs managed and the funding sources utilized;
15. A copy of the applicant's organizational chart;
16. A copy of the most recent organization-wide audit report;

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17. A copy of the applicant's code of ethics and/or conflict of interest policy;
18. A list of the board of directors, officers and their terms of office;
19. Documentation of the applicant's charitable registration status;
20. A copy of the certification of incorporation of the applicant;
21. Original and/or copies of letters of support from the community;
22. A completed budget proposal "Appendix B" (attached) with a separate column for each service to be provided and with the same program and service names used consistently throughout the proposal;
23. A list of the name(s) and address(es) of those entities providing support and/or money to help fund the program for which the proposal is being made;
24. A list of those persons responsible and authorized within the agency to approve and certify binding documents, reports and financial information; and
25. A statement of assurance that all federal and state laws and regulations are adhered to; and
26. An indication of the approximate percentage of the client population to be served that requires bilingual/bicultural services, and how your agency currently addresses the needs of bilingual/bicultural clients who are eligible to receive services from your agency. If your agency currently does not have a system to meet such needs, what actions will you take to ensure that the needs of bilingual/bicultural clients are served?

Evaluation of Proposals

Proposals shall be evaluated by a review panel using, at a minimum, the following general criteria:

1. Satisfactory documentation of need for services;
2. Compatibility of applicant's goals and objectives with goals of the program and services solicited;
3. Clarity and attainability of the objectives and the implementation plan;
4. Logic and consistency of the proposal;
5. Clarity of the planned integration of the services with the generic agencies in the community;
6. Reasonableness of the proposed budget as related to the anticipated results;
7. Availability and accuracy of supporting documentation; and
8. Local endorsements;

The specific evaluation criteria to be used when assessing proposals shall include:

1. Completeness of the application and clarity of statements concerning:
   a) The applicant's mission and goals;
   b) Need justification;
   c) Service goals and objectives;
   d) The program approach, including:
      (1) services definitions;
      (2) activities/methods to achieve objectives;
      (3) staff qualifications and job descriptions;
      (4) monitoring plan; and
      (5) evaluation of quality of services;
   e) Accessibility of services;
   f) The termination procedure;
   g) The level of service;
   h) Service coordination;
   i) The community participation description;
   j) The timetable to implement services;
   k) Identification of current programs managed and the funding sources;
   l) Required documents;
   m) The budget proposal; and
   n) Identification of other sources of support and match, as appropriate;
2. Reasonableness of proposed budget in consideration of anticipated results;
3. Compatibility of the applicant's goals and objectives with goals of the program;
4. Availability and accuracy of supporting documentation;
5. Compliance with all terms and conditions of previous contracts with the Department and the standard language document;
6. A record of the ability to manage the fiscal aspects of previous contracts;
7. The extent to which new and innovative strategies are proposed to assist the target population;
8. The adequacy and specificity of the outcome statements;
9. Evidence of ability (including satisfactory past performance and evaluation) to provide the proposed services to the target population; and
10. Evidence of the existence of adequate resources, facilities and equipment to operate the proposed program.

Notes:

1. The Division reserves the right to reject any and all proposals when circumstances indicate that it is in its best interest to do so. The Division's best interests in this context include, but are not limited to: loss of funding, inability of the applicant to provide adequate and/or non-compliance with state and federal laws and regulations and any existing Division contracts.
2. Notification and description of the process of appealing the review panel's decision will be included in the letter sent to applicants upon determination of acceptance or rejection of proposals submitted.
3. If awarded a contract, your agency will be required to comply with the affirmative action requirements of P.L. 1975 c.127 (N.J.A.C. 17:27).
4. For the information of applicants, attached is a copy of Executive Order No. 189 (1988) regarding conflict of interest as it pertains to N.J.A.C. 10:3.1, Debarment, Suspension and Disqualification of a Person(s).
5. For the information of applicants, attached is a listing of depository libraries where throughout the State, applicants may review the Department of Human Services *Contract Reimbursement Manual and Contract Policy and Information Manual.*

Completed proposals (10) copies shall be delivered or mailed to:
New Jersey Division of Youth & Family Services
Upper Central Regional Office
153 Halsey Street—2nd Floor
Newark, New Jersey 07101
Attention: Joseph Makowski

Submission deadline: 4:00 p.m.—January 11, 1993
No application will be accepted after this time and date.

Proposal review completion date:	January 22, 1993
Appeal request submission date:	February 3, 1993
Contract award date:	February 15, 1993
Target date for implementation:	March 15, 1993

Requests for technical assistance may be directed to:
Joseph Makowski
New Jersey Division of Youth & Family Services
Upper Central Regional Office
153 Halsey Street—2nd Floor
Newark, New Jersey 07101
(201) 648-4100

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Date received

Dept/Component

"Appendix A"

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

Funding Proposal
Cover Sheet

1. **Proposal Summary Information**

Incorporated Name of Applicant: _____

Type: Public _____ Profit _____ Non-Profit _____, or Hospital Based _____

Federal ID Number: _____ Charities Reg. Number: _____

Address of Applicant: _____

Address of Service(s): _____
(Attach list if necessary.)

Contact person: _____ Phone No.: _____

Total dollar amount requested: _____ Fiscal Year End: _____

Total Match required: _____ Match Secured: Yes _____ No _____

Funding period: From _____ to _____

Services: _____
(For which funding is requested)

Total number of unduplicated clients to be served: _____

Brief description of services by program name and level of service to be provided*:

_____

Authorization: _____

Chief Executive Officer (Print) _____

Signature _____ Date _____

*NOTE: If funding request is for more than one service, complete a separate description for each service. Identify the number of units to be provided for each service as well as the unit description (hours, days, etc.). If the Contract will be based on a rate, please describe how the rate was established.

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"Appendix B"

State of New Jersey
Department of Human Services
Request for Proposal (RFP): Budget Information Summary

Date _____ Page ____ of _____

RFP Project Name _____
Agency Name _____
Address _____
_____
Telephone Number _____
Chief Exec. Officer _____

Agency Federal ID # _____
Charities Registration # _____
Agency: Non-Profit _____ Profit _____
Public _____ Hosp. Based _____
Budget Period _____ to _____
Agency Fiscal Year End _____

Contract Information Summary
(List all Department of Human Services contracts)

Contracting Division	Contract Number	Program Name	Type of Service	Current Reimbursable Ceiling

Budget Information Summary

The budget information summary gives the Department of Human Services (DHS) information regarding the planned expenditure of funds for the programs and services being proposed in response to a request for proposal (RFP). **It is necessary that all information be completed on the budget forms. Failure to do so may negatively impact on the evaluation of the proposal.** Additional copies of the budget forms may be copied and attached as needed to ensure complete and accurate information. If you have questions regarding the completion of the budget forms, contact the person listed in the RFP for technical assistance. Review of the Department's *Contract Reimbursement Manual,* July 1986 edition, will also be helpful if questions arise.

Directions—Budget Information Summary

1. All identifying information must be provided in its entirety—information not completed may negatively impact on the review of the proposal.
2. Indicate the date of the proposal and the page number as part of the total budget information, i.e., Page 1 of 10.
3. Because the contract information summary requires a list of all contracts now in effect with DHS, please list all current DHS contracts by contracting division, the contract number, the name of the programs funded, services rendered and the current reimbursable ceiling (total funding amount) for each program.

Definitions

Program—that separation of units with a single identifiable individual name within the provider agency that may provide the same or different types of services for the client population. Example—ABC, Inc. has a day care center and two group homes, each having a name—ABC Day Care Center, the ABC Group Home, and CBA Group Home. Each would be listed as a program within the agency ABC, Inc.

Service—the need, which can be measured for monitoring purposes, for which the client is being included in the proposal.

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"Appendix B"

State of New Jersey
Department of Human Services
Request for Proposal (RFP): Budget Information Summary

Date _____ Page ____ of ____

RFP Project Name _____ Agency Federal ID # _____
Agency Name _____
Funding Request—Program Name(s) _____
Service(s) _____

RFP Budget Expense Summary

Budget Categories	Total Costs	Indicate Programs to be Funded			Unallowable Costs	Gen. & Adm. Costs
A. Personnel (including fringe benefits)						
B. Consultants & Professional Fees						
C. Materials & Supplies						
D. Facility Costs						
E. Specific Assistance to Clients						
F. Other						
G. Gen. & Adm. (G&A) Cost Allocation	>>>>>					( )
H. Total Operating Costs						
I. Equipment						
J. Total Cost						
K. Revenue (deduct)	( )	( )	( )	( )		
L. Funding Request	$	$	$	$		
Total Units of Service						
Unit Description						

The budget request shall indicate the Agency's total proposed budget for delivery of the service(s) reduced by the other sources (not DHS) of funding (line K). Indicate the sources of funding and the dollar amounts for each:

Total Other Sources of Funding	$	$	$	$

Directions—Budget Expense Summary

1. Complete the identifying information at the top of the page. It is important that all information be completed in full.
2. The budget expense summary summarizes the expected expenditures by budget category, by program(s) as specified in the proposal. Please list all anticipated expenditures required to meet the needs of the proposal for services by the categories indicated on the form. Indicate the total for each category and then break out the total by program, listing the names of the programs in the column headings provided next to the column for total cost. Parenthesis means that the amount will be deducted where indicated.
3. List the anticipated level of service (Total Units of Service) for each program and the description of the unit to be used for measurement of service.
4. Indicate all other than the Department of Human Services funding sources for the programs in the proposal, the total amount and the total broken down by program.

Definitions

General and Administrative Costs (indirect costs)—represents costs incurred for common or joint objectives which are not readily assignable as a direct cost.

Unallowable costs—those costs which are not reimbursable in a contract with DHS as specified in the DHS July 1986 edition of the *Contract Reimbursement Manual,* Section 4.7.

Units of Service—the breakdown of the services used as a standard of measurement, e.g., hours, roundtrips, meals).

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"Appendix B"

State of New Jersey
Department of Human Services
Request for Proposal (RFP): Budget Information Summary

Date _____ Page ____ of ____

RFP Project Name _____ Agency Federal ID # _____
Agency Name _____

RFP—Personnel Detail

Position Title/ Name of Employee	Total Cost	Hrs/ Week	% of Time	Indicate Programs to be Funded			Unallowable Costs	Gen. & Adm. Costs

Directions—Personnel Detail

(Make additional copies of this page, as needed, to ensure inclusion of all personnel data.)

1. Complete the identifying information at the top of the page.
2. Personnel detail requests a listing of all personnel involved in providing the services being proposed, including the percentage of time spent on each program. Please list each person and their position title, the total salary alloted to this proposal, the hours per week assigned to each program and any unallowable or general and administrative costs involved for each person.
3. Also indicate any vacant titles that will be filled to meet the obligations of this proposal.

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"Appendix B"

State of New Jersey
Department of Human Services
Request for Proposal (RFP): Budget Information Summary

Date _____ Page ____ of ____

RFP Project Name _____ Agency Federal ID # _____
Agency Name _____

RFP—Budget Category Detail

Budget Category	Basis of Allocation	Total Cost	Indicate Programs to be Funded			Unallowable Costs	Gen. & Adm. Costs

Directions—Budget Category Detail

1. Ensure that all identifying information is completed, including the date and page number.
2. The budget category detail is intended to show which method was used to allocate the expenses to the various categories of the proposal. List the categories as indicated on the budget expense summary A through G and I.
3. Indicate the basis for allocation and the total funding for each category. Then break out the total by program and indicate any unallowable and/or general and administrative costs.

Definitions

Cost Allocation—the distribution base used to allocate items or groupings of indirect costs in proportion to the relative benefit derived for the program within the proposal. (Example—a building used by several programs of which only one is funded by DHS. The square footage may be used to prorate the expenses of the building and assigned according to contracted program usage.) If there is no indirect cost in the category, the cost basis is a direct cost which is identified specifically with a particular category.

Direct cost—any cost which can be identified with a particular cost objective (category).

Indirect cost—a cost, because of its incurrence for common or joint objectives, which is not readily assignable as a direct cost.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

ADDENDUM TO REQUEST FOR PROPOSAL
FOR SOCIAL SERVICE AND TRAINING CONTRACTS

Executive Order No. 189 establishes the expected standard of responsibility for all parties that enter into a contract with the State of New Jersey. All such parties must meet a standard of responsibility which assures the State and its citizens that such parties will compete and perform honestly in their dealings with the State and avoid conflicts of interest.

As used in this document "provider agency" or "provider" means any person, firm, corporation, or other entity or representative or employee thereof which offers or proposes to provide goods or services to or performs any contract for the Department of Human Services.

In compliance with Paragraph 3 of Executive Order No. 189, no provider agency shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other things of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such provider agency transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any provider agency shall be reported in writing forthwith by the provider agency to the Attorney General and the Executive Commission on Ethical Standards.

No provider agency may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such provider agency to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be

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reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

No provider agency shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

No provider agency shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the provider agency or any other person.

The provisions cited above shall not be construed to prohibit a State officer or employe or special State officer or employee from receiving gifts from or contracting with provider agencies under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

LIST OF LIBRARY DEPOSITORIES

The following libraries have current copies of the Department's *Contract Policy and Information Manual* and *Contract Reimbursement Manual.*

Atlantic County Library
2 S. Farragut Avenue
Mays Landing, NJ 08330

Bloomfield Public Library
90 Broad Street
Bloomfield, NJ 07003

Burlington County Library
W. Woodland Road
Mount Holly, NJ 08060

Camden County College Library
P.O. Box 200
College Drive
Blackwood, NJ 08012

Camden County Library
Echelon Urban Center
Laurel Road
Voorhees, NJ 08043

Cape May County Library
Mechanic Street
Cape May Courthouse, NJ 08210

Cherry Hill Free Public Library
100 Kings Highway North
Cherry Hill, NJ 08034

Cumberland County Library
800 E. Commerce Street
Bridgeton, NJ 08302

Drew University
Rose Memorial Library
Madison, NJ 07940

East Brunswick Public Library
2 Jean Walling Civic Center
East Brunswick, NJ 08816

East Orange Public Library
21 S. Arlington Street
East Orange, NJ 07018

Elizabeth Public Library
11 S. Broad Street
Elizabeth, NJ 07202

Fairleigh Dickinson University
Messler Library
Montross Avenue
Rutherford, NJ 07070

Glassboro State College
Savitz Library
Glassboro, NJ 08028

Johnson Free Public Library
275 Moore Street
Hackensack, NJ 07601

Jersey City Public Library
472 Jersey Avenue
Jersey City, NJ 07302

Jersey City State College Library
2039 Kennedy Boulevard
Jersey City, NJ 07305

Kean College
N. Thompson Library
Morris Avenue
Union, NJ 07083

Linden Public Library
31 E. Henry Street
Linden, NJ 07036

Monmouth College
Guggenheim Memorial Library
Cedar Avenue
West Long Branch, NJ 07764

Monmouth County Library
Eastern Branch
N.J. Highway 35
Shrewsbury, NJ 07701

Montclair State College
Harry A. Sprague Library
College Drive
Upper Montclair, NJ 07764

Morris County College Library
Center Grove Rd. & Route 10
Randolph, NJ 07869

Morris County Library
30 E. Hanover Avenue
Whippany, NJ 07981

New Brunswick Public Library
60 Livingston Avenue
New Brunswick, NJ 08901

Newark Public Library
P.O. Box 630
5 Washington Street
Newark, NJ 07101

Ocean County College
Learning Resources Center
Toms River, NJ 08753

Ocean County Library
101 Washington Street
Toms River, NJ 08753

Paterson Free Public Library
250 Broadway
Paterson, NJ 07501

Phillipsburg Public Library
200 Frost Avenue
Phillipsburg, NJ 08865

Plainfield Public Library
8th St. at Park Ave.
Plainfield, NJ 07060

Princeton University
Firestone Library
Nassau St. and Washington Rd.
Princeton, NJ 08544

Ramapo College Library
505 Ramapo Valley Rd.
Mahwah, NJ 07430

Rider College
Moore Library
2083 Lawrenceville Rd.
Trenton, NJ 08648

Ridgewood Library
125 North Maple Avenue
Ridgewood, NJ 07450

Rutgers-Alexander Library
169 College Avenue
New Brunswick, NJ 08903

Rutgers-Camden
Arts & Sciences Library
300 N. Fourth Street
Camden, NJ 08102

Rutgers-Camden Law School
Fifth and Penn Streets
Camden, NJ 07102

Rutgers-Dana Library
185 University Avenue
Newark, NJ 07102

Rutgers-Douglass College Library
George St. and Nicholl Ave.
New Brunswick, NJ 08903

Rutgers-Kilmer Area Library
Avenue D, Livingston Campus
New Brunswick, NJ 08903

Rutgers-Newark
Law School Library
15 Washington Street
Newark, NJ 07102

Salem County Community College Library
Donaghay Building
460 Hollywood Avenue
Carneys Point, NJ 08069

Seton Hall University Library
South Orange Avenue
South Orange, NJ 07079

Seton Hall University
Law School Library
1111 Raymond Boulevard
Newark, NJ 07102

Somerset County Library
N. Bridge and Vogt Avenue
Bridgewater, NJ 08807

Stockton State College Library
Jim Leeds Road
Pomona, NJ 08240

Sussex County Library
R.D. #3, Box 76
Route 655
Newton, NJ 07860

Trenton Public Library
120 Academy Street
Trenton, NJ 08608

Trenton State College
West Library
CN 550, Pennington Road
Trenton, NJ 08625-0550

Wayne Public Library
475 Valley Road
Wayne, NJ 07470

William Paterson College Library
300 Pompton Road
Wayne, NJ 07470

Woodbridge Public Library
St. George Ave. & Freeman
Woodbridge, NJ 07095

Woodbury Public Library
33 Delaware Street
Woodbury, NJ 08096

The New Jersey State Library at 185 W. State Street, Trenton, N.J. 08625, also has three sets available for review.

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Notice of Applicable Interest Rates on Customer Deposits Effective for Calendar Year 1993

Take notice that N.J.A.C. 14:3-7.5(c) provides in pertinent part: Simple interest at a rate equal to the average yields on new six month Treasury Bills for the 12 month period ending each September 30 shall be paid by the utility on all deposits held by it, provided the deposit has remained with the utility for at least three months. Said rate shall become effective on January 1 of the following year. The Board shall perform the annual calculation to determine the applicable interest rate and shall notify the affected public utilities of said rate.

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Based upon the foregoing, **be advised** that the average yield on new six month Treasury Bills for the 12 month period ending September 30, 1992, is 3.93 percent. Accordingly, simple interest at the rate of 3.93 percent shall be applied to all customer deposits received by public utilities on and after January 1, 1993, pursuant to the provisions of N.J.A.C. 14:3-7.5.

STATE

(a)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Application Process and Deadlines Fellowship Support Fiscal Year 1994 (July 1, 1993-June 30, 1994)

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces, in accordance with N.J.S.A. 52:14-34.4 et seq., the availability of the following grant program.

Name of program: Fellowship Support, Fiscal Year 1994.

Purpose: In recognition of outstanding artistic work, Fellowships are awarded to New Jersey artists to enable them to pursue their artistic goals. Fellowships are awarded in choreography, music composition, opera/music theatre composition, theatre (mime), experimental art, graphics, painting, sculpture, design arts, crafts, photography, media arts (film/video), prose, playwriting, poetry, and interdisciplinary.

Eligible applicants: Artists who are residents of the State of New Jersey (all awards are subject to verification of New Jersey residency); artists who have not received a fellowship since Fiscal Year 1990-91; artists who are not students matriculating in an undergraduate program at the time of application. (Fellowships do not provide funding for scholarships or academic study in pursuit of a college degree). NOTE: Artists may apply in one discipline only and only in one category of a single discipline.

Ineligible applicants: Artists who are residents in another state, are students matriculating in an undergraduate program at the time of application, or who received an NJSCA Fellowship during Fiscal Years 1991-92 or 1992-93.

Amount of Awards: Contingent upon the availability of funds and Council action. For Fiscal Year 93, 73 awards ranging from $5,000 to $12,000 were made from among the 993 applicants.

Match: This is a non-matching award.

Deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than February 4, 1993 (5:00 P.M. if delivered in person to office).

Decision-making process: All complete applications by eligible applicants are evaluated by an independent panel of experts in the applicant's discipline for evidence of artistic excellence and promise, which is the sole criteria. The Council reviews the evaluations of all applicants as well as Council funding priorities and issues. Its final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 27, 1993. Applicants are notified in writing of the Council's decision within six weeks following the annual meeting.

To receive a set of guidelines and application forms, call (609) 292-6130 or write FELLOWSHIPS 94, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

(b)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Application Process and Deadlines Organizational Grants in Aid to the Arts Fiscal Year 1994 (July 1, 1993-June 30, 1994)

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces the availability of the following grant program.

Name of program: Organizational Grants in Aid to the Arts, Fiscal Year 1994.

General Operating Support (for arts organizations)

Special Project Support (for arts projects)

Arts Basic to Education Expansion Project Support (for arts organizations)

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations.

Eligible Applicants: Must be a New Jersey incorporated, nonprofit organization that is tax exempt as 501(c)(3) or (4) by determination of the Internal Revenue Service, or a unit of government; must have been in existence and active in presenting, producing or servicing the fine, performance or literary arts for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finance; and must comply with all existing State and Federal regulations and laws as described in the Guidelines and Application.

Ineligible Applicants: Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

Grant size: Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for Fiscal Year (FY) 94.

Match: All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions and indirect costs are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must be able to project a 4:1 match of applicant cash to NJSCA dollars; Special Project applicants who are arts organizations, a 1:1 match of applicant cash to NJSCA dollars and Special Project applicants who are **not** arts organizations, a 3:1 match of applicant cash to NJSCA dollars.

Projected deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than January 29, 1993 (5:00 P.M. if delivered in person to office). All prospective applicants that **are not** direct recipients of FY 93 NJSCA Grants must submit a Letter of Intent. **PROJECTED DEADLINE FOR LETTERS OF INTENT IS DECEMBER 21, 1992 (5:00 P.M. Receipt).** These deadlines are subject to change that would place them later in the year. The NJSCA urges all organizations interested in applying for FY 94 support to call the Grants Office immediately to discuss issues related to deadlines and eligibility.

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council reviews the evaluations of all applications as well as Council funding priorities and issues. Its final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 27, 1993. Applicants are notified in writing of the Council's decision within six weeks following the annual meeting.

To receive a set of guidelines and application forms, call (609) 292-6130 or write GRANTS 94, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

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EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	4/21/97
1:5	9/13/96
1:6	4/21/97
1:6A	3/19/95
1:7	4/21/97
1:10	4/21/97
1:10B	9/13/96
1:11	4/21/97
1:13	4/21/97
1:13A	4/3/94
1:14	7/15/96
1:20	4/21/97
1:21	4/21/97
1:30	1/25/96
1:31	4/21/97

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	EXPIRED RULES
2:9	8/19/96
2:16	1/22/96
2:17	5/31/96
2:18	8/5/96
2:19	10/1/95
2:20	10/1/95
2:21	8/5/96
2:22	6/26/97
2:23	7/18/93
2:24	4/2/95
2:32	5/13/97
2:33	3/6/94
2:34	1/2/95
2:48	10/25/95
2:50	5/1/97
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	8/20/95
2:71	7/8/93
2:72	7/8/93
2:74	7/8/93
2:76	7/31/94
2:90	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	1/11/95
3:4	8/17/97
3:6	3/1/96
3:7	9/12/95
3:11	5/1/94
3:12	6/15/97
3:13	1/21/97
3:16	6/18/95
3:17	6/13/96
3:18	1/19/93
3:19	3/15/96
3:21	1/24/97
3:22	5/12/94
3:23	7/6/97
3:24	8/18/94
3:25	7/23/97
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:29	8/5/96
3:32	10/3/93
3:33	9/18/94
3:38	9/11/97
3:41	10/11/95
3:42	4/4/93

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	9/22/97
4A:2	9/22/97
4A:3	9/6/93
4A:4	6/6/93
4A:5	9/22/97
4A:6	1/4/93
4A:7	9/22/97
4A:8	1/16/95
4A:9	9/22/97
4A:10	9/22/97

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/5/95
5:2	4/10/94
5:3	9/1/93
5:4	9/1/97
5:10	11/17/93
5:11	3/10/94
5:12	12/27/94
5:13	6/22/97
5:14	11/9/95
5:15	5/1/94
5:18	1/4/95
5:18A	1/4/95
5:18B	1/4/95
5:18C	2/5/95
5:19	2/1/93
5:20	9/3/96
5:22	2/5/95
5:23	3/1/93
5:24	7/10/95
5:25	2/19/96
5:25A	4/20/97
5:26	2/7/96

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N.J.A.C.	Expiration Date
5:27	5/2/95
5:28	12/13/95
5:29	2/19/96
5:30	6/29/93
5:31	12/1/94
5:33	8/6/95
5:34	12/3/95
5:37	1/7/96
5:50	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	4/22/97
5:71	6/4/95
5:80	4/20/95
5:91	12/7/97
5:92	2/7/96
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97
5A:5	9/21/97

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	1/11/96
6:2	2/6/94
6:3	7/8/93
6:5	10/22/95
6:7	1/2/95
6:8	12/11/96
6:11	9/21/95
6:12	3/8/96
6:20	7/16/95
6:21	11/22/94
6:22	7/16/95
6:22A	12/19/93
6:24	1/11/96
6:26	8/3/97
6:28	4/10/94
6:29	2/8/95
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	8/10/95
6:46	4/10/94
6:51	8/5/96
6:53	4/10/97
6:64	9/14/97
6:68	2/26/95
6:70	10/17/94
6:78	11/7/93

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	5/22/97
7:1C	6/15/95
7:1D	11/28/93
7:1E	9/3/96
7:1F	4/16/97
7:1G	9/29/94
7:1H	7/13/95
7:1I	7/18/93
7:2	10/7/96
7:3	3/21/93
7:4	8/17/97
7:4A	9/18/94
7:5	11/19/95
7:5A	6/24/93
7:5B	6/24/93
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	3/16/97
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/93
7:9	1/18/96
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:18	7/3/96
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/16/93
7:22	12/27/96
7:22A	2/5/95
7:23	6/9/94
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/95
7:45	2/6/94
7:50	Exempt
7:60	3/2/97

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/14/95
8:8	4/12/94
8:9	2/14/96
8:13	9/8/97
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
8:21A	8/3/97
8:22	7/11/96
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	4/12/96
8:31	1/16/95
8:31A	2/20/95
8:31B	8/17/95
8:31C	4/20/97
8:33	7/27/95
8:33A	EXPIRED RULES
8:33B	7/27/95
8:33C	9/8/97

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N.J.A.C.	Expiration Date
8:33E	EXPIRED RULES
8:33F	11/16/94
8:33G	7/17/94
8:33H	9/8/97
8:33I	EXPIRED RULES
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:33Q	11/19/95
8:34	11/15/93
8:35A	9/8/97
8:38	4/3/94
8:39	6/20/93
8:40	12/6/96
8:41	2/13/93
8:41A	2/18/97
8:42	8/17/97
8:42A	6/19/94
8:42B	7/18/93
8:43	11/19/92
8:43A	7/27/95
8:43E	12/11/92
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	2/7/95
8:51	9/17/95
8:52	12/11/96
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/4/96
8:65	6/17/96
8:66	3/5/95
8:66A	3/5/95
8:70	8/19/93
8:71	2/17/94
8:80	4/6/97
8:100	7/20/97

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	5/4/95
9:3	9/27/93
9:4	9/26/96
9:5	4/1/96
9:6	4/30/95
9:6A	1/4/93
9:7	11/6/97
9:8	10/15/95
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	4/11/95
9:15	8/21/94

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	12/11/96
10:3	11/21/93
10:6	1/7/96
10:7	1/21/97
10:11	1/16/95
10:12	12/23/96
10:13	7/18/93
10:14	5/16/93
10:15	1/1/95
10:15A	1/1/95
10:15B	1/1/95
10:15C	1/1/95
10:31	6/5/94
10:35	9/21/97
10:36	12/31/92
10:37	11/2/95
10:38	4/29/96
10:39	5/7/95
10:40	5/11/94
10:41	3/20/94
10:42	8/19/96
10:43	8/21/94
10:44A	11/21/93
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:47	11/2/95
10:48	12/19/95
10:49	8/17/97
10:50	2/27/96
10:51	10/9/95
10:52	2/8/95
10:53	4/27/95
10:53A	11/2/97
10:54	2/15/96
10:55	3/8/95
10:56	8/21/96
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	12/19/93
10:63	11/28/94
10:64	2/22/96
10:65	2/19/96
10:66	12/15/93
10:67	2/19/96
10:68	6/28/96
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/7/96
10:71	12/24/95
10:72	8/24/97
10:73	7/15/96
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	11/2/97
10:85	12/20/94
10:86	9/21/97
10:87	1/27/94
10:89	5/24/95
10:90	10/14/92
10:91	9/4/95
10:95	Exempt
10:97	5/15/94
10:99	6/4/95
10:109	2/4/96
10:120	7/9/96
10:121	7/16/95
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:123	7/13/95
10:123A	8/17/97
10:124	11/4/97
10:125	6/4/95
10:126	11/7/93
10:126A	5/7/95
10:127	8/26/93
10:128	2/19/96
10:129	7/13/95

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N.J.A.C.	Expiration Date
10:130	7/2/95
10:131	10/7/97
10:132	10/25/96
10:141	2/7/94
10:150	10/22/97

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	6/1/97
10A:2	2/5/95
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	10/27/97
10A:8	8/19/97
10A:9	2/18/97
10A:10	7/9/97
10A:16	7/6/97
10A:17	2/3/97
10A:18	5/27/97
10A:19	8/21/94
10A:20	2/18/97
10A:21	2/4/96
10A:22	7/5/93
10A:23	7/6/97
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/97
10A:35	4/15/96
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/28/93
11:7	9/25/97
11:10	7/12/95
11:12	9/27/96
11:13	11/10/97
11:15	10/26/94
11:16	1/31/96
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/7/93
12:19	7/2/95
12:20	8/14/94
12:35	7/16/95
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/21/93
12:61	12/16/96
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/11/96
12:110	1/19/93
12:112	9/6/93
12:120	5/3/95
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	4/30/93
12A:12	9/21/92
12A:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95
12A:100	7/17/96
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	7/24/95
13:3	4/25/93
13:4	1/17/96
13:10	3/27/94
13:13	7/16/95
13:14	9/16/96
13:18	3/30/95
13:19	8/18/94
13:20	12/13/95
13:21	12/13/95
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	9/26/93
13:27	2/20/95
13:28	5/16/93
13:29	5/23/95
13:30	3/12/95
13:31	11/20/96
13:32	10/21/97
13:33	3/12/95
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	8/27/95
13:39	6/19/94
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94

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N.J.A.C.	Expiration Date
13:44B	11/2/97
13:44C	7/18/93
13:44D	8/7/94
13:44E	7/1/96
13:44F	6/15/97
13:45A	11/9/95
13:45B	9/21/97
13:46	9/4/95
13:47	1/27/97
13:47A	10/2/97
13:47B	2/21/94
13:47C	6/9/94
13:47K	9/17/95
13:48	1/17/96
13:49	12/16/93
13:51	9/16/96
13:54	11/18/96
13:59	7/30/95
13:60	1/16/97
13:61	3/5/95
13:62	3/19/95
13:63	8/19/96
13:70	1/25/95
13:71	1/25/95
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94
13:80	9/17/95
13:81	8/6/95

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	6/1/97
14:3	5/6/96
14:5	12/2/96
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	EXPIRED RULES
14:12	11/4/96
14:17	4/24/94
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96
14:38	4/1/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:6	1/16/95
14A:8	1/16/95
14A:11	1/16/95
14A:13	EXPIRED RULES
14A:14	1/30/94

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	8/19/96
15:5	7/6/97
15:10	4/15/96

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	10/1/95
16:1A	6/16/94
16:4	9/16/96
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	9/4/95
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	11/20/94
16:21B	12/3/95
16:22	12/18/95
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	4/8/96
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	2/8/95
16:38	10/15/95
16:41	9/8/97
16:41B	7/2/95
16:41C	5/4/97
16:43	5/10/95
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:47	4/20/97
16:49	2/8/95
16:51	2/14/97
16:53	7/17/94
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	3/28/96
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	2/26/95
16:72	3/20/96
16:73	5/18/97
16:74	12/16/96
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	12/17/95
16:79	9/12/96
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	6/8/95
17:5	11/30/95
17:6	11/22/93
17:7	12/19/93
17:8	10/15/95
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94

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N.J.A.C.	Expiration Date
17:16	5/2/96
17:19	3/8/95
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	8/17/95
17:29	9/26/95
17:30	3/11/97
17:32	3/21/93
17:33	4/17/94
17:40	11/19/95
17:41	4/1/96
17:42	9/8/97

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:18A	2/3/97
18:19	3/14/94
18:21	2/19/96
18:22	2/24/94
18:23	2/24/94
18:23A	9/4/95
18:24	6/7/93
18:25	2/19/96
18:26	6/7/93
18:35	6/7/93
18:36	3/19/95
18:37	7/23/95
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3A	11/4/96
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:6	5/6/96
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/8/93
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:31	8/20/95
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	9/18/97
19:50	5/12/93
19:51	8/14/96
19:52	1/6/97
19:53	4/28/93
19:54	3/24/93
19:61	3/2/97
19:65	10/5/97
19:75	1/13/94

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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 October 5, 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 SEPTEMBER 21, 1992

NEXT UPDATE: SUPPLEMENT OCTOBER 19, 1992

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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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. 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	24 N.J.R. 2753 and 2970	August 17, 1992
24 N.J.R. 509 and 672	February 18, 1992	24 N.J.R. 2971 and 3202	September 8, 1992
24 N.J.R. 673 and 888	March 2, 1992	24 N.J.R. 3203 and 3454	September 21, 1992
24 N.J.R. 889 and 1138	March 16, 1992	24 N.J.R. 3455 and 3578	October 5, 1992
24 N.J.R. 1139 and 1416	April 6, 1992	24 N.J.R. 3579 and 3784	October 19, 1992
24 N.J.R. 1417 and 1658	April 20, 1992	24 N.J.R. 3785 and 4144	November 2, 1992
24 N.J.R. 1659 and 1840	May 4, 1992	24 N.J.R. 4145 and 4306	November 16, 1992
24 N.J.R. 1841 and 1932	May 18, 1992	24 N.J.R. 4307 and 4454	December 7, 1992
24 N.J.R. 1933 and 2102	June 1, 1992		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-1.5, App. A	Conduct of administrative law judges	24 N.J.R. 2755(a)	R.1992 d.430	24 N.J.R. 4028(a)
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
1:31-3.1	Conduct of administrative law judges	24 N.J.R. 2755(a)	R.1992 d.430	24 N.J.R. 4028(a)
Most recent update to Title 1: TRANSMITTAL 1992-4 (supplement September 21, 1992)				
AGRICULTURE—TITLE 2				
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:6	Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes	24 N.J.R. 3981(a)		
2:32-2.4	Sire Stakes Program: stallion standing full season	24 N.J.R. 3981(b)		
2:69-1.11	Commercial values of primary plant nutrients	24 N.J.R. 2318(a)	R.1992 d.373	24 N.J.R. 3511(a)
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program	24 N.J.R. 2318(b)	R.1992 d.374	24 N.J.R. 3511(b)
2:71-2.28, 2.29	Inspection and grading charges for fruits and vegetables	24 N.J.R. 2321(a)	R.1992 d.375	24 N.J.R. 3513(a)
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing uses of enrolled lands	24 N.J.R. 2831(a)		
2:76-6.15	Farmland Preservation Program: pre-existing uses on lands permanently deed restricted	24 N.J.R. 2833(a)		
2:90-1.4, 1.5	Certification of soil erosion and sediment control plans	24 N.J.R. 3587(a)		
Most recent update to Title 2: TRANSMITTAL 1992-4 (supplement August 17, 1992)				
BANKING—TITLE 3				
3:1-2.1–2.9, 2.18, 2.20, 2.21	Branch and charter application procedures for banks, savings banks, and savings and loan associations	24 N.J.R. 3034(a)	R.1992 d.483	24 N.J.R. 4341(a)
3:18	Secondary Mortgage Loan Act rules	24 N.J.R. 3982(a)		
3:18-1, 2.1, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 7.4, 7.5, 8.1, 8.2, 9, 10.5, 10.7, 10.8, 11	Secondary Mortgage Loan Act rules	24 N.J.R. 2760(a)		
3:38	Mortgage bankers and brokers	24 N.J.R. 2653(a)	R.1992 d.378	24 N.J.R. 3514(a)
3:38-1.6	Mortgage bankers and brokers: administrative correction regarding surety bonds	———	———	24 N.J.R. 3514(b)
3:38-1.9, 5.2, 5.3	Branch offices; mortgage services licensure exemption; solicitor registration	24 N.J.R. 1937(a)	R.1992 d.431	24 N.J.R. 4032(a)
Most recent update to Title 3: TRANSMITTAL 1992-6 (supplement August 17, 1992)				
CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)				
PERSONNEL—TITLE 4A				
4A:1	General rules and Department organization	24 N.J.R. 2490(a)	R.1992 d.416	24 N.J.R. 3715(a)
4A:2	Appeals, discipline, separations	24 N.J.R. 2491(a)	R.1992 d.414	24 N.J.R. 3716(a)
4A:3-5.3, 5.6, 5.9	Comparable time off restrictions	24 N.J.R. 3588(a)		
4A:4-2.6, 2.15	Promotional examinations	24 N.J.R. 3589(a)		
4A:4-6.5	Medical and psychological examinations as condition of employment	24 N.J.R. 3596(a)		
4A:4-7.11	Transfers and retention of employee rights in a consolidation	24 N.J.R. 2494(a)	R.1992 d.419	24 N.J.R. 3718(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:5	Veterans and disabled veterans preference	24 N.J.R. 2495(a)	R.1992 d.415	24 N.J.R. 3719(a)
4A:6	Leaves, hours of work, employee development, and awards program	24 N.J.R. 3590(a)		
4A:6-1.6	Sick leave injury (SLI) benefits: carpal tunnel syndrome and asbestosis	24 N.J.R. 2108(a)	R.1992 d.413	24 N.J.R. 3720(a)
4A:7	Equal employment opportunity and affirmative action	24 N.J.R. 2496(c)	R.1992 d.420	24 N.J.R. 3721(a)
4A:9-1	Political subdivisions	24 N.J.R. 2498(a)	R.1992 d.418	24 N.J.R. 3722(a)
4A:10	Violations and penalties	24 N.J.R. 2499(a)	R.1992 d.417	24 N.J.R. 3723(a)

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COMMUNITY AFFAIRS—TITLE 5

5:4-2	Debarment and suspension from Department contracting	24 N.J.R. 2322(a)	R.1992 d.389	24 N.J.R. 3515(a)
5:10-25	Indirect apportionment of heating costs in multiple dwellings: methods, devices, and systems	24 N.J.R. 1844(a)	R.1992 d.390	24 N.J.R. 3515(b)
5:10-25.2	Indirect apportionment of heating costs in multiple dwellings	24 N.J.R. 3597(a)		
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)	R.1992 d.433	24 N.J.R. 4035(a)
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:18-1.5, 2.4A, 2.4B, 2.7, 2.8	Uniform Fire Code: life hazard uses and permits	24 N.J.R. 2654(a)	R.1992 d.385	24 N.J.R. 3519(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)	R.1992 d.405	24 N.J.R. 3723(b)
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		
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)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.19A, 5.21, 5.22, 5.23, 5.25	Uniform Construction Code: mechanical inspector license and mechanical inspections	24 N.J.R. 3457(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)	R.1992 d.390	24 N.J.R. 3515(b)
5:23-3.14	Uniform Construction Code: tent permits	24 N.J.R. 2656(a)	R.1992 d.391	24 N.J.R. 3521(a)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)	Expired	
5:23-4.5, 4.19–4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19, 12.5, 12.6	UCC: State Training Fee Report; fees	24 N.J.R. 2657(a)	R.1992 d.392	24 N.J.R. 3521(b)
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-5.5	UCC: administrative correction regarding elevator inspector licensure	———	———	24 N.J.R. 4344(a)
5:23-5.7	UCC: subcode official requirements	24 N.J.R. 2661(a)	R.1992 d.393	24 N.J.R. 3525(a)
5:23-5.19	UCC: elevator inspector H.H.S. requirements	24 N.J.R. 2662(a)	R.1992 d.394	24 N.J.R. 3525(b)
5:23-9.7	Uniform Construction Code: manufacturing, production and process equipment exemption	24 N.J.R. 3458(a)		
5:25-5.4	State new home warranty plan contributions	24 N.J.R. 2663(a)	R.1992 d.395	24 N.J.R. 3525(c)
5:26-2.3, 2.4	Planned real estate development full disclosure: fees	24 N.J.R. 2657(a)	R.1992 d.392	24 N.J.R. 3521(b)
5:30-8.2	Unbudgeted school aid	24 N.J.R. 2766(a)	R.1992 d.426	24 N.J.R. 3723(c)
5:33-1.2, 1.3, 1.5–1.8	Municipal tax collection procedures	24 N.J.R. 2766(a)	R.1992 d.426	24 N.J.R. 3723(c)
5:33-3.2, 3.3, 3.6, 3.8–3.11	Tenant Property Tax Rebate Program	24 N.J.R. 3205(a)	R.1992 d.469	24 N.J.R. 4255(a)
5:33-4	Property tax and mortgage escrow account transactions	24 N.J.R. 2664(a)	R.1992 d.400	24 N.J.R. 3527(a)
5:34-7	Cooperative purchasing by local contracting units	24 N.J.R. 2667(a)	R.1992 d.401	24 N.J.R. 3529(a)
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:91	Council on Affordable Housing: procedural rules	24 N.J.R. 2671(a)	R.1992 d.491	24 N.J.R. 4344(b)

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MILITARY AND VETERANS' AFFAIRS—TITLE 5A

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EDUCATION—TITLE 6

6:3-2.6	Conditions for access to pupil records	24 N.J.R. 3038(a)	R.1992 d.490	24 N.J.R. 4362(a)
6:8	Thorough and efficient system of public schools	24 N.J.R. 3039(a)		
6:8-6	Programs and services for pupils at risk	24 N.J.R. 3494(a)		
6:8-9	Educational improvement plans in special needs districts	24 N.J.R. 2323(a)	R.1992 d.396	24 N.J.R. 3535(b)
6:12-1.2, 1.7–1.10, 1.14	Governor's Teaching Scholars Program	24 N.J.R. 3050(a)	R.1992 d.489	24 N.J.R. 4362(b)
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 2109(a)	R.1992 d.397	24 N.J.R. 4069(a)

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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)		
6:29-2.4	Attendance at school by pupils or adults infected by HIV	24 N.J.R. 2124(a)	R.1992 d.398	24 N.J.R. 3538(a)
6:29-3.4	Medical examination requirement for interscholastic athletic participation	24 N.J.R. 4150(a)		
6:29-8	Nonpublic school nursing services	24 N.J.R. 3495(a)		
6:31-1.1–1.7, 1.9–1.16	Multiple indicators for exit from bilingual programs	24 N.J.R. 3497(a)		
6:64	Public, school, and college libraries	24 N.J.R. 2126(a)	R.1992 d.399	24 N.J.R. 3538(b)

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ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
7:1-1	Organization of Department	Exempt	R.1992 d.441	24 N.J.R. 4085(a)
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)	R.1992 d.473	24 N.J.R. 4363(a)
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)	Expired	
7:1A-2.13, 5.2	Water supply loan programs: administrative corrections concerning eligible project costs and priority determination	_____	_____	24 N.J.R. 4364(a)
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(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	24 N.J.R. 3609(a)		
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)		
7:7-1.7	Coastal Permit Program fees	24 N.J.R. 2768(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)	Expired	
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-16.1	Freshwater wetlands permit fees	24 N.J.R. 2768(a)		
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
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)		
7:12	Shellfish-growing water classifications	24 N.J.R. 3657(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)	R.1992 d.434	24 N.J.R. 4088(a)
7:14A-1.8, 3.9, App. A, B; 10.3, App. H	Statewide Stormwater Permitting Program: administrative corrections and changes	_____	_____	24 N.J.R. 4364(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14B	Underground storage tanks	24 N.J.R. 2975(a)		
7:14B	Underground storage tanks: public hearing	24 N.J.R. 3286(b)		
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
7:19-3.9	Water supply allocation permits: fee schedule	_____	_____	24 N.J.R. 4121(a)
7:25-5.13	1992-93 Game Code: hunting prohibition in Monmouth County	24 N.J.R. 2773(a)	R.1992 d.423	24 N.J.R. 3725(a)
7:25-6	1993-94 Fish Code	24 N.J.R. 2539(a)	R.1992 d.439	24 N.J.R. 4122(a)
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-16.1	Freshwater fishing line for Rahway River in Union County	24 N.J.R. 2977(a)		

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7:25-18.1	Filleting of flatfish at sea	24 N.J.R. 1456(a)	R.1992 d.476	24 N.J.R. 4368(b)
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.1, 18.12, 18.14	Summer flounder management; otter and beam trawls	24 N.J.R. 4249(a)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)	R.1992 d.449	24 N.J.R. 4256(a)
7:25-18.16	Taking of horseshoe crabs	24 N.J.R. 2978(a)		
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)		
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)		
7:26-4.3	Thermal destruction facilities: extension of comment period regarding compliance monitoring fees	24 N.J.R. 2687(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)		
7:26-6.5, 6.6	Interdistrict and intradistrict solid waste flow	24 N.J.R. 3291(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)	R.1992 d.448	24 N.J.R. 4258(a)
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)	R.1992 d.440	24 N.J.R. 4126(a)
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)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26B	Environmental Cleanup Responsibility Act rules	24 N.J.R. 2773(b)		
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-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. 1	ECRA rules: extension of comment period	24 N.J.R. 1281(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)		
7:27-1.4, 1.6–1.30, 8.4, 8.14–8.24, 16.9, 21	Air contaminant emission statements from stationary sources	24 N.J.R. 2979(a)		
7:27-1.4, 1.36, 1.37, 1.38, 8.1, 8.3, 8.4, 8.24, 18	Control and prohibition of air pollution from new or altered sources: emission offsets	24 N.J.R. 3459(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)	R.1992 d.382	24 N.J.R. 3539(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)	R.1992 d.382	24 N.J.R. 3539(a)
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)		
7:28-42.4	Radio frequency protection guides for whole body exposure: administrative correction	———	———	24 N.J.R. 4371(a)
7:30	Pesticide Control Code	24 N.J.R. 2776(a)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		

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HEALTH—TITLE 8				
8:8-1.3	Blood bank licensure fees	24 N.J.R. 2508(a)	R.1992 d.427	24 N.J.R. 3725(c)
8:13	Shellfish handling and shipping; hard and soft shell clam depuration	24 N.J.R. 2504(a)	R.1992 d.384	24 N.J.R. 3532(a)
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:31A-1.5, 7.4, 7.5, App. D	SHARE Manual: per diem add-on fee assessment	24 N.J.R. 2810(a)	R.1992 d.450	24 N.J.R. 4259(a)
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33C-2.7, 7.2	Regionalized perinatal services: administrative corrections	———	———	24 N.J.R. 3727(a)
8:33G	Computerized tomography services: certification of need	24 N.J.R. 4221(a)		
8:33I-1	Megavoltage radiation oncology services: certification of need	24 N.J.R. 4222(a)		
8:33M-1.6	Bed need methodology for adult comprehensive rehabilitation services	24 N.J.R. 4225(a)		
8:33R	Psychiatric health care facilities and services: policy manual for planning and certificate of need reviews	24 N.J.R. 3598(a)		
8:39-13.4, 27.1, 27.8, 29.4, 33.2, 45, 46	Long-term care facilities: use of restraints and psychoactive drugs; pharmacy supplies; Alzheimer's and dementia care services	24 N.J.R. 4228(a)		
8:41	Mobile intensive care programs	24 N.J.R. 3255(b)		
8:43	Residential health care facilities: standards for licensure	24 N.J.R. 2506(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43E	Recodification (see 8:33R)	24 N.J.R. 3598(a)		
8:43I	Hospital Policy Manual	24 N.J.R. 3280(a)		
8:45-1.3, 2.1	Blood bank licensure fees and Department laboratory services charges	24 N.J.R. 2508(a)	R.1992 d.427	24 N.J.R. 3725(c)
8:65-2.5	Controlled dangerous substances: physical security controls	24 N.J.R. 174(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), 2560(a), 3173(b))	24 N.J.R. 61(a)	R.1992 d.461	24 N.J.R. 4260(a)
8:71	Interchangeable drug products (see 24 N.J.R. 1896(a), 2560(b))	24 N.J.R. 735(a)	R.1992 d.350	24 N.J.R. 3174(a)
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 (see 24 N.J.R. 2557(b), 3173(a))	24 N.J.R. 1674(a)	R.1992 d.462	24 N.J.R. 4260(b)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a))	24 N.J.R. 2414(b)	R.1992 d.464	24 N.J.R. 4262(a)
8:71	Interchangeable drug products	24 N.J.R. 2997(a)	R.1992 d.463	24 N.J.R. 4261(a)
8:71	Interchangeable drug products	24 N.J.R. 4009(a)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		
8:100-14.8, 14.13	State Health Plan: hospital inpatient services	24 N.J.R. 2704(a)	R.1992 d.451	24 N.J.R. 4262(b)
8:100-16	State Health Plan: correction to Economic Impact statement regarding Long-Term Care Services	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)	R.1992 d.466	24 N.J.R. 4371(a)
9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:6A	State college personnel system	24 N.J.R. 3052(a)		
9:7	Student Assistance Programs	24 N.J.R. 2510(a)	R.1992 d.486	24 N.J.R. 4373(a)
9:9-7.6	NJCLASS Program: loan interest rate	24 N.J.R. 2687(b)	R.1992 d.436	24 N.J.R. 4035(b)
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)		
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	24 N.J.R. 3506(a)		
10:36	Patient supervision at State psychiatric hospitals	24 N.J.R. 4232(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:50-1.1–1.4, 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)	R.1992 d.447	24 N.J.R. 4264(a)
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:53A	Hospice Services Manual	24 N.J.R. 2778(a)	R.1992 d.442	24 N.J.R. 4036(a)
10:60-2.3, 3.15, 4.2	Home Care Services: personal care assistant services; eligibility for Home Care Expansion Program	24 N.J.R. 2687(c)	R.1992 d.438	24 N.J.R. 4054(a)
10:63-1	Long-Term Care Services Manual: administrative changes	———	———	24 N.J.R. 3728(b)
10:71-5.6	Medicaid Only income eligibility standards for hospice care	24 N.J.R. 2778(a)	R.1992 d.442	24 N.J.R. 4036(a)
10:72-1.1, 3.4, 4.1	New Jersey Care: Medicaid eligibility of children	24 N.J.R. 1860(a)	R.1992 d.484	24 N.J.R. 4378(a)
10:80 et al.	Designation of Division of Economic Assistance as Division of Family Development	———	———	24 N.J.R. 3729(a)
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)		
10:83	Service Programs for Aged, Blind or Disabled Persons	24 N.J.R. 3074(a)	R.1992 d.477	24 N.J.R. 4379(a)
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)	R.1992 d.488	24 N.J.R. 4379(b)
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:85-1.1, 2.1, 3.1–3.5, 4.1, 4.2, 5.1–5.8, 6.8, 7.2, App. D	General Assistance program: time-limited eligibility for employable persons; alien eligibility; payment of hospital medical services	24 N.J.R. 3075(a)		
10:87-2.4, 2.6, 2.31, 2.39, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5,10, 6.9, 6.20, 10.3, 10.6, 10.18, 11.26, 11.29, 12.1	Food Stamp Program revisions	24 N.J.R. 3207(b)		
10:87-12	Food Stamp Program: income eligibility, deduction, and coupon allotment standards	———	———	24 N.J.R. 3769(b)
10:97-1.3, 7.3	Business Enterprise Program for the blind and visually impaired: promotion and transfer	24 N.J.R. 2798(a)		
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)	R.1992 d.471	24 N.J.R. 4386(a)
10:121A	Manual of Requirements for Adoption Agencies	24 N.J.R. 3500(a)		
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	24 N.J.R. 3088(a)		
10:124	Children's Shelter Facilities and Homes: manual of standards	24 N.J.R. 3089(a)	R.1992 d.485	24 N.J.R. 4387(a)
10:131	DYFS: Adoption Assistance and Child Welfare Act of 1980 requirements	24 N.J.R. 2522(a)	R.1992 d.437	24 N.J.R. 4055(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)		
10:150	Organization of Division of the Deaf and Hard of Hearing	Exempt	R.1992 d.460	24 N.J.R. 4267(a)

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10A:1-1.2, 2.7	Petitioning for a rule and requesting rule exemptions: administrative corrections	———	———	24 N.J.R. 4390(a)
10A:6	Inmate access to courts	24 N.J.R. 2799(a)	R.1992 d.470	24 N.J.R. 4390(b)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-33	Public Advocate reimbursement disputes	24 N.J.R. 2706(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)	R.1992 d.493	24 N.J.R. 4391(a)
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)		
11:2-26	Insurer's annual audited financial report: extension of comment period	24 N.J.R. 2708(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)		
11:2-33	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:2-35.1–35.6	Insurer relief from FAIR Act obligations	24 N.J.R. 3212(a)		
11:3-2A	New Jersey Automobile Full Insurance Underwriting Association claims payment deferral for residual bodily injury	24 N.J.R. 3480(a)	R.1992 d.494	24 N.J.R. 4392(a)
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-19.3, 34.3	Automobile insurance eligibility rating plans: incorporation of merit rating surcharge	24 N.J.R. 2332(a)		
11:3-28.8	Reimbursement of excess medical expense benefits paid by insurers	24 N.J.R. 3215(a)		
11:3-29.1, 29.2, 29.4	Motor bus medical expense benefits coverage	24 N.J.R. 3605(a)		
11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-33.2	Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 2128(b)		
11:3-34.4	Automobile insurance coverage: eligible person qualifications	24 N.J.R. 3420(a)	R.1992 d.481	24 N.J.R. 4396(a)
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:3-36.12	Automobile physical damage photo inspection	24 N.J.R. 2708(c)	R.1992 d.424	24 N.J.R. 3729(b)
11:3-42	Producer Assignment Program	24 N.J.R. 3421(a)	R.1992 d.482	24 N.J.R. 4397(a)
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)	Expired	
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.8	Real Estate Commission: deposit of monies paid to broker	24 N.J.R. 3483(a)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.15	Real Estate Commission: advertising by brokers and licensees	24 N.J.R. 3484(a)		
11:5-1.16	Real Estate Commission: documentation of offers and counter-offers	24 N.J.R. 3485(a)		
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)		
11:5-1.28	Real Estate Commission: surety bond posting by prelicensure schools	24 N.J.R. 3488(a)		
11:5-1.38	Real Estate Commission: fee cap for mortgage services	24 N.J.R. 1957(a)	R.1992 d.468	24 N.J.R. 4268(a)
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:7	Insurance of municipal bonds	24 N.J.R. 1958(a)	R.1992 d.425	24 N.J.R. 3729(c)
11:13	Commercial lines insurance	24 N.J.R. 2830(a)	R.1992 d.492	24 N.J.R. 4408(a)
11:16-2	Reports to National Insurance Crime Bureau regarding motor vehicle theft or salvage	24 N.J.R. 3606(a)		
11:17-1.2, 2.3–2.15, 5.1–5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation	24 N.J.R. 2128(b)		
11:17A-1.3	Licensure as insurance producer or registration as limited insurance representative: compliance deadline	24 N.J.R. 3220(a)		
11:19-2	Financial Examination Monitoring System: data submission by domestic insurers	24 N.J.R. 2999(a)		
11:19-3	Financial Examination Monitoring System: data submission by surplus lines producers and insurers	24 N.J.R. 3003(a)		

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12:15-1.3–1.7	Unemployment Compensation and Temporary Disability: 1993 maximum benefit rates, taxable wage base, government entity contribution rate, base week, and alternative earnings test	24 N.J.R. 3014(a)	R.1992 d.454	24 N.J.R. 4269(a)
12:16-4.8	Board and room, meals and lodging in lieu of wages: 1993 rates	_____	_____	24 N.J.R. 3182(a)
12:60-3.2, 4.2	Prevailing wages on public works contracts: telecommunications worker	24 N.J.R. 2689(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: extension of comment period	24 N.J.R. 3015(b)		
12:60-3.2, 4.2	Prevailing wages for public works: extension of comment period	24 N.J.R. 3607(a)		
12:100-4.2	Public employee safety and health: occupational exposure to bloodborne pathogens	24 N.J.R. 3607(b)		
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		
12:110	Public employee occupational safety and health: procedural standards	24 N.J.R. 4234(a)		
12:190	Regulation of explosives	24 N.J.R. 4235(a)		
12:235-1.6	Workers' Compensation: 1993 maximum benefit rate	24 N.J.R. 3015(a)	R.1992 d.467	24 N.J.R. 4270(a)
12:235-9.4	Workers' Compensation: appeal procedures regarding discrimination complaint decisions	24 N.J.R. 1684(a)		
12:235-9.4	Workers' Compensation appeal procedures regarding discrimination complaint decisions: extension of comment period	24 N.J.R. 3090(a)		

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13:2-22	Alcoholic Beverage Control: licensee training and certification	24 N.J.R. 1958(b)	R.1992 d.445	24 N.J.R. 4055(b)
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:21-19.9	Motor Vehicle Franchise Committee: administrative hearing costs	24 N.J.R. 3015(c)		
13:24-4.1, 4.2	Amber light permit for rural route letter carrier vehicles	24 N.J.R. 4236(a)		
13:28-5.1, 6.35	Schools of cosmetology and hairstyling: use of annex classrooms	24 N.J.R. 2333(a)	R.1992 d.444	24 N.J.R. 4057(a)
13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
13:30-8.6	Board of Dentistry: professional advertising	24 N.J.R. 2801(a)		
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:32	Rules of Board of Examiners of Master Plumbers	24 N.J.R. 2334(a)	R.1992 d.457	24 N.J.R. 4270(b)
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.JR. 4010(a)		
13:34-1.1	Board of Marriage Counselor Examiners: annual license fees and charges	24 N.J.R. 2522(b)	R.1992 d.386	24 N.J.R. 3533(a)
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)	R.1992 d.429	24 N.J.R. 3729(d)
13:35-6.13	Bio-analytical laboratory directorships: license fees	24 N.J.R. 4011(a)		
13:35-6.13, 9	Acupuncture Examining Board: practice of acupuncture	24 N.J.R. 4013(a)		
13:35-6.17	Corporate medical practice: administrative correction regarding significant beneficial interest	_____	_____	24 N.J.R. 4409(a)
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:36-5.12, 5.20	Mortuary Science: licensee advertising; referral fee prohibition	24 N.J.R. 3016(a)		
13:37	Certification of homemaker-home health aides: open public forum	24 N.J.R. 1861(a)		
13:37-13.1, 13.2	Nurse anesthetist: conditions for practice	24 N.J.R. 4020(a)		
13:38-1.2, 1.3, 2.5	Practice of optometry: permissible advertising	24 N.J.R. 4237(a)		
13:38-2.4, 4, 5.1	Board of Optometrists: issuing prescriptions; certification by examination; fees	24 N.J.R. 2802(a)	R.1992 d.443	24 N.J.R. 4058(a)
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40A-1, 2, 2A, 3.6, 6.1, 6.2, 6.3	Board of Real Estate Appraisers: certified residential classification; general appraiser; temporary visiting license; fees and designations	24 N.J.R. 3489(a)		
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)		
13:44-2.5, 2.7, 2.11	Veterinary Medical Examiners: referral fee prohibition; product endorsements; licensee advertising	24 N.J.R. 3017(a)	R.1992 d.478	24 N.J.R. 4409(a)

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13:44B	Per diem compensation for members of professional and occupational licensing boards	24 N.J.R. 3019(a)	R.1992 d.480	24 N.J.R. 4410(a)
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)		
13:44G-14.1	Board of Social Work Examiners: fees for licensure, certification, and services	24 N.J.R. 2523(a)		
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)		
13:45A-24	Toy and bicycle safety	24 N.J.R. 3019(b)		
13:45A-24	Toy and bicycle safety: extension of comment period	24 N.J.R. 3666(a)		
13:46-9.17	Boxing inspectors	24 N.J.R. 3492(a)		
13:47A-1–8, 10, 11	Bureau of Securities rules	24 N.J.R. 2524(a)	R.1992 d.435	24 N.J.R. 4060(a)
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:54-1.15	Confidentiality of information regarding firearms permits, ID cards, licenses and registration	24 N.J.R. 3022(a)	R.1992 d.446	24 N.J.R. 4068(a)
13:70-4.1, 4.2, 4.15, 9.41, 22.5	Thoroughbred racing: licensure fees; partnership registration	24 N.J.R. 4021(a)		
13:70-12.4	Thoroughbred racing: claimed horse	24 N.J.R. 4022(a)		
13:71-7.1, 7.5, 7.26, 7.35, 24.5	Harness racing: licensure fees; partnership registration	24 N.J.R. 4023(a)		
13:71-10.5	Harness racing: programmed trainer	24 N.J.R. 2340(a)	R.1992 d.388	24 N.J.R. 3533(b)
13:72	Casino simulcasting of horse races	24 N.J.R. 3666(b)		
13:75-1.19	Violent Crimes Compensation Board: moneys received from other sources by claimants	24 N.J.R. 4239(a)		

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14:3-5.1	Relocation or closing of utility office	24 N.J.R. 2132(a)		
14:3-6.5	Public records	24 N.J.R. 1966(a)		
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)		
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)		
14:3-11	Solid waste collection regulatory reform	24 N.J.R. 1459(a)		
14:5A	Nuclear generating plant decommissioning: periodic cost review and trust fund reporting	23 N.J.R. 3239(b)		
14:6-5	Natural gas service: preproposal on inspection and operation of master meter systems	24 N.J.R. 1862(b)		
14:9B	Private domestic wastewater treatment facilities	24 N.J.R. 1863(a)		
14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)		
14:10-7	Telephone access to adult-oriented information	24 N.J.R. 1238(a)		
14:11	Board of Regulatory Commissioners: administrative orders	24 N.J.R. 1684(b)		
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)		
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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. 1688(a)
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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TRANSPORTATION—TITLE 16

16:28-1.41	Speed limit zones along Route U.S. 9 in Atlantic County	24 N.J.R. 2806(a)	R.1992 d.408	24 N.J.R. 3731(a)
16:28A-1.1, 1.2, 1.3, 1.7, 1.97, 1.106	Restricted parking and stopping along U.S. 1, U.S. 1 and 9, and Route 3 in northern and central counties, and U.S. 9 in Atlantic County	24 N.J.R. 2807(a)	R.1992 d.407	24 N.J.R. 3732(a)

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16:28A-1.4, 1.5, 1.6, 1.13, 1.30	Restricted parking and stopping zones along Routes 4 and 5 in Bergen County; Route 7 in Kearny, Jersey City, Nutley and Belleville; U.S. 22 in Readington; and Route 44 in Greenwich and West Deptford	24 N.J.R. 3024(a)	R.1992 d.455	24 N.J.R. 4273(a)
16:28A-1.5, 1.61, 1.71	Bus stop zones along Route 5, U.S. 9W, and Route 67 in Bergen County	24 N.J.R. 3673(a)		
16:28A-1.27	Restricted parking and stopping along Route 38 in Burlington County	24 N.J.R. 3492(b)	R.1992 d.495	24 N.J.R. 4411(a)
16:54	Licensing of aeronautical and aerospace facilities	24 N.J.R. 2542(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 4025(a)		
16:83	Conduct and safety of public in use of NJ TRANSIT equipment and facilities	24 N.J.R. 3674(a)		

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17:1-4.12	Purchase of service credit in State retirement systems	24 N.J.R. 4239(b)		
17:2-1.4	Public Employees' Retirement System: election of member-trustee	24 N.J.R. 3690(a)		
17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)	Expired	
17:9-2.3	State Health Benefits Program: annual enrollment periods	24 N.J.R. 4025(b)		
17:9-2.4	State Health Benefits Program: retirement or COBRA enrollment	24 N.J.R. 4025(c)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer" eligibility	24 N.J.R. 3493(a)		
17:9-4.2	State Health Benefits Program: part-time deputy attorneys general	24 N.J.R. 2345(a)		
17:9-5.6	Health maintenance organization charges: administrative correction	_____	_____	24 N.J.R. 4068(b)
17:20-2.1, 4.3, 4.4	Background checks and training of lottery agents and employees	24 N.J.R. 2238(a)	R.1992 d.376	24 N.J.R. 3533(c)
17:20-4.8	Sale of lottery tickets at specific locations licensed	24 N.J.R. 2239(a)	R.1992 d.378	24 N.J.R. 3534(b)
17:20-6.2	Redemption of winning lottery tickets	24 N.J.R. 2239(b)	R.1992 d.377	24 N.J.R. 3534(a)
17:26	Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J)	24 N.J.R. 1255(a)		
17:28-2.8	Applications for State Employee Charitable Fund-Raising Campaign: administrative change	_____	_____	24 N.J.R. 3534(c)

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18:5-2.3, 3.2–3.13, 3.20–3.25, 4.3–4.7, 5.8	Cigarette Tax rate and stamps	24 N.J.R. 2415(a)		
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18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)	R.1992 d.404	24 N.J.R. 3733(a)
18:22-1.3, 3.3, 6.1, 6.2, 6.3, 8.1, 9.2, 9.6, 10.1	Public utility corporations	24 N.J.R. 2531(b)		
18:26-3.2, 6.4, 11.20–11.28	Transfer Inheritance and Estate Tax: State death tax credit; tenancy by the entirety in personal property; release of safe deposit box contents	24 N.J.R. 2533(a)	R.1992 d.402	24 N.J.R. 3734(b)
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