

NEW JERSEY REGISTER

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 16, 1993
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 15, 1993

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

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

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NEW JERSEY REGISTER

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NEW JERSEY REGISTER, MONDAY, APRIL 19, 1993

REORGANIZATION PLANS

(a)

OFFICE OF THE GOVERNOR

Governor Jim Florio

Notice of a Plan for the Transfer of the Division of Juvenile Services and Related Functions from the Department of Corrections to the Department of Human Services

Take notice that, on March 22, 1993, Governor James J. Florio hereby issues the following Reorganization Plan (No. 001-1993) providing for the transfer of the Division of Juvenile Services and related functions from the Department of Corrections to the Department of Human Services.

GENERAL STATEMENT OF PURPOSE

The Division of Juvenile Services was created in 1978 by the Commissioner of Corrections pursuant to his authority under Public Law 1976, Chapter 98 (N.J.S.A. 30:1B-1 et seq.). The Division fulfills the obligations and mandate of the Department of Corrections regarding juvenile offenders by, first, protecting the public from juvenile criminal offenders; second, separating juvenile offenders from the adult offender population; and third, creating an environment which encourages rehabilitation of offenders and their reintegration into the community.

The purpose of this Reorganization Plan is to implement the recommendation of the Governor's Cabinet Action Group on Juvenile Justice (which was established by Executive Order No. 27(1991)) to create an efficient governmental structure which protects the public from further criminal acts by adjudicated youth and best promotes the rehabilitation of juvenile offenders in the most appropriate setting. Through its research, the Action Group found that a comprehensive program would need to be established, one that provides a number of alternatives, ranging from secure placement in juvenile institutions for violent youth offenders to day treatment type programs in the youth's community to reintegrate the rehabilitated offender or non-violent offender into the community.

The Cabinet Action Group recognized the great variety of human service needs of those youth committed to the Division of Juvenile Services in the Department of Corrections. These juveniles require a myriad of services in the areas of mental health, developmental disabilities, health, substance abuse and remedial education. Additionally, many of these youth come from dysfunctional or non-existent families or from communities in crisis, and they are often victims of neglect, physical, psychological, or sexual abuse.

In the course of its work, the Cabinet Action Group examined the programs of the major state departments with the purpose of recommending the placement of the Division of Juvenile Services in the state-level department which best matches the needs of these juveniles. It became evident that the present position of the Division of Juvenile Services within the Department of Corrections is not the best placement. In fact, because of the paramount problems stemming from the unrelenting increase in the adult offender population, the Department of Corrections is not designed to provide the sanctions and services needed by juveniles, resulting in the Division of Juvenile Services accessing resources outside of the Department. Therefore, the present placement of the Division is not the most efficient placement for appropriate programs or for long-term cost efficiency.

In examining all the other possible state-level departments, Department of Human Services, Department of Law and Public Safety, Department of Community Affairs, Department of Health, and Department of Education, it became evident that the Department of Human Services is the most appropriate.

The Department of Human Services already provides many of the services required by youth committed to the Division of Juvenile Services, namely, mental health, services for the developmentally disabled, abused and neglected, case management, and educational services. In addition, the Department of Human Services has experience with providing secure 24-hour care. As a result, the recommendation by the Governor's Cabinet Action Group on Juvenile Justice is to transfer the Division of Juvenile Services from the Department of Corrections to the Department of Human Services.

This transfer of the Division of Juvenile Services from the Department of Corrections to the Department of Human Services recognizes the inter-relationship of the already existing services in the Department of Human Services and the needs of youth committed to the Division of Juvenile Services. This Plan will develop a rational approach to the juvenile delinquency problem by better implementing a range of dispositions as designed in the Code of Juvenile Justice enacted in 1982. The Reorganization Plan is designed to protect society from further criminal acts by these juveniles not only by maintaining maximum and medium-security institutions for the dangerous and incorrigible but also by increasing the chances of rehabilitation to break the cycle of crime. It will also provide the state with a structure for future improvements to the juvenile justice system.

This Reorganization Plan proposes that the institutions, programs, personnel, powers, and responsibilities listed herein and heretofore administered by the Division of Juvenile Services in the Department of Corrections be transferred to the Department of Human Services, thereby creating a Division of Juvenile Services in the Department of Human Services. The statutory and administrative powers and responsibilities of the Commissioner of Corrections as they apply to juveniles committed to the Department of Corrections will be transferred to the Commissioner of Human Services.

These actions will promote the policy objectives of protecting the public while increasing the efficiency of providing a coordinated range of rehabilitative services in the most appropriate environment for juvenile offenders. By moving the secure care institutions for juveniles into the Department of Human Services, restrictive facilities and services will be available for those juveniles who are a danger to the public. For juveniles who do not pose a danger to the public, the new placement of the Division will more easily match the needs of these troubled juveniles to services offered through the Department of Human Services. The effective programs already begun by the Division of Juvenile Services in the Department of Corrections can be more easily augmented. Additionally, placement of Juvenile Services in the Department of Human Services will enable the Division to be in a better position to access additional federal funds for health care and rehabilitation programs. The result will be a better designed, more efficient and cost-effective approach to rehabilitating juveniles in New Jersey.

Therefore, in accordance with the provisions of the "Executive Reorganization Act of 1969," P.L. 1969 c.203 (C. 52:14C-1 et seq.), I find with respect to each reorganization included in this Plan that each is necessary to accomplish the purposes set forth in Section 2 of the Act and will do the following:

1. Promote more effective management of the Executive Branch and its departments because it will more appropriately group similar functions within already existing agencies;
2. Promote better and more efficient execution of the law by integrating the State's mandate to protect the public from juvenile offenders, provide services to at-risk youth and rehabilitate adjudicated juveniles;
3. Group, coordinate and consolidate functions in a more consistent and practical way according to major purposes; and
4. Eliminate duplication and overlapping of effort by consolidating certain functions and result in a more efficient use of state and federal funds.

THE PROVISIONS OF THE REORGANIZATION PLAN ARE AS FOLLOWS:

A. This reorganization provision will transfer the Division of Juvenile Services from the Department of Corrections to the Department of Human Services. This transfer of placement will enable the Division not only to maintain and administer secure facilities for the dangerous or incorrigible offender but also to provide better services to rehabilitate and remediate the problems of other juvenile offenders. In addition, this transfer of placement will better enable the Commissioner of Human Services to plan for and implement programs which prevent young people from becoming involved with or further involved with the juvenile justice system. Further, this transfer will assist the Department of Human Services in its attempt to obtain federal funding for programs needed by, and/or already provided to, these juveniles with state funds.

Therefore, I hereby order the following reorganization:

1. a. The powers, duties and functions of the Commissioner and the Department of Corrections contained in P.L. 1976, c.98 (C. 30:1B-1 et

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seq.) as applied to the commitment, incarceration and rehabilitation of juvenile offenders pursuant to the New Jersey Code of Juvenile Justice, P.L. 1982, c.77, as amended (C. 2A:4A-20 et seq.), are continued and are transferred to the Commissioner and Department of Human Services, except as hereinafter provided.

b. The powers, duties and functions of the Commissioner and the Department of Corrections concerning the confinement and transfer of juvenile offenders pursuant to P.L. 1918, c.147, as amended (C. 30:4-81 et seq.), are continued and transferred to the Department of Human Services and the Commissioner of Human Services, except as hereinafter provided.

c. The Division of Juvenile Services of the Department of Corrections, including the functions, powers and duties assigned by the Commissioner of Corrections to it pursuant to P.L. 1976, c.98 (C. 30:1B-1 et seq.), is continued and is transferred to and constituted as the Division of Juvenile Services in the Department of Human Services.

d. Subject to the provisions of paragraph j. of this subsection, all programmatic, administrative and support staff presently comprising the Division of Juvenile Services, Department of Corrections, are transferred to the Division of Juvenile Services, Department of Human Services, with all of their present powers, duties and responsibilities and any other powers, duties and responsibilities contained herein.

e. A proportionate share of those support services or funds to purchase such services presently housed in the Department of Corrections' Central Office utilized for the support of the Division of Juvenile Services, Department of Corrections shall be transferred from the Department of Corrections to the Department of Human Services. These transfers shall be made by agreement between the Commissioner of Corrections and the Commissioner of Human Services after determining the number and type of positions presently utilized for support of the Division and the appropriateness of transferring personnel, positions or funding.

f. It is the intention of this Reorganization Plan that Corrections Officers continue to work at, and provide security for, maximum and medium-security institutions. To that end, the Department of Corrections shall provide security by Corrections Officers for the institutions delineated in sections A.2.a. and A.2.b. of this Reorganization Plan and any other maximum or medium-security institution developed by the Division of Juvenile Services for juvenile offenders. This shall be accomplished by a Memorandum of Understanding to be executed by the Commissioners of Human Services and Corrections. All Corrections Officers and positions providing these services shall maintain their Civil Service titles along with all their powers, duties, responsibilities, and rights held pursuant to New Jersey law and regulation.

g. Nothing in this Reorganization Plan shall be construed to deprive any person of any tenure rights or of any right or protection provided him or her by Title 11A of the Revised Statutes, Civil Service, or under any pension law or retirement system.

h. It is the intention of this Reorganization Plan that resources continue to be provided for the education of juvenile offenders whose custody and supervision shall be transferred to the Department of Human Services and those offenders between the ages of 18 and 21 whose custody and supervision shall remain with the Department of Corrections, and, accordingly, existing and future monies, personnel, and other educational resources shall be appropriately apportioned between the Departments of Human Services and Corrections, with both Commissioners addressing and resolving questions involved in such apportionment. To that end, all funds for the education of juvenile offenders whose custody and supervision shall be transferred to the Department of Human Services by this Reorganization Plan and collected pursuant to the "State Facilities Education Act of 1979," P.L. 1979, c.207, as amended (C. 18A:7B-1 et seq.) (SFEA), are to be forwarded and hereafter given to the Commissioner of Human Services and used according to the provisions of the SFEA. The Commissioner of Corrections shall forward to the Department of Human Services and the Department of Education an accurate census of those juvenile offenders who will be transferred to the Department of Human Services. This report will allow appropriate budget planning by the Department of Human Services and fund allocation by the Department of Education for the education of these juvenile offenders.

All federal and state educational grants and contract funds received for these juvenile offenders are redesignated and shall be immediately forwarded to the Commissioner of Human Services and used accordingly.

Nothing contained in this Reorganization Plan shall be construed to affect funds received pursuant to the provisions of the SFEA for those

persons under the age of 21 years whose custody is not transferred by this Reorganization Plan from the Department of Corrections to the Department of Human Services. The Department of Corrections shall continue to receive such funds to be used according to the provisions of the SFEA.

i. The powers, duties, and responsibilities of the Office of Education created and established in the Department of Corrections pursuant to the "State Facilities Education Act of 1979," P.L. 1979, c.207, §12 (C. 18A:7B-8), for the education of those juvenile offenders whose custody is transferred to the Department of Human Services and those juvenile offenders whose custody will be given to the Department of Human Services subsequent to the effective date of this Reorganization Plan are hereby transferred to the Office of Education in the Department of Human Services pursuant to P.L. 1979, c.207, §13 (C. 18A:7B-9).

j. Anything hereinbefore stated to the contrary notwithstanding:

(1) All current Division of Juvenile Services employees affected by the transfer of the Division of Juvenile Services from the Department of Corrections to the Department of Human Services will have three months to make a decision to stay within the Department of Corrections. During this three-month period, each employee shall remain in his or her Department of Corrections position and retain all rights and emoluments thereto. Anyone deciding to remain in Corrections at the conclusion of the three-month period will move to available positions within a reasonable period of time, allowing for the need of Human Services to hire to fill the position being vacated. Any employees who wish to remain in Corrections and who cannot be immediately accommodated at the conclusion of the three-month period will have rights to transfer as positions become available, second only to applicable special re-employment rights. Anyone choosing to move to Human Services shall retain all seniority earned at the Department of Corrections.

(2) All current Division of Juvenile Services employees who were impacted by the most recent round of layoffs, and who wish to transfer to the Department of Human Services, as well as former Division of Juvenile Services employees who were so impacted, will have special re-employment rights as follows:

They will be given the opportunity to select priority special re-employment rights to either the Department of Human Services or the Department of Corrections. This choice shall be exercised upon the conclusion of the three-month period specified in subparagraph 1 above, by formal notice to the Department of Personnel. Regardless of which Department is selected for priority rights, former and current Juvenile Services employees will retain special re-employment rights over regular re-employment and open competitive lists on a Statewide basis.

(3) Employees will have promotional rights in the Department they select for employment. The existing promotional lists for Juvenile Services employees established under the Division of Juvenile Services unit scope will be transferred to and usable for promotional opportunities within the Division of Juvenile Services in the Department of Human Services for those employees who opt to remain with Human Services. Employees who opt to remain with the Department of Corrections will not be eligible for appointment from these lists and will establish their promotional rights in the Department of Corrections. However, employees who opt to remain with the Department of Corrections but cannot be immediately accommodated at the conclusion of the three-month period will have their promotional rights preserved until their transfer back to the Department of Corrections can be effectuated.

(4) There will be a written agreement between the Commissioner of Corrections and the Commissioner of Human Services that, in accordance with N.J.S.A. 18A:28-6.1, teachers who are transferred from the Department of Corrections to the Department of Human Services shall retain all tenure or if non-tenured all time served toward tenure.

(5) As stated in this Reorganization Plan, after the juvenile population is moved to the Department of Human Services there will continue to be education funding for eligible youth 18 to 21 and any other juveniles remaining in the Department of Corrections.

2. a. The New Jersey Training School for Boys created pursuant to P.L. 1918, c.147, as amended (C. 30:1-7), and previously transferred to the Commissioner of Corrections pursuant to P.L. 1976, c.98, §8 (C. 30:1B-8), is continued and along with all those juveniles committed thereto by court order, law, classification, regulation or contract, are hereby transferred from the Department of Corrections to the Division of Juvenile Services, Department of Human Services.

b. The Juvenile Medium Security Center created pursuant to P.L. 1918, c.147, as amended (C. 30:1-7), and previously transferred to the

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Commissioner of Corrections pursuant to P.L. 1976, c.98, §8 (C. 30:1B-8), is continued and, along with all those juveniles committed thereto by court order, law, classification, regulation or contract, are hereby transferred from the Department of Corrections to the Division of Juvenile Services, Department of Human Services.

c. All residential and day care facilities and programs established pursuant to the powers delegated to the Division of Juvenile Services, Department of Corrections, by the Commissioner of Corrections pursuant to his powers contained in P.L. 1976, c.98 (C. 30:1B-1 et seq.), along with all those youth committed to participate therein by court order, law, classification, regulation or contract, are hereby transferred to the Division of Juvenile Services, Department of Human Services.

d. All furnishings and equipment presently located in the institutions and programs of the Division of Juvenile Services, Department of Corrections, transferred herein are also transferred to the Division of Juvenile Services, Department of Human Services.

e. All operating and capital funding demarcated for the aforesaid institutions and programs of the Division of Juvenile Services, Department of Corrections, are to be transferred by agreement between the Commissioner of Corrections and the Commissioner of Human Services for use in the Division of Juvenile Services, Department of Human Services.

3. a. The powers, duties, responsibilities and membership of the Institutional Board of Trustees established for the New Jersey Training School for Boys pursuant to P.L. 1918, c.147, as amended (C. 30:4-1 et seq.), previously transferred to the jurisdiction of the Commissioner of Corrections pursuant to P.L. 1976, c.98, §21 (C. 30:1B-21), is continued and transferred to the jurisdiction of the State Board of Institutional Trustees of the Department of Human Services. The State Board of Institutional Trustees of the Department of Human Services shall select and appoint members to the Institutional Board of Trustees for the New Jersey Training School for Boys as their existing terms expire, pursuant to N.J.S.A. 30:4-1 et seq.

b. Notwithstanding any provision contained in this Reorganization Plan, the Commissioner of Corrections and the Commissioner of Human Services shall develop a procedure for transferring custody of committed juveniles who have reached the age of 18 during their commitment, from the Department of Human Services to the Department of Corrections in instances where the public safety, safety of juvenile offenders, or control of the program is threatened and necessity requires placement in an adult corrections program.

c. Nothing contained in this Reorganization Plan shall affect or transfer the custody of juveniles convicted of adult offenses pursuant to N.J.S.A. 2A:4A-26 and N.J.S.A. 2A:4A-27.

B. This transfer of the Juvenile Monitoring Unit will ensure inspections of the county detention centers and compliance of the centers to standards developed for juvenile offenders. As one part of the comprehensive system, these detention centers serve a critical role in the juvenile justice system and must also be safe for the juveniles residing therein.

Therefore, I hereby order the following reorganization:

1. a. All functions, powers and duties of the Commissioner of Corrections with respect to all juvenile detention facilities throughout the state pursuant to P.L. 1982, c.77, §18 (C. 2A:4A-37), are hereby transferred to the Commissioner of Human Services.

b. The powers, duties and responsibilities of the Commissioner of Corrections for establishing standards and monitoring of juvenile detention facilities pursuant to P.L. 1982, c.77, §18 (C. 2A:4A-37), are hereby transferred to the Commissioner of Human Services. All existing agreements made between county governments and the Department of Corrections concerning juvenile detention centers are hereby modified to transfer the responsibilities, duties and obligations specified in these agreements between the county governments and the Department of Corrections to between the county governments and the Department of Human Services.

c. The Juvenile Detention Monitoring Unit, Department of Corrections, established pursuant to the powers of the Commissioner of Corrections pursuant to N.J.S.A. 30:1B-1 et seq., to fulfill the obligations of the Department of Corrections in monitoring juvenile detention centers throughout the State pursuant to the Federal "Juvenile Justice and Delinquency Prevention Act of 1974," as amended, and pursuant to N.J.S.A. 2A:4A-37, is continued and transferred along with its staff, powers, duties and responsibilities to the Department of Human Services.

C. This reorganization provision changes legal custody of juvenile parolees from the Department of Corrections to the Department of

Human Services. The Plan also changes the reporting requirements of the State Parole Board, from the Department of Corrections to the Department of Human Services to ensure an efficient means of fulfilling the mandate of the law under the Parolee Act of 1979, P.L. 1979, c.441 (C. 30:4-123.45 et seq.).

Therefore, I order the following reorganization:

1. a. The powers, duties and functions of the State Parole Board established pursuant to P.L. 1979, c.441 (C. 30:4-123.45 et seq.), regarding juvenile offenders are continued. The State Parole Board will, however, file all of its reports and recommendations regarding juveniles with the Department of Human Services rather than the Department of Corrections as stipulated in N.J.S.A. 30:4-123.45 et seq. In addition, pursuant to P.L. 1979, c.441, §15 (C. 30:4-123.59), the legal custody of each juvenile parolee shall be transferred to the Department of Human Services. Supervision of juvenile parolees shall remain under the Bureau of Parole within the Department of Corrections until such time that an agreement between the Commissioner of Human Services and the Commissioner of Corrections in consultation with the State Parole Board effectuates a transfer of this function to the Department of Human Services. At all times supervision of the juvenile parolees shall be in accordance with the rules of the State Parole Board.

b. All funding, programs and positions created to provide juvenile parole services by the Bureau of Parole within the Department of Corrections are continued and shall be transferred to the Department of Human Services by agreement between the Commissioner of Human Services and the Commissioner of Corrections in consultation with the State Parole Board. Such agreement shall also specify appropriate changes in the reporting requirements, funding, positions, and administrative housing and support for the district juvenile parole officers.

D. This reorganization provision will promote closer cooperation among the various departments responsible for the provision of services to troubled youth by coordinating services and making more services available to juveniles in a more timely fashion, thereby preventing juveniles from becoming involved in the juvenile justice system and rehabilitating those juveniles already involved before they commit additional or more serious crimes. The creation of an Advisory Council on Juvenile Justice, essentially combining the Governor's Cabinet Action Group on Juvenile Justice with additional public and legislatively appointed members, will further this cooperative and better coordinated effort to provide effective juvenile services.

Therefore, I hereby order the following reorganization:

1. a. The Commissioner of Human Services shall establish an Advisory Council on Juvenile Justice. The Advisory Council shall consist of no less than 20 nor more than 25 members, who shall serve without compensation but may be reimbursed for reasonable expenses incurred during performance of their duties for the Advisory Council, and shall include:

The Commissioner of Human Services, who shall serve as Chairperson;
The Attorney General;
The Commissioner of Corrections;
The Commissioner of Education;
The Commissioner of Health;
The Commissioner of Labor;
The Commissioner of Community Affairs;
The Public Advocate; and

Between seven and 12 public members, chosen by the Commissioner of Human Services on the basis of their expertise or interest in making long-term improvements to the juvenile justice system.

In addition, the Administrative Director of the Courts shall be invited to participate on the Advisory Council. Also, the President of the Senate and the Speaker of the General Assembly shall each be asked to select two individuals chosen on the basis of their expertise or interest in making long-term improvements to the juvenile justice system to serve as members of the Advisory Council.

b. The Advisory Council shall assist the Commissioner of Human Services to:

1. Expand the range of disposition options available to the Court, consistent with the Code of Juvenile Justice, including the sharing of resources to allow for more appropriate intervention at the local level;

2. Develop a range of services for committed youth, in particular those youth in secure settings under the jurisdiction of the Commissioner of Human Services;

3. Work with the county youth services commissions and assist the Commissioner of Human Services in fulfilling the statutory

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responsibilities outlined in P.L. 1982, c.80, §16, as amended (C. 2A:4A-91); and

4. Report to the Governor and the Legislature on an annual basis as to issues, programs, and the setting of budgetary and policy priorities.

c. The Commissioner of Human Services is authorized to call upon any department or agency of state government to provide such information, resources, or other assistance deemed necessary to discharge the responsibilities outlined above.

d. The Commissioner of Human Services shall file a report with the Governor and Legislature within 12 months of the effective date of this Reorganization Plan on the transfer of the Division of Juvenile Services from the Department of Corrections to the Department of Human Services and shall thereafter report annually to the Governor and the Legislature on the operation of the Division of Juvenile Services in the Department of Human Services.

GENERAL PROVISIONS

1. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Commissioner or the Department of Corrections regarding a juvenile or juvenile offender as defined in P.L. 1982, c.77, as amended (C. 2A:4A-20 et seq.), the same shall mean and refer to the Commissioner or Department of Human Services.

2. All transfers directed by this plan shall be made in accordance with the "State Agency Transfer Act," P.L. 1971, c.375 (C. 52:14D-1 et seq.).

3. All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies.

A copy of this Reorganization Plan was filed on March 22, 1993, with the Secretary of State and the Office of Administrative Law (for publica-

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tion in the New Jersey Register). This Plan shall become effective in 60 days on May 21, 1993, unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan. This Reorganization Plan shall be implemented on July 1, 1993, or such earlier date as the Governor may designate by Executive Order.

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

(a)

OFFICE OF THE GOVERNOR

Governor Jim Florio

Notice of Withdrawal of Reorganization Plan No.

003-1992, A Plan to Transfer the Division of Juvenile Services and Related Functions from the Department of Corrections to the Department of Human Services

Take notice that, by letter dated January 21, 1993 to the President of the Senate and the Speaker of the Assembly, Governor Jim Florio has withdrawn the plan to transfer the Division of Juvenile Services and related functions from the Department of Corrections to the Department of Human Services, Reorganization Plan No. 003-1992, which was submitted to and filed with the Senate and General Assembly on November 30, 1992 (see 24 N.J.R. 4460(a)).

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Gypsy Moth Suppression Rules

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

2:23

Authorized By: Arthur R. Brown, Jr., Secretary Department of Agriculture.

Authority: N.J.S.A. 4:7-36 through 4:740.

Proposal Number: PRN 1993-223.

Submit written comments by May 19, 1993 to:

Robert J. Balaam, Director
Division of Plant Industry
N.J. Department of Agriculture
CN 330

Trenton, New Jersey 08625-0330
Telephone: (609) 292-5441

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:23 expires on July 18, 1993. The Department of Agriculture has reviewed the rules and, with the following exceptions, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

The gypsy moth is a serious pest of primarily oak forested areas of New Jersey. Successive defoliations of susceptible trees by the gypsy moth causes tree mortality, thereby reducing property values, and requiring property owners to pay for costly removal of dead or dying tree hazards. The New Jersey Department of Agriculture (NJDA) promotes a gypsy moth pest management philosophy utilizing non-chemical pest control strategies. The primary goal of the NJDA Gypsy Moth Suppression Program is to protect trees on private residential and public recreational land; watershed areas and uninhabited high value timber forests may also be protected, but these areas are of a lower priority. It is the intent of the NJDA to promote the development of populations of natural enemies of the gypsy moth, such as parasites, predators, and diseases. If, however, those naturally occurring enemies do not sufficiently control the gypsy moth in private residential and public recreational areas, then the NJDA will recommend that affected municipalities or agencies treat only those high use or high timber value areas where tree mortality is imminent with a selective, non-chemical insecticide. Based on this philosophy, the NJDA has proposed in these rules the use of *Bacillus thuringiensis* as the active ingredient to be utilized when an insecticide application is required to prevent tree defoliation.

The rules are applicable to those municipal and county entities that wish to enter into the Department of Agriculture's Voluntary Gypsy Moth Suppression Program. These rules define the spray priorities which will be followed when considering allocation of resources to the program on a Statewide basis, the conditions of participation by local governments, the conditions of participation by the Department of Agriculture, and the property occupant notification requirements.

As proposed below, the proposed amendments make several minor changes in the existing rule to facilitate the suppression of highly injurious gypsy moth populations in forested residential and recreational areas.

The proposed amendments involve changes in wording to reflect policy changes regarding the insecticide to be used in the suppression program. They delete buffers around bodies of water and precautions for beekeepers since they are not adversely affected by *Bacillus thuringiensis* formulations. The proposed amendments also address the situation that exists when proposed spray areas within a single municipality encompass more than one school district and agreement on the "best" one hour spray shut-down time becomes difficult.

N.J.A.C. 2:23-1.2(a)5 has required a "50 foot buffer area in which no spraying is to occur, surrounding major bodies of water." This buffer was originally needed when chemical insecticides were used and the pesticide label stated it should be kept out of direct contact with water.

Since the Department no longer uses chemical sprays, and many infested trees in residential areas may border large bodies of water, this requirement is no longer necessary. *Bacillus thuringiensis* can be sprayed up to the shoreline.

The proposed amendment at N.J.A.C. 2:23-1.3(a)2. reflects a change in policy from recommending treatments to selecting *Bacillus thuringiensis* as the treatment of choice.

At N.J.A.C. 2:23-1.3(a)5, the Department proposes that in cases where a municipality has a spray block that encompasses more than one school district and it is difficult for the school districts to agree on the best one hour spray shut-down time, as required by N.J.A.C. 7:30-10.3(k), the municipal governing body shall act as mediator and designate the one hour spray shut-down, with the approval of affected school districts. If the affected school districts do not approve the mediated shut-down time as designated by the municipal governing body, the municipality will be prohibited from participating in the Voluntary Suppression Program.

Amendments to N.J.A.C. 2:23-1.3(a)7 and 8 reflect the fact that notification requirements are amply spelled out in N.J.A.C. 2:23-1.5.

The deletion of the word "chemical" and insertion of the word "insecticide," since the Department no longer uses chemicals for control of the gypsy moth, is proposed at N.J.A.C. 2:23-1.4(b)1.

At N.J.A.C. 2:23-1.4(b)2, the deletion of "chemical application" and replacement with "applicators", since chemicals are no longer used, is proposed.

In N.J.A.C. 2:23-1.4(b)3, the proposed readoption clearly states the Department's role in specifying *Bacillus thuringiensis* as the non-chemical insecticide to be used for control of the gypsy moth in the Voluntary Suppression Program. The Department will also specify the types of application aircraft required, and the conditions necessary before the aerial applications can be conducted.

N.J.A.C. 2:23-1.6, which addressed notification of beekeepers in the treated areas and the use of pollen traps, is proposed for deletion. In past years, chemical insecticides used to control the gypsy moth were toxic to honeybees; beekeeper notification and pollen traps were needed to prevent bee loss. The specified insecticide, *Bacillus thuringiensis*, as now proposed, does not pose a hazard to bees; therefore, these precautions are no longer necessary.

Social Impact

The rules will affect property owners and inhabitants in affected communities, and municipal and county entities planning to conduct gypsy moth aerial suppression programs. The proposed amendments to this chapter reflect a change in written policy from using chemical insecticides to a non-chemical, biological control approach in suppressing injurious gypsy moth populations. In practice, however, the Department has specified the use of non-chemical, biological insecticides for several years, so no significant change in program implementation will result if this proposal is adopted. It is expected that this formal change will be widely accepted by municipal and environmental officials.

The requirement for a municipal wide one-hour spray shut-down time during the morning hours for commuting school children had created difficulties among school administrators and municipal officials when the proposed spray area(s) encompassed more than one school district. Extending the shut-down time to more than one hour is not operationally feasible since most spraying can only be done during the early morning hours when the winds are calm and the temperatures are cool; if the shut-down time was increased it would greatly reduce the Department's ability to complete the spray applications in a timely and effective manner throughout the entire State. It is essential that the pesticide application be completed within the proper "spray window" for effective control of the gypsy moth. The biological spray material specified for use in these rules is most effective against the smaller caterpillars. Increasing the morning shut-down time would limit the number of areas the Department could protect from gypsy moth feeding. The proposed amendment would allow the municipal governing body to act as mediator in selecting the best one hour shut-down time when multiple school districts are located in the proposed spray area(s). The one hour shut-down time requirement is part of these rules because of a section in N.J.A.C. 7:30, Pesticide Control Regulations, which prohibits areawide pesticide application for gypsy moth control during normal student commuting times. The New Jersey Department of Agriculture will be requesting that the New Jersey Department of Environmental Protection and Energy con-

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sider changing their rule in cases where non-chemical pesticides are used which do not impose a health risk to school children during commuting times.

Economic Impact

The rules proposed for re-adoption affect only those municipalities which voluntarily choose to participate in the program. Those municipalities which do wish to adhere to the requirements specified in these rules do not have to participate and, hence, will not be economically impacted by the rules.

Participating municipalities and counties will be required to publish advertisement of intent to adopt a gypsy moth resolution and to properly notify all residents in the proposed spray area(s) as to the intent of the spray program by legal advertisement and first class mailing. These advertisements, mailings and any necessary tax roll searches will have an economic impact on the municipalities; the increase in that economic impact since the rules were last proposed and adopted five years ago is negligible. The economic impact of those requirements, however, is minor compared to the overall economic damage that can be expected from repeated gypsy moth defoliation.

It is difficult for individual woodland homeowners to control economically damaging infestations of the gypsy moth. Since the pest infests trees as high as 100 feet or more, it is costly to physically remove egg masses, trap larvae, or spray with small application equipment. Ground spraying is also very expensive and can range from \$50.00 to \$160.00 per quarter acre lot. If trees are killed by repeated infestations, the hazard of dead trees and their removal presents a great economic burden upon the homeowner. On the other hand, the average cost of aerial spraying of a full acre of residential area, which may have as many as four homes upon it, could range from \$9.00 to \$25.00 per acre, depending on the insecticide formulation used. Average per acre application costs to municipalities who have participated in the Voluntary Suppression Program over the last five years has been less than \$10.00. The municipality or county would benefit because State supervision would insure that the insecticide was mixed properly, all aircraft were calibrated for correct dosage rate per acre, and the insecticide was applied when winds were calm and foliage and insect larvae were at their proper development.

The proposal to require the Department of Agriculture to specify only *Bacillus thuringiensis* as the selected pesticide could increase the cost to municipalities in cases where chemical insecticides might have been desired. In recent years, however, the Department of Agriculture has required the use of *Bacillus thuringiensis* so no appreciable increase in cost to the municipalities is anticipated. Municipalities who participate in the Voluntary Suppression Program are currently entitled to a 50 percent reimbursement for application costs from the Federal government; non-participating municipalities are not.

It is not anticipated that the enhanced shut-down requirement will cause any added economic impact to municipalities or school districts. School districts may choose to delay school openings on the days when spraying is scheduled to compensate for the municipal wide shut-down time; this is not expected to cause overtime for school district employees who may be involved in student transportation or student teaching schedules. Properly planned and executed shut-down times should lower spray application costs since applicator idle time will be minimized.

The proposed deletion of the requirement for beekeeper notification will result in an economic savings to municipalities. The elimination of the requirement for the Department of Agriculture to supply diagrams and directions for use of pollen traps to interested beekeepers will also result in an economic savings although ever so slight since few beekeepers have requested pollen trap information in recent years.

Regulatory Flexibility Statement

The rules proposed for re-adoption impose no reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; only voluntarily participating municipal or county governing bodies are regulated by the rules.

The proposed re-adoption of these rules imposes certain legal, fiscal and labor requirements on all applicants requesting participation in the Voluntary Suppression Program. These requirements are necessary to ensure that the public has been properly notified, the cost of treatment has been budgeted and the labor needed to delineate the spray block boundaries has been provided by the applicant.

The amendments are intended to facilitate the spray operation, reduce municipal costs, reduce tree damage caused by the gypsy moth, and

assure the public that only non-chemical, biological control measures will be used against the pest.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:23.

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

2:23-1.2 Spray priorities

(a) If it becomes necessary to protect trees in residential and recreational areas, the following set of priorities have been established by the Department of Agriculture:

1.-4. (No change.)

5. Watershed areas defoliated once and expected heavy defoliation the following spring. [The Department of Agriculture recommends a 50 foot buffer area in which no spraying is to occur, surrounding major bodies of water.]

6. (No change.)

2:23-1.3 Local government participation

(a) Spraying will only be done on a voluntary basis with local governments that agree to fully accept the following conditions for participation in their aerial spray program[.]:

1. (No change.)

2. Arrange for financing the total cost of [any] aerial treatments [recommended] and make contractual agreement with the spray vendor, either provided by the State or obtained by local bidding.

3.-4. (No change.)

5. Notify the occupants by a properly served notification of the intent of the spray program. Spraying will only be done between the hours of 5:30 A.M. to 12:00 Noon, and 5:00 P.M. to 8:00 P.M. Notwithstanding any provisions of this subchapter, no community or area-wide pesticide application for gypsy moth control may take place during normal student commuting times. **Each school district, within a participating municipality, shall designate a normal student commuting time, not to exceed one hour, during which no spraying will be performed** [as determined by the local school district,] within two miles of a school housing grades kindergarten through eighth grades or within 2½ miles of schools housing grades nine through 12. **In the event that the proposed spray area(s) encompass more than one school district in the municipality, the municipal governing body shall designate the one hour spray shut-down, with the approval of affected school districts. Failure of the affected school districts to approve the designated shut-down time shall result in the ineligibility of the municipality to participate in the aerial spray program.**

6. (No change.)

7. In addition to the resolution, a responsible municipal official shall certify to the Department of Agriculture that these notices have been served [as outlined in the guidelines]. No work will begin until certification is filed with the Department of Agriculture.

8. To give, on behalf of the Department of Agriculture, the notices required by [N.J.S.A. 4:7-39] N.J.A.C. 2:23-1.5.

2:23-1.4 The Department of Agriculture participation

(a) (No change.)

(b) If the conditions in N.J.A.C. 2:23-1.3 are met, the Department agrees to:

1. Conduct surveys to determine the size and location of areas requiring treatment. Biological evaluation of all proposed treatment areas will be performed before [chemical] insecticide application is initiated.

2. Develop spray contracts and contact reputable [chemical application] applicators for competitive bidding.

3. [Recommend the choice of insecticides, method of application] **Select the most efficacious non-chemical insecticide *Bacillus thuringiensis*, specify types of application aircraft, and specify proper [application] timing[,] of aerial application depending on [entomological and climatic conditions] foliage size (about 30 percent of full leaf expansion of the majority of oak species found in the proposed spray block), larval size (about 1/2 inch) and winds under 10 miles per hour.**

4.-5. (No change.)

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6. [Assist in] **If personnel are available, monitor the aerial application of the [recommended pesticide at] specified insecticide, inspect mixing equipment and spray aircraft to ensure that the [proper] specified dosage rate [with the appropriate application equipment, if personnel available] is applied.**

[2:23-1.6 Beekeepers

(a) The Department of Agriculture shall supply a diagram and directions for use to those beekeepers who wish to use pollen traps.

(b) It is the responsibility of the local government to notify each beekeeper at least 20 days before proposed application time as to:

1. The availability of the pollen trap information;
2. The areas selected for treatment; and
3. The date and time of application.]

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Construction Permits—Application Prototype Plan Review

Proposed Amendments: N.J.A.C. 5:23-1.6, 2.15 and 4.18

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 1993-216.

Submit comments by May 19, 1993 to:
 Michael L. Ticktin, Esq.
 Chief, Legislative Analysis
 Department of Community Affairs
 CN 802
 Trenton, New Jersey 08625-0802
 Fax No. (609) 633-6729

The agency proposal follows:

Summary

The Department has found there to be inconsistency throughout the State in how local enforcing agencies handle prototype plan review. Prototype plans are plans or designs repeatedly used at different locations throughout a development.

The major advantage of prototype plan review is that new plans do not have to be submitted and reviewed every time a structure of identical design is built on a different lot. These proposed amendments allow as many variations as can be shown on the master plans. These variations could include, but not be limited to, multiple garages, extra bedrooms, fireplace and master bath. Once the plan review has been completed on the master plan, additional plan review fees shall not be charged for the individual prototype permits. Most municipalities have established a prototype plan review fee but, for those that have not, the reduction in fees for prototype plan review shall be set at 20 percent.

The requirement to depict as many variations as can be shown on the plan, added at N.J.A.C. 5:23-2.15(e)3i(4), allows flexibility in the use of the plans. The requirement to clearly show the floor plan and mechanical, electrical and plumbing information, if not shown on the prototype or the subcode sections, added at N.J.A.C. 5:23-2.15(e)3ii(4) and ii(2), provides the information needed for the construction official or subcode official to properly evaluate the construction. The addition of a requirement for sealed copies of plans to N.J.A.C. 5:23-2.15(e)3ii(2) conforms to the general requirement in the Code for all construction copies of plans to be sealed. If a plan is used as a substitute for a plan required to be sealed, then the substitute plan must also be sealed.

These proposed amendments also address the issue of when a new code must be used and for how long prototype or master plans are valid. N.J.A.C. 5:23-1.6 has always allowed the old code to be used for a period of six months after the adoption of the new code. To avoid inconsistent enforcement, the Department proposes to delete reference to reasons for allowing a six-month extension and make it a matter of right instead for plans to be submitted and approved based on the previous code for

a period of up to six months after the effective date of a new code. In addition, since BOCA has gone to a three year code change cycle, prototype plans are valid for 36 months or until the adoption of the next edition of the code, as set forth in N.J.A.C. 5:23-1.6.

Social Impact

The proposed amendments are intended to promote uniformity in the use of prototype plans in all municipalities, thereby eliminating the need for redundant work by applicants and code officials alike.

Economic Impact

The proposed amendment will result in cost savings to applicants and to a corresponding reduction in workload for code officials.

Regulatory Flexibility Statement

The proposed amendments clarify the requirements for prototype processing. Most builders qualify as "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These amendments will benefit all builders, whether or not they are "small businesses," if they make repeated use of the same plans in a single development. No special provision need therefore be made to accommodate those builders who qualify as "small businesses."

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

5:23-1.6 Prior permit; transitional rules for public school facilities

(a) (No change.)

(b) In the case of projects for which a permit has not been issued[,] on the effective date of [the regulations, but which would have received a permit except for a delay experienced in obtaining financing or for other good reasons, or in the case of a project which has received a commitment for financing] **any code revision, and for which plans were submitted** based upon drawings and specifications prepared in conformance to the code in force **immediately** prior to the effective date of the [regulations;] **code revision**, the construction official shall, upon request of the applicant, for a period of six months after the effective date of the [regulations] **code revision**, issue a permit to construct such project pursuant to the code[s] in force **immediately** prior to the effective date of the [regulation] **code revision**.

(c) (No change.)

5:23-2.15 Construction permits-application

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

(e) Plans, plan review, plan approval:

1.-2. (No change.)

3. Plan review:

i. Department or other State agency review: When a review and release of plans by the [department] **Department** or other State agency designated by the [department] **Department** pursuant to N.J.A.C. 5:23-3 is required, the owner or [his] agent of the owner shall file an application for construction plan release for each project, along with three sets of plans, specifications and such other supporting information as the [department] **Department** or other designated reviewing agency may require on forms obtained from the [department] **Department** or such reviewing agency. The plans, specifications and other supporting information shall conform to the requirements of (e) above.

(1)-(3) (No change.)

(4) Prototype or master plan filing: Designs repeatedly used at different locations may be designated as "prototype or master plans" and filed as follows: On initial application, one additional complete set of repeated portions of the project, **with as many variations as can be shown on the plans**, may be submitted along with a request for prototype or master plan filing. Subsequent submittals shall consist of at least a plot plan which is signed and sealed by a registered architect or licensed professional engineer, including utilities, [floor plan] exterior elevations of the specific building, and the prototype or master plan file identification number. **In addition, a schematic or sketch plan that clearly shows the floor plan arrangement, and any necessary mechanical, electrical and plumbing information not clearly shown in the prototype plan or on the subcode sections, must be submitted.**

(5) (No change.)

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ii. Local enforcing agency plan review: Where a [department] **Department** or other State plan review is not required by the regulations, an applicant for a construction permit shall be deemed to have applied for a local enforcing agency plan review by filing an application for a construction permit.

(1) (No change.)

(2) Where a design is used repeatedly at different locations, the plans attached to the first application for the construction permit may be designated as a "prototype or master plan". **These plans may include as many variations as can be shown.** Subsequent submittals shall consist of a plot plan **which is signed and sealed by a registered architect or professional engineer**, including utilities, [floor plan] exterior elevations, and a reference to the prototype plan by application or permit number. **In addition, a schematic or sketch plan that clearly shows the floor plan arrangement, and any necessary mechanical, electrical and plumbing information not clearly shown in the prototype plan or on the subcode sections, must be submitted;**

iii. Validity of plan release or prototype plan approval: The released plans or prototype approval ([department] **Department** or local) shall be valid for the purposes of applying for a construction permit for [six months or until any subcodes governing the plan may be amended, whichever is longer] **36 months or until adoption of the next edition of the code, as set forth in N.J.A.C. 5:23-1.6(b).**

iv.-vi. (No change.)

5:23-4.18 Standards for Municipal Fees

(a) (No change.)

(b) Plan review fees:

1.-2. (No change.)

3. If a municipality has not established a plan review fee by ordinance, 20 percent of the construction permit fee shall be designated as the plan review fee for prototype plans, in accordance with N.J.A.C. 5:23-2.26.

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

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Finance Board

Proposed Readoption: N.J.A.C. 5:30

Authorized By: Local Finance Board, Barry Skokowski, Sr., Chairman.

Authority: N.J.S.A. 52:27BB-10 and 32; 52:27D-18; 40A:4-83, 40A:5-38 and 40A:12.6.

Proposal Number: PRN 1993-229.

Submit comments by May 19, 1993 to:

Harold George, Executive Secretary
Local Finance Board
Division of Local Government Services
Department of Community Affairs
CN 803
Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:30 will expire on June 29, 1993.

The Board has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, N.J.A.C. 5:30 is proposed for readoption without change.

P.L. 1947, c.151, as amended, specifically N.J.S.A. 52:27BB-10, requires the Local Finance Board to promulgate reasonable rules and regulations for the interpretation and administration of State laws included within the jurisdiction of the Division of Local Government Services in the Department of Community Affairs. These rules and regulations oversee local government unit debt activities, annual budgets, capital budgets and capital improvement programs, emergency appropriations, annual audits, accounting, financial administration, municipal port authorities and school bonds.

N.J.A.C. 5:30 contains the rules of the Local Finance Board, a State agency with the responsibility of financial oversight of activities of the State's municipalities, counties, local authorities, and special districts. These rules control local government unit debt activities, annual budgets, capital budgets and capital improvement programs, emergency appropriations, annual audits, accounting, financial administration, municipal port authorities, and school bonds.

The authority for the Board to regulate these activities is found in P.L. 1947, c.151, as amended, specifically 52:27BB-10. This section requires the Local Finance Board to promulgate reasonable rules and regulations for the interpretation and administration of State laws included within the jurisdiction of the Division of Local Government Services in the Department of Community Affairs.

The rules are intended to ensure fiscal integrity and protection of taxpayer and citizen interests by providing a State review of critical activities and standardize recordkeeping of local units. The Board has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, N.J.A.C. 5:30 is proposed for readoption without change.

After the last readoption in 1988, the rules were significantly amended in 1990 when sections relating to local public purchasing, tax collection procedures, and tenant property tax rebates were relocated from this chapter and given separate chapters in the Administrative Code. Existing rules were reorganized to provide a more coherent framework. At the same time, the remaining rules were updated to reflect contemporary practices. Since then, several outdated sections have been eliminated over the last few years in separate regulatory actions.

Subchapter 1 of the rules covers basic operations of the Board, including its meeting schedule, outline of duties, hearing and determination practices, and voting policies. Practices regarding availability and certification of forms required by the Board are also discussed.

Subchapter 2 addresses the Local Bond Law (N.J.S.A. 40A:2) and includes various determinations made by the Board regarding interpretations of that statute concerning exceptions to debt limitation laws, handling of downpayments for improvements, the use of capital improvement funds for preliminary capital expenses, and details relating to self-liquidation improvements and expenses for municipal utility operations.

Details of the municipal budget approval process are covered in subchapter 3. The procedure for budget adoption, special circumstances regarding the examination of the budget, filing of amendments, and the requirement that municipalities prepare supplemental details of the budget for public use are included in this section.

Local units requirements to prepare and submit annual capital improvement budgets are detailed in subchapter 4. Restrictions concerning bond ordinances, content of a capital improvement plan and its content and, relationship to the annual budget, and limitations of capital expenditures, are explained in the rule.

The treatment of emergency appropriations exceeding the three percent budget cap, road repairs, and those related to disaster accounting are covered in subchapter 5. Certain requirements of annual audit of municipalities and counties are detailed in subchapter 6; specifically, uniform accounting systems for county surrogate's and probation departments. Details of the required certification of a local unit governing body concerning its review of the annual audit, rules relating to issuance of bond anticipation notes for schools and local units, and the requirement for the use of an ordinance when capital projects are financed by existing reserves are included.

Technical aspects of local unit financial administration are covered in subchapter 8. Requirements relating to use of data processing techniques in accounting, minimum surety bond coverage for tax collectors and municipal courts, guidelines for receipt and custody of public funds, use of signatures on public checks, and security of certain school bonds are also covered. Accounting practices for Community Development Block Grant funds are also included. Rules previously found at N.J.A.C. 5:30-8.2 relating to unbudgeted school aid were repealed in 1992, as the program was discontinued.

Subchapter 10 contains accounting and debt requirements relating to Municipal Port Authorities, while requirements relating to Federal aid for libraries and handling of library aid are covered in subchapter 12.

Subchapters 7, 9, 11, and 13 through 17, while utilized prior to the 1990 amendments to the rules, are now reserved for future use.

Social Impact

Readoption of the rules, which includes readoption of the subchapters adopted by reference, will ensure the continued fiscal integrity of local

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ENVIRONMENTAL PROTECTION

governmental units. Affected by the rule are the 567 municipalities, 21 counties, over 220 utility authorities and over 180 fire districts of the state. Failure to readopt these rules might result in financial instability of local governments throughout the State.

The rules are intended to protect the citizens of the State by overseeing the financial activities of the agencies conducting public business on their behalf. They were, in part, initially precipitated by bankruptcies and fiscal mismanagement in the 1930's. Those events were even presaged by statutory authority granted to the Department of Municipal Accounts in the early 1920's. The rules are part of the basic foundation of State oversight of local government unit fiscal integrity.

Periodically, a public entity is mismanaged or is damaged by corrupt officials. While an uncommon occurrence, the existence of the rules promulgated by the Local Finance Board in this and other chapters have a salutary influence, and acts as a preventative and precautionary vehicle against mismanagement and corruption in public agencies.

As these procedures have been in place for many years, the reoption will cause little or no impact on the regulated community or the public. The agencies have worked with them and understand their purposes. Little, if any comment, either positive or negative is anticipated, as there is little impact on the parties.

Economic Impact

Ultimately the public pays the costs of the rule through fees and taxes charged by the public agencies. Because the rules have been in effect for many years, these costs are part of the basic operating practices of the agencies. Agencies affected are noted above in Social Impact.

There is no statistical data that relates to these rules and their reoption, nor is there a specific statement of their impact on funding sources. However, as they are a part of the regulatory schema of the State's oversight of local units, their cost is determined to be necessary for protection of the public interest.

Because there are no fees being established or continued, nor new procedural or technical requirements being imposed, there will be no economic changes as a result of the reoption of these rules. While compliance with the rules may involve costs to the taxpayers, those costs are overshadowed by the resulting fiscal security. Failure to readopt the rules would remove many of the procedures that now protect New Jersey taxpayers against fiscal mismanagement of local tax dollars.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because rules proposed for reoption do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules affect only the regulation of local government units.

Full text of the proposed reoption appears in the New Jersey Administrative Code at N.J.A.C. 5:30.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Worker and Community Right to Know Regulations Proposed Amendments: N.J.A.C. 7:1G-1 through 5 and 7

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

Authority: N.J.S.A. 34:5A-1 et seq., 13:1D-1 et seq. and 52:27D-223.

DEPE Docket Number: 24-93-03.

Proposal Number: PRN 1993-230.

A public hearing will be held at 9:30 A.M. on Friday, May 21, 1993 at:

New Jersey Department of Environmental Protection and Energy
401 E. State Street
First Floor Hearing Room
Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given above, by June 19, 1993, to:

Janis E. Hoagland, Esq.
New Jersey Department of Environmental Protection and Energy
Office of Legal Affairs
401 E. State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. (the Act), became effective on August 29, 1984, and established a comprehensive program for the disclosure of information to the Departments of Health and of Environmental Protection and Energy by designated categories of employers about hazardous substances in the workplace and the community, and provides for public access to this information.

In accordance with the Act, the Department of Environmental Protection and Energy (Department) developed a list of Environmental Hazardous Substances (EHSs) and prepared and distributed a two-part Environmental Survey to collect information on these substances and to provide this collected information to the public. The Environmental Survey provides chemical inventory as well as environmental release and waste transfer information concerning EHSs at a facility. The Department also promulgated regulations at N.J.A.C. 7:1G-5.1, 5.2 and 5.3 for an Emergency Services Information Survey (ESIS). The purpose of the ESIS was to collect chemical inventory information about hazardous materials and provide this information to emergency responders. The U.S. Department of Transportation (USDOT) Hazardous Materials List (49 C.F.R. 172.101-102) was adopted as the list of substances subject to ESIS reporting.

In October 1986, the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA) was signed into law. Title III of SARA, known as the Emergency Planning and Community Right to Know Act of 1986, established requirements for Federal, state and local governments and industry concerning emergency planning and community right to know reporting on extremely hazardous substances and toxic chemicals. Pursuant to Section 312 of Title III, a facility which has hazardous chemicals present during the calendar year in amounts equal to or exceeding specified threshold quantities must report such substances by March 1st of the following year. In addition, pursuant to Section 313 of Title III, a facility which manufactures, processes or otherwise uses certain toxic chemicals exceeding specified threshold quantities must report environmental release information concerning such toxic chemicals by July 1st of the following year. In New Jersey, these requirements apply in addition to the Environmental Survey's chemical inventory and environmental release reporting mandates of the Worker and Community Right to Know Act.

In 1987, the Department consolidated the chemical inventory reporting portion of the Environmental Survey, the ESIS and Section 312 of SARA into a single reporting form called the "Community Right to Know Survey." The combined form eliminated duplicative reporting and is still in use today. Environmental release, waste transfer and throughput information portions of the Environmental Survey are collected on the "Release and Pollution Prevention Report."

The Department is proposing changes to the Worker and Community Right to Know regulations (N.J.A.C. 7:1G) to increase reporting efficiency, clarify the requirements for reporting, and revise the penalties for non-compliance. The Department also proposes amendments to reflect changes in the Community Right to Know program brought about by the enactment of SARA and the New Jersey Pollution Prevention Act of 1991.

The Department is proposing to add and alter definitions in section N.J.A.C. 7:1G-1.2. On March 1, 1993 (25 N.J.R. 858(a)) the Department proposed an amendment to the definition of Environmental Survey to reflect that the Community Right to Know Survey and the Release and

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Pollution Prevention Report are components of that survey and to define those surveys. These amendments appear in this proposal as well since the initial proposal is not yet adopted. The definition of "employer" is being amended to indicate that a person engaged in a business activity covered under the Act may or may not have employees, and to indicate changes which were made to the list of Standard Industrial Classification (SIC) codes through an amendment to the Act (P.L. 1985, c.543; N.J.S.A. 34:5A-3). This amendment added and deleted several SIC codes to the list of those covered under the Act when it was originally passed in 1983. The amended definition of employer also includes several SIC code redesignations made by the Federal Office of Management and Budget when its Standard Industrial Classification manual was updated in the late 1980's. The changes being proposed do not expand coverage under the Act; rather, they reflect changes that have already been made and are currently being implemented.

The Department is defining the term "Local Emergency Planning Committee" necessitated by the enactment of Title III of SARA. The Department is proposing to define the terms "administrative order," "designated county lead agency," "hazard code," "hazardous waste," "Environmental Hazardous Substance Number," "inventory range," "inventory range code," and "technically qualified person." The definition of "research and development (R&D) laboratory" has been clarified to specify that, for the purpose of chemical inventory reporting on the Community Right to Know Survey, more than 50 percent of the work time in the area designated as an R&D laboratory must be devoted to research and development activities.

The Department is proposing to add a burden of proof clause at N.J.A.C. 7:1G-1.3. This will specify that the onus is on the employer to demonstrate and provide clarification of reported information or documentation to the Department to prove eligibility for an exemption.

Proposed new section N.J.A.C. 7:1G-1.4 specifies who may certify the accuracy of submitted information and standardizes the language to be used in the certification to conform with that used in other of the Department's environmental programs.

As authorized by N.J.S.A. 13:1D-9 and N.J.S.A. 34:5A-29b, proposed new section N.J.A.C. 7:1G-1.5 gives notice to an employer that a representative of the Department has the right to enter his facility to conduct an unannounced inspection for determining compliance.

Proposed new section N.J.A.C. 7:1G-1.6 declares that the regulations are severable in the event that any provision of the regulations is found to be invalid.

The Department is proposing significant changes to subchapters 2, 3, 4 and 5. Proposed amendments to subchapter 2 will revise the list of Environmental Hazardous Substances subject to Right to Know reporting. The existing subchapters 4 and 5 concerning the Emergency Services Information Survey and the use of Federal USDOT Hazardous Materials Tables used for ESIS reporting are being deleted since the ESIS has been rendered unnecessary by the Community Right to Know Survey and certain classes of USDOT hazardous materials are being incorporated into the EHS list. Subchapter 3 is being expanded to specify Community Right to Know Survey reporting requirements. This subchapter will also include exemptions to reporting including thresholds that must be met before reporting is required.

A new subchapter 4 is being proposed to list requirements for environmental release and pollution prevention reporting. A new subchapter 5 is proposed to insure proper distribution of the Community Right to Know Survey and Release and Pollution Prevention Report components of the Environmental Survey.

The Department proposes to amend N.J.A.C. 7:1G-2.1 to reflect the inclusion of the following substances as EHSs subject to chemical inventory reporting:

- toxic chemicals listed in SARA Title III, Section 313;
- selected substances used for the Industrial Survey (N.J.A.C. 7:1F—Appendix A);
- Extremely Hazardous Substances listed in SARA, Title III, Section 302;
- Class 1 explosives and Class 7 radioactive materials on the USDOT Hazardous Materials Tables (49 CFR 171);
- Unusually Hazardous Substances pursuant to N.J.S.A. 52:27D-223; and
- Hazardous substances that are added to the list of chemicals subject to pollution prevention planning pursuant to N.J.A.C. 7:1K-3.5.

In adding the phrase "as from time to time supplemented or amended" to the Federal lists being incorporated into the EHS list, the Department

is specifying that additions or deletions of chemicals to those lists will result in similar changes to the EHS list without the need for formal rulemaking.

The Department is amending the EHS list to add the SARA Section 313 toxic chemicals and all substances on the Industrial Survey list including those substances not originally included on the EHS list pursuant to the changes to the Act at N.J.S.A. 34:5A-4 made when the Pollution Prevention Act was passed.

The Department is also incorporating SARA 302 chemicals into the EHS list to conform the State's program requirements to those of the Federal program. The Department is also establishing an Unusually Hazardous Substances List pursuant to N.J.S.A. 52:27D-1 et seq. As defined by that Act, these substances become hazardous for firefighters and the community when exposed to fire.

The Department proposes to add language in N.J.A.C. 7:1G-3 and add a new N.J.A.C. 7:1G-4 to clarify the information required for completion of each component of the Environmental Survey. These changes clarify that the Community Right to Know survey portion is used for chemical inventory reporting and the Release and Pollution Prevention Report portion is used for reporting of environmental releases and transfers of EHSs.

The proposed changes to the topics covered in existing subchapters 4 and 5 are noteworthy. First, the Department is proposing to reflect existing program policy by repealing the ESIS (subchapter 5). This survey, originally adopted to provide emergency responders with information concerning hazardous materials, is no longer being used to collect that information. Instead, the Department enlarged the scope of the Community Right to Know Survey to eliminate the need for employers to file two separate reports containing nearly identical information. The Department is also proposing to repeal subchapter 4, Hazardous Materials List. This change is being made for several reasons: the USDOT Hazardous Materials List was adopted for use with the ESIS, which is now obsolete. Recent changes to the Act made at the time the Pollution Prevention Act was passed (August 1991), added to the EHS list, specific chemicals and chemical categories from the SARA section 313 list of toxic chemicals and chemicals from the original Industrial Survey list not already covered under the program. Future changes to the list of SARA 313 toxic chemicals will now automatically be incorporated into the EHS list. Two separate petitions have been filed with the Federal government to place additional chemicals to the SARA 313 toxic chemicals list, and hence to the EHS list. In addition, passage of pending Federal Right to Know More legislation will further expand the SARA 313 list. In order to better conform the State program to the Federal program to facilitate consistency and efficiency in reporting, and to assure that only substances presenting demonstrated hazards to public health and safety and the environment are subject to reporting requirements, the Department is proposing to delete the hazardous materials on the USDOT Tables from the lists of reportable substances for Community Right to Know reporting. The Department may, however, evaluate individual substances on the USDOT Hazardous Materials Table, on a case by case basis, to determine the need to add them to the EHS list through the rulemaking process. The Department is proposing to incorporate into the EHS list, two classes of USDOT hazardous materials, explosives and radioactive substances, in this proposal. The Department believes these substances pose serious risks to emergency responders and the community.

The Department is proposing to add a new section N.J.A.C. 7:1G-3.2 listing exemptions to Community Right to Know reporting requirements. Specifically, the Department is proposing to add threshold provisions, below which EHSs need not be reported on the survey. The Department proposes that for certain substances which currently do not have a threshold established under section 302 of SARA Title III, the reporting of quantities under 500 pounds is not required. The Department finds that small quantities of EHSs are contained in many products in use by industry, and that a defacto level of risk due to these quantities is assumed by emergency responders. These EHSs may be found in small amounts of cleaners, paints, etc., which are normally associated with maintenance and general office functions at a facility. The Department believes that the benefit derived from the collection of information concerning small quantities of hazardous substances in these circumstances is not nearly commensurate with costs incurred by the regulated community and the Department in reporting, collecting and processing this data. In this situation, the information collected is considered of little value for emergency planning or response purposes.

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The Department has considered that there may be instances where hazardous substances may pose a threat to human health or the environment when present at quantities less than 500 pounds. For reporting of these substances, the Department will rely on the separate Federal requirement to report any Extremely Hazardous Substances listed at Section 302 of SARA at the Threshold Planning Quantity if it is less than 500 pounds. This reporting requirement for Extremely Hazardous Substances is already in effect in New Jersey and is now being satisfied by use of the Community Right to Know Survey for reporting. In addition, the Department is proposing to require reporting of USDOT Class 1 explosives and Class 7 radioactive materials at zero threshold or at any quantity, due to the high level of risk these materials pose in a fire.

In proposing the threshold exemptions at N.J.A.C. 7:1G-3.1, the Department limits the exemptions to Community Right to Know inventory reporting only. These exemptions in no way eliminate the need for chemical labelling, regulated under N.J.A.C. 8:59 which has been established to protect the community and public worker safety. Therefore, the amendment proposed at N.J.A.C. 7:1G-3.2(b) codifies the limit of the exemption only to CRTK reporting.

The Department is proposing to codify reporting exemptions at N.J.A.C. 7:1G-3.2. This section also discusses exemptions to the annual Right to Know fee assessment established pursuant to the Act. It specifies that employers who do not use, store or manufacture hazardous substances are exempt from the annual fee assessment as long as they advise the Department of their status on their annual survey. However, employers claiming reporting exemptions because their EHSs do not meet or exceed threshold quantities or because the employer has been granted a research and development laboratory exemption, are users of EHSs and are subject to the fee assessment. In addition, the Department is proposing to exempt employers engaged only in general office activities from the requirement to file annual surveys and the fee assessment once they notify the Department of their status.

The Department is also proposing rules at a new subchapter 4 concerning the completion and submittal of the Release and Pollution Prevention Report. The Release and Pollution Prevention Report is also known as Part II of the Environmental Survey and deals with the release of EHSs to the environment, materials throughput and waste transfer data. It should be noted that the Department used the Supplemental Information Report (DEQ-100) to collect this information in 1987. The DEQ-114 form (Release and Source Reduction Report) replaced the DEQ-100 form in 1990 when pollution prevention questions were added to the form. The adoption of regulations codifying requirements for Release and Pollution Prevention information is particularly important since this reporting form is expected to also be used for pollution prevention reporting pursuant to the Pollution Prevention Act (N.J.S.A. 13:1D). Proposed new rule N.J.A.C. 7:1G-4.1 states the information requirements for the Release and Pollution Prevention Report and specifies that the thresholds for reporting shall be established pursuant to the Pollution Prevention Act. The Department is taking this reporting approach to maximize the usefulness of the information collected and minimize the reporting burden on the regulated community.

The Department is proposing to add a new subchapter 5 which contains the due dates for reporting and the requirements for distributing the Community Right to Know Survey and the Release and Pollution Prevention Report.

If the Department is to meet the public health protection goals of the Worker and Community Right to Know Act, it is essential that all employers covered by the Act comply with its mandates by submitting complete and accurate hazardous substance information to the Department. To this end, the Department is proposing to amend N.J.A.C. 7:1G-7. The proposed changes to N.J.A.C. 7:1G-7 have two major purposes: (1) to clarify the Department's existing Civil Administrative enforcement authority, and (2) to establish new Civil Administrative Penalties for non-compliance. The amendment at N.J.A.C. 7:1G-7.1 was added to provide for the issuance of Administrative Orders and Notices of Civil Administrative Penalties and cites N.J.S.A. 34:5A-31(a) and (b) as the enabling legislation. N.J.A.C. 7:1G-7.2 is being deleted and reserved for future use, with the exception of the definition of "Administrative Order" which will be moved to the general definition section at N.J.A.C. 7:1G-1.2. The proposed amendment to N.J.A.C. 7:1G-7.3 details the administrative enforcement powers available to the Commissioner pursuant to N.J.S.A. 34:5A-31(a), (b) and (d). It contains new language expressly providing for the issuance of administrative orders to compel compliance with the act or its implementing rules or regulations and

also specifies the civil administrative penalties may be assessed in conjunction with or independent of such administrative order. N.J.A.C. 7:1G-7.4 is being amended to reflect the conditions under which penalties may be compromised. Additionally, the proposed amendment of N.J.A.C. 7:1G-7.7 and the repeal of N.J.A.C. 7:1G-7.8, 7.9 and 7.10 eliminate the existing penalty assessment rules and replace them with new penalty assessments. The existing penalty rule provides for the assessment of penalties for time-related and non-time related infractions. Under that current rule, penalty assessments for non-time related infractions necessitate the use of the formula involving "seriousness" and "type of violation" factors. Because this format requires calculations, employers are not immediately aware of the precise monetary consequences of noncompliance. Confusion on the part of covered employers may lead them to underestimate the impact of their noncompliance. This is of concern to the Department because non-time related violations involve the non-reporting or inaccurate reporting of reportable substances and are often serious in nature.

The Department recognizes that these proposed amendments and new rules will be of interest to a wide spectrum of citizens, and it anticipates receiving comments addressing many provisions of the rules as proposed. Accordingly, the Department reserves the right in the adoption of these rules to include fewer than all proposed provisions.

Social Impact

New Jersey, the most densely populated state in the country, is also a major producer of chemicals. Many of the State's residential areas are also industrial zones and are frequently intermingled with industrial facilities. The proposed amendments and new rules are expected to have a positive social impact by increasing the amount of meaningful information collected and available to the public about hazards posed by chemical substances and by eliminating the reporting of small quantities of these substances which poses no significant threat to health, safety or the environment. The rules will foster the assembly of the information by clarifying the reporting requirements for the Community Right to Know Survey and the Release and Pollution Prevention Report components of the Environmental Survey and the dates each portion is due. Coordinating State and Federal requirements will have a positive social impact by educating the regulated community about the requirements of both programs and synchronizing the State and Federal reporting requirements.

The penalties set forth in proposed N.J.A.C. 7:1G-7.7 will induce employers to comply with the requirements of the Worker and Community Right to Know Act and will encourage the submission of timely, complete and accurate Community Right to Know Surveys and Release and Pollution Prevention Reports to the Department. The data that will be available to the Department as a result of increased compliance with the Act will enable the Department to more accurately determine the location and quantities of hazardous substances used, stored, released or disposed of in the State and enable the Department to make this information available to the public.

Chemical inventory and environmental release information concerning hazardous substances is valuable for many purposes. It can help the general public to become more aware of hazardous substances in the community. It can also help in prioritizing the planning and development of safety and response programs by facilitating the identification of those businesses which pose the highest risk to community safety and the environment. Information on releases of hazardous substances can assist local, county and State officials in the development of legislative and regulatory programs for pollution prevention.

Economic Impact

These proposed amendments and new rules impose no additional requirements on the regulated community; therefore, no economic burden is introduced by these amendments and new rules. However, the revised rules would have a positive economic impact in that some regulated facilities will need to invest less time to complete the Community Right to Know survey form, which will lower existing costs. This is due to the reporting thresholds proposed by the Department, which will alleviate the need for facilities to report small quantities of hazardous substances, and the repeal of the USDOT hazardous materials list of chemicals subject to reporting requirements.

The proposed amendments and new rules will have a negative economic impact only on those employers who do not submit a timely, accurate or complete environmental survey. The extent of the cost of non-compliance on such employers will depend on the type of violation. Under proposed N.J.A.C. 7:1G-7.7, an employer who fails to submit,

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is late in submitting or fails to submit clarifying information when requested to do so by the Department, is subject to specified penalties ranging from \$500.00 to \$1,000. Further, under proposed N.J.A.C. 7:1G-7.7(c) an employer's failure to report all regulated substances may result in the imposition of a penalty ranging from \$500.00 to \$1,000. Penalties will also be assessed in the amount of \$500.00 to facilities which fail to maintain or make available copies of current surveys at their facility, or which fail to report to the required agencies pursuant to N.J.S.A. 34:5A-7.

Environmental Impact

The promulgation of these amended and new rules is expected to have a positive impact on the environment. More meaningful information concerning the types and quantities of hazardous substances which are manufactured, processed, stored, used, or released into the environment will be available to the Department. The substantial penalties set forth in proposed N.J.A.C. 7:1G-7.7 will increase the number of timely, complete and accurate Community Right to Know Surveys submitted to the Department. This information will better enable the Department to monitor the levels of hazardous substances which are released into the environment and develop strategies for promoting the reduction of their use and hence, reduce pollution at its source. The hazardous substances inventory and release information is being incorporated into several databases that meet the needs of different users for a variety of environmental protection and public health and safety programs.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.), the Department has determined that the proposed amendments will not impose additional recordkeeping, reporting or other compliance requirements on small businesses. Currently, approximately 35,000 employers are subject to reporting requirements under the Community Right to Know program. For many employers, similar information and reporting is required under Sections 302, 312 and 313 of SARA. Most of these employers are small businesses having fewer than 100 employees. For covered businesses there are expenses associated with computing the inventory and completing the Community Right to Know and/or Release and Pollution Prevention Report portions of the Environmental Survey. These expenses may include the hiring of consultants where the hazardous substances inventory is complex or taking staff from regular work assignments to complete the reporting forms. The extent of these costs is dependent on a number of factors including the complexity of the businesses' activities. Therefore, an exact estimate is not possible, but costs could range between \$100.00 and \$1,000.

Most of the businesses that have not complied with the Act are small businesses having fewer than 100 employees and, as such, are defined as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules do not impose any new reporting, recordkeeping or other compliance requirements on small businesses. Rather, the proposed amendments and new rules clarify reporting mandates, incorporate a threshold for reporting and reduce the number of chemicals subject to reporting which may eliminate the need for many small businesses to report. These amendments and new rules also provide the mechanism necessary to enforce the existing statutory requirements and incentives for voluntary compliance. The proposed amendments and new rules also make it easier to determine the costs of non-compliance.

In order for the rules to serve their intended purpose of providing meaningful information about hazardous substances in the community to the public and emergency responders, it is essential that broad based information be collected. The Department has balanced the need to protect public health and the environment against the economic impact of the rules and has determined that to minimize the impact of the rules on small businesses would endanger the environment, public health and safety. Therefore, no exemption from coverage is provided for small businesses.

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

7:1G-1.2 Definitions

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

...

"Administrative order" means any and all orders issued or entered into by the Department including, but not limited, to administrative consent orders.

"Chemical Abstracts Service Registry Number" or **"C.A.S. number"** means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

...

"Community Right to Know Survey" means the reporting form which combines the chemical inventory reporting requirements of the Environmental Survey Part I, the Emergency Services Information Survey, and the Superfund Amendments and Reauthorization Act, Section 312.

"Compound" means a substance composed of two or more elements chemically united in a fixed proportion.

...

"Department" means the New Jersey Department of Environmental Protection and Energy, however, for the purpose of N.J.A.C. 7:1G-6, it shall mean both the New Jersey Department of Environmental Protection and Energy and the State Department of Health, unless otherwise indicated.

"Designated county lead agency" means a health agency or office of emergency management designated by the county clerk to be responsible for conducting all county health department activities required by the Act in the county.

...

"Emergency Service Information Survey" or **"ESI Survey"** means a written form prepared by the Department and Energy and transmitted to an employer, on which the employer shall provide certain information concerning each of the Hazardous Materials at his facility, including, but not limited to, the following: the name of the Hazardous Material and its United States Department of Transportation identification number, the United States Department of Transportation designated hazard class, the approximate range of the maximum inventory quantity, the units of measure, the major methods of storage or types of containers, and whether the substance is present in a mixture.]

"Employee" means a worker at a facility operated by an employer as defined in this section on a paid or unpaid basis and who may or may not be directly paid by the employer who owns or operates the facility. It is not intended that this term encompass independent contractors.

"Employer" means any person or corporation, regardless of whether he pays employees, in the State, engaged in business operations having a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within [Major Group numbers 20 through 39 inclusive (manufacturing industries), numbers 46 through 49 inclusive (pipelines, transportation services, communications, and electric, gas, and sanitary services), number 51 (wholesale trade, nondurable goods), number 75 (automotive repair, services, and garages), number 76 (miscellaneous repair services), number 80 (health services), number 82 (educational services), and number 84 (museums, art galleries, botanical and zoological gardens). For the purposes of N.J.A.C. 7:1G "employer" means the State and local governments, or agency, authority, department, bureau, or instrumentality thereof.] Major Group Number 07 (Agricultural Services), only Industry Number 0782—Lawn and Garden Services; Major Group Numbers 20-39 inclusive (Manufacturing Industries); Major Group Number 45 (Transportation by Air), only Industry Numbers 4512—Scheduled Air Transport, 4513—Air Courier Services, and Group Number 458—Airports, Flying Fields and Airport Terminal Services; Major Group Number 46 (Pipelines, except Natural Gas); Major Group Number 47, only Group Numbers 473—Arrangement of Transportation of Freight and Cargo, 474—Rental of Railroad Cars, and 478—Miscellaneous Services Incidental to Transportation), Major Group Number 48 (Communications), only Group Numbers 481—Telephone Communications, and 482—Telegraph and other Message Communications—Major Group Number 49 (Electric, Gas, and Sanitary Services); Major Group Number 50 (Wholesale Trade—Durable Goods), only Industry Numbers 5085—Industrial Supplies, 5087—Service Establishment

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Equipment and Supplies, and 5093—Scrap and Waste Materials; Major Group Number 51 (Wholesale Trade, Nondurable goods), only Group Numbers 512—Drugs, Drug Proprietaries, and Drug-gist's Sundries, 516—Chemicals and Allied Products, 517—Petroleum and Petroleum Products, 518—Beer, Wine and Distilled Alcoholic Beverages, and 519—Miscellaneous Non-durable Goods; Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551—Motor Vehicle Dealers—(New and Used), 552—Motor Vehicle Dealers (Used Only), and 554—Gasoline Service Stations; Major Group Number 72 (Personal Services), only Industry Numbers 7216—Dry Cleaning Plants except Rug Cleaning, 7217—Carpet and Upholstery Cleaning, and 7218—Industrial Launderers; Major Group Number 75 (Automotive Repair, Services, and Parking), only Group Number 753—Automotive Repair Shops; Major Group Number 76 (Miscellaneous Repair Services) only Industry Number 7692—Welding Repair; Major Group Number 80 (Health Services), only Group Numbers 806—Hospitals; Major Group Number 82 (Educational Services) only Group Numbers 821—Elementary and Secondary schools, 822—Colleges, Universities, and Professional Schools, and Junior Colleges and Industry Number 8249—Vocational Schools, not elsewhere classified, and Major Group Number 87 (Engineering, Accounting, Research, Management, and Related Services), only Industry Number 8734—Testing Laboratories. Employer also means State and Local Governments, or any agency, authority, department, bureau or instrumentality thereof.

“Environmental Hazardous Substance” or “EHS” means any substance designated by the Department in N.J.A.C. 7:1G-2.

“Environmental Hazardous Substance Number” means the unique number assigned by the Department to each EHS.

“Environmental Survey” means a written form, entitled Part I or the Community Right to Know Survey, and Part II or the Release and Pollution Prevention Report [as the case may be], prepared by the Department of Environmental Protection and Energy and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at the facility, including, but not limited to, the following:

1.-10. (No change.)

11. The total discharge of the environmental hazardous substance into publicly owned treatment works; [and]

12. The quantity and methods of disposal, of any wastes containing an environmental hazardous substance, the methods of on-site storage of these wastes, the location or locations of the final disposal site for these wastes, and the identity of the hauler of the waste[.];

13. The total quantity of EHSs generated at the facility, including hazardous substances generated as nonproduct output;

14. The quantity of EHSs recycled on-site and off-site; and

15. Information pertaining to pollution prevention activities at the facility.

“Extremely hazardous substances” means chemicals on the list developed by the USEPA pursuant to Section 302 of the Federal Superfund Amendments and Reauthorization Act (SARA).

[“Hazardous Material” means any substance designated by the Department in N.J.A.C. 7:1G-4.

“Hazardous Materials List” means the list of Hazardous Materials designated by the Department in N.J.A.C. 7:1G-4.]

“Hazardous substance” means any substance defined by the State Department of Health in N.J.A.C. 8:59-9.

“Hazard Code” means a number assigned by the Department to represent each hazard category established by the US Environmental Protection Agency pursuant to the Superfund Amendments and Reauthorization Act (SARA), Title III.

“Hazardous waste” means any solid waste defined as hazardous waste by the Department pursuant to P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.)

“Inventory range” means the upper and lower limits of the quantity of a hazardous substance used, stored or manufactured on site.

“Inventory range code” is a representation of an inventory range for reportable hazardous substances.

“Local Emergency Planning Committee” means a committee formed pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act.

“Research and development laboratory” means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which environmental hazardous substances are used by or under the direct supervision of a technically qualified person. For the purpose of reporting on the Community Right to Know Survey, “primarily” means greater than 50 percent.

“Right to Know Survey” means a survey prepared by the Department of Health and completed by a public sector employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility.

“Superfund Amendments and Reauthorization Act” or “SARA” means the Federal Act (PL 99-499) establishing the “Emergency Planning and Community Right to Know Act of 1986” at Title III (42 USC 11001).

“Technically qualified person” in a research and development (R&D) laboratory means a person who has a bachelors degree in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to the hazardous substances used in the R&D laboratory.

“Trade secret docket number” means a code number temporarily or permanently assigned to the identity of information on the [environmental survey] Community Right to Know Survey or Release and Pollution Prevention Report by the Department of Environmental Protection and Energy.

“Transmit” means to send via first-class mail or otherwise distribute.

“Unusually hazardous” means likely to explode due to a highly volatile nature, a propensity to produce toxic fumes, or a tendency to react with water or common firefighting chemicals and any other property which the Department of Environmental Protection and Energy determines will make a substance an uncommon danger to firefighters and the surrounding community in the event of its exposure to a fire.

[“Workplace Hazardous Substance List” means the list of hazardous substances developed by the Department of Health pursuant to N.J.S.A. 34:5A-5.

“Workplace survey” means a written document, prepared by the Department of health and completed by an Employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility.]

7:1G-1.3 Burden of proof for exemptions

(a) A person claiming that they qualify for any exemption under this chapter or that they are not otherwise subject to the rules of this chapter shall demonstrate and appropriately document entitlement to such exemption.

(b) Employers claiming that a certain chemical, hazardous substance, or mixture is not an EHS, as designated or delineated in N.J.A.C. 7:1G-2, shall, at a minimum, submit in support of such claim, a Material Safety Data Sheet (MSDS) for the substance or mixture in question.

(c) Employers shall, upon request, submit information to the Department to clarify any statement made on the Community Right to Know Survey, Release and Pollution Prevention Report or in a request for an exemption. This information may include, but is not limited to: purchase records, sales records, production records, inventory records, or other business records or documents utilized by the employer or person. Submission of the clarifying information by the employer to the Department is required within 30 days of notification.

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7:1G-1.4 Certification

An employer shall submit a Community Right to Know Survey and/or Release and Pollution Prevention Report, or a Research and Development laboratory exemption to the Department which shall include an original certification signed by the employer or a duly authorized representative, which states the following:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete."

7:1G-1.5 Department right of entrance and inspection

Pursuant to N.J.S.A. 13:1D-9 and 34:5A-29b, the Department shall have the authority to enter any business premises or building during normal hours or other reasonable time to determine compliance with the rules and regulations of the Department hereunder. Failure to permit such inspection after presentation of official credentials is an offense punishable under N.J.S.A. 2C:29-1.

7:1G-1.6 Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of these rules and to this end, the provisions of these rules are declared to be severable.

7:1G-2.1 Designation of [substances] environmental hazardous substances (EHSs)

[The following substances and corresponding Chemical Abstract Services (CAS) numbers are designated as EHSs pursuant to the Act. Each substance has further been identified according to the classifications, in N.J.A.C. 7:1G-2.2. Substances may have numerous synonyms which are not included herein.]

Chemical	CAS Number	Group Number
ACETALDEHYDE	75-07-0	02
ACROLEIN	107-02-8	02
ACRYLIC ACID	79-10-7	01
ACRYLONITRILE	107-13-1	23
ALDRIN	309-00-2	28
ALLYL CHLORIDE	107-05-1	15
2-AMINOANTHRAQUINONE	117-79-3	31
ANILINE	62-53-3	06
O-ANISIDINE	90-04-0	06
ANTHRACENE	120-12-7	07
ANTIMONY AND COMPOUNDS	7440-36-0	19
ARSENIC AND COMPOUNDS	7440-38-2	19
ASBESTOS	1332-21-4	19
BENZAL CHLORIDE	98-87-3	16
BENZENE	71-43-2	07
BENZOTRICHLORIDE	98-07-7	16
BENZOYL CHLORIDE	98-88-4	01
BENZOYL PEROXIDE	94-36-0	27
BENZYL CHLORIDE	100-44-7	16
BERYLLIUM AND COMPOUNDS	7440-41-7	19
BIPHENYL	92-52-4	07
BIS(2-CHLORO-1-METHYLETHYL)ETHER	108-60-1	13
BIS(2-ETHYLHEXYL)ADIPATE	103-23-1	12
BIS(2-ETHYLHEXYL)PHTHALATE	117-81-7	12
BROMINE	7726-95-6	34
BUTADIENE	106-99-0	03
1,-BUTYLENE OXIDE	106-88-7	11
C.I. ACID GREEN 3	4680-78-8	10
C.I. BASIC GREEN 4	569-64-2	10
C.I. BASIC RED 1	989-38-8	10
C.I. DIRECT BLACK 38	1937-37-7	10
C.I. DIRECT BLUE 6	2602-46-2	10
C.I. DIRECT BROWN 95	16071-86-6	10
C.I. DISPERSE YELLOW 3	2832-40-8	10
C.I. FOOD RED 5	3761-53-3	10
C.I. FOOD RED 15	81-88-9	10

C.I. SOLVENT ORANGE 7	3118-97-6	10
C.I. SOLVENT YELLOW 1	60-09-3	10
C.I. SOLVENT YELLOW 3	97-56-3	10
C.I. SOLVENT YELLOW 14	842-07-9	10
C.I. VAT YELLOW 4	128-66-5	10
CADMIUM AND COMPOUNDS	7440-43-9	19
CAPTAN	133-06-2	28
CARBARYL	63-25-2	28
CARBON TETRACHLORIDE	56-23-5	14
CATECHOL	120-80-9	29
CHLORDANE	57-74-9	28
CHLORINE	7782-50-5	34
CHLOROBENZENE	108-90-7	16
CHLOROFORM	67-66-3	14
CHLOROPRENE	126-99-8	15
CHLOROTHALONIL	1897-45-6	28
CHROMIUM AND COMPOUNDS	7440-47-3	19
COPPER AND COMPOUNDS	7440-50-8	19
P-CRESIDINE	120-71-8	06
CUMENE	98-82-8	07
CUMENE HYDROPEROXIDE	80-15-9	27
CYANIDE COMPOUNDS	57-12-5	19
2,4-D	94-75-7	28
DECABROMODIPHENYL OXIDE	1163-19-5	13
DIALLATE	2303-16-4	28
2,4-DIAMINOANISOLE	615-05-4	06
4,4'-DIAMINODIPHENYL ETHER	101-80-4	13
2,4-DIAMINOTOLUENE	95-80-7	06
1,2-DIBROMOETHANE	106-93-4	14
DI-N-BUTYL PHTHALATE	84-74-2	12
1,2-DICHLOROBENZENE	95-50-1	16
1,2-DICHLOROETHANE	107-06-2	14
1,4-DICHLOROBENZENE	106-46-7	16
3,3'-DICHLOROBENZIDINE	91-94-1	06
DICHLOROMETHANE	75-09-2	14
1,2-DICHLOROPROPANE	78-87-5	14
1,3-DICHLOROPROPYLENE	542-75-6	15
DICHLOROS	62-73-7	28
DICOFOL	115-32-2	28
DIETHYL PHTHALATE	84-66-2	28
1,1-DIMETHYL HYDRAZINE	57-14-7	17
DIMETHYL PHTHALATE	131-11-3	12
DIMETHYL SULFATE	77-78-1	32
3,3'-DEMETHYLBENZIDINE	119-93-7	06
2,4-DEMETHYLPHENOL	105-67-9	29
2,4-DINITROTOLUENE	121-14-2	24
2,6-DINITROTOLUENE	606-20-2	24
DI-N-OCTYL PHTHALATE	117-84-0	12
1,4-DIOXANE	123-91-1	13
1,2-DIPHENYL HYDRAZINE	122-66-7	17
EPICHLOROHYDRIN	16-89-8	11
ETHYLBENZENE	100-41-4	07
ETHYLENE OXIDE	75-21-8	11
ETHYLENE THIOUREA	96-45-7	33
ETHYLENEIMINE	151-56-4	18
FLUOMETURON	2164-17-2	28
FORMALDEHYDE	50-00-0	02
HEPTACHLOR	76-44-8	28
HEXACHLOROBENZENE	118-74-1	16
HEXACHLOROCYCLOPENTADIENE	77-47-4	15
HEXACHLOROETHANE	67-72-1	14
HEXAMETHYLPHOSPHORAMIDE	680-31-9	30
HYDRAZINE	302-01-2	17
HYDROGEN CHLORIDE	7647-01-0	35
HYDROGEN FLUORIDE	7664-39-3	35
HYDROGEN SULFIDE	7783-06-4	35
HYDROQUINONE	123-31-9	29
LEAD AND COMPOUNDS	7439-92-1	19
LINDANE	58-89-9	28
MANEB	12427-38-2	28
MERCURY AND COMPOUNDS	7439-97-6	19

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METHOXYCHLOR	72-43-5	28
METHYL HYDRAZINE	60-34-4	17
METHYL IODIDE	74-88-4	14
METHYLMETHACRYLATE	80-62-6	12
4,4'-METHYLENE BIS(2-CHLOROANILINE)	101-14-4	06
4,4'-METHYLENEBIS(N,N-DIMETHYL) BENZENAMINE	101-61-1	06
4,4'-METHYLENEDIANILINE	101-77-9	06
METHYL ISOCYANATE	624-83-9	20
NAPHTHYLAMINE	91-29-3	06
1-NAPHTHYLAMINE	134-43-7	06
NICKEL AND COMPOUNDS	7440-02-02	19
5-NITRO-O-ANISIDINE	99-59-2	06
NITROFEN	1836-75-5	28
4-NITROPHENOL	100-02-7	29
2-NITROPROPANE	79-46-9	24
N-NITROSODIPHENYLAMINE	86-30-6	26
PARATHION	56-38-2	28
PENTACHLOROPHENOL	87-86-5	29
PERACETIC ACID	79-21-0	27
PHENOL	108-95-2	29
2-PHENYLPHENOL	90-43-7	29
PHOSGENE	75-44-5	01
PHOSPHORUS TRICHLORIDE	7719-12-2	35
POLYCHLORINATED BIPHENYLS	1336-36-3	16
PROPOXUR	114-26-1	28
PROPYLENE OXIDE	75-56-9	11
QUINOLINE	91-22-5	25
QUINTOZENE	82-68-8	28
SAFROLE	94-59-7	13
STYRENE	100-42-5	07
STYRENE OXIDE	96-09-3	11
1,1,2,2-TETRACHLOROETHANE	79-34-5	14
TETRACHLOROETHYLENE	127-18-4	14
TETRACHLORVINPHOS	961-11-5	28
4,4'-THIODIANILINE	139-65-1	06
THIOUREA	62-56-6	33
TOLUENE	108-88-3	07
TOLUENE-2,4-DIISOCYANATE	584-84-9	20
TOLUENE-2,6-DIISOCYANATE	91-08-7	20
O-TOLUIDINE	95-53-4	06
TOXAPHENE	8001-35-2	28
TRICHLORFON	52-68-6	28
1,2,4-TRICHLOROETHANE	120-82-1	16
1,1,1-TRICHLOROETHANE	71-55-6	14
1,1,2-TRICHLOROETHANE	70-00-5	14
TRICHLOROETHYLENE	79-01-6	15
TRIFLURALIN	1582-09-8	28
URETHANE	51-79-6	09
VINYLDENE CHLORIDE	75-35-4	15
XYLENES	1330-20-7	07
2,6-XYLIDENE	87-62-7	06
ZINEB	12122-67-7	28]

(a) The list of EHSs shall be comprised of the substances listed below:

1. Toxic chemicals on the list at 40 CFR 372.65 established by the United States Environmental Protection Agency for reporting pursuant to SARA Title III section 313, as from time to time supplemented or amended;

2. Extremely hazardous substances on the list at 40 CFR 355 Appendix A designated under SARA Title III section 302, established by the United States Environmental Protection Agency for reporting as from time to time supplemented or amended;

3. Chemicals designated as selected substances at N.J.A.C. 7:1F Appendix A for reporting on the Industrial Survey as from time to time supplemented or amended;

4. The following substances adopted pursuant to N.J.S.A. 34:5A-4:

<u>Chemical</u>	<u>CAS number</u>
Amitrol	61-82-5

5. Unusually hazardous substances defined at N.J.A.C. 7:1G-1.2:
i. Unusually hazardous substances as listed below by the Department pursuant to N.J.S.A. 52:27D-223:

<u>Chemical</u>	<u>CAS Number</u>
Boron Trifluoride Etherate	109-63-7
Diethyl Carbamyl Chloride	88-10-8
Diisobutyl Aluminum Hydride	1191-15-7
Triethylborane	97-94-9
Alkyl Aluminums (generic)	109-72-8
Chlorosulfonic Acid	7790-94-5
Lithium Tetrahydroaluminate	16853-85-3
Tert-Butyl Perbenzoate	614-45-9
Ammonium Permanganate	13446-10-1
Cobaltous Nitrate	10141-05-6
Cupric Nitrate	3251-23-8
Dibenzoyl Peroxide	94-36-0
Dichloro-s-Triazinetrione	2782-57-2
Nitrogen Peroxide	10102-44-0
Potassium Chromate	7789-00-6
Sodium Dichloro-s-Triazinetrione	2893-78-9
Thorium Nitrate	13823-29-5
Uranyl Nitrate	36478-76-9
Saran	
PVC	
Lopac	

ii. Hazard Class 1 Explosive Materials listed on the U.S. Department of Transportation Hazardous Materials Table established at 49 CFR §172.101 as from time to time supplemented or amended; and

iii. Hazard Class 7 Radioactive Materials listed on the U.S. Department of Transportation Hazardous Materials Table established at 49 CFR §172.101A as from time to time supplemented or amended; and

6. Any hazardous substance added to the list of chemicals subject to pollution prevention planning pursuant to N.J.A.C. 7:1K-3.5.

(b) Chemical inventory reporting on the Community Right to Know Survey shall include all EHSs listed at (a)1 through 5 above.

(c) Environmental release, throughput, and waste transfer reporting on the Release and Pollution Prevention Report shall be limited to the list of Toxic Chemicals described at (a)1 and 6 above.

7:1G-2.2 [Chemical group and group numbers] (Reserved)

[The groups, and their designated group numbers, to which Environmental Hazardous Substances listed in N.J.A.C. 7:1G-2.1 belong, are designated herein, to reflect similarity in chemical structure, with the exception of Pesticides (Number 28) and Dyes (Number 10), which reflect commercial use:

Group No.	Chemical Group	Group No.	Chemical Group
01	Acids & acid chlorides	18	Imides
02	Aldehydes	19	Inorganics
03	Aliphatic hydrocarbons	20	Isocyanates
04	Amides	21	Ketones
05	Anhydrides	22	Lactams
06	Aromatic amines	23	Nitriles
07	Aromatic hydrocarbons	24	Nitro Compounds
08	Azo Compounds	25	Nitrogen heterocycles
09	Carbamates	26	Nitroso Compounds
10	Dyes	27	Organic peroxides
11	Epoxides	28	Pesticides
12	Esters	29	Phenols
13	Ethers & Lactones	30	Phosphoramides
14	Halogenated alkanes	31	Quinones & Anthraquinones
15	Halogenated alkenes	32	Sulfuric acid esters
16	Halogenated aromatic	33	Thioureas
17	Hydrazines	34	Halogens
		35	Inorganic Acids]

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SUBCHAPTER 3. [ENVIRONMENTAL] COMMUNITY RIGHT TO KNOW SURVEY

7:1G-3.1 Completion of Community Right to Know Survey Portion of the Environmental Survey

[Within 90 days of receipt of Part I or Part II of the Environmental Survey, an employer shall complete the survey concerning each of the Environmental Hazard Substances at his facility, and transmit copy of the completed survey to the Department of Environmental Protection and the health department of the county in which the employer's facility is located (or county clerk if there is no county health department). This deadline shall be extended for an additional period not to exceed 30 days, at the discretion of the Department for good cause shown by the employer.]

(a) An employer shall complete and submit to the Department a Community Right to Know Survey for each facility covered by this chapter indicating if EHSs were present during the reporting period and whether the EHSs met or exceeded the threshold quantities for reporting listed in (b) below.

(b) An employer shall report on the Community Right to Know Survey, those EHSs that met or exceeded the thresholds listed in (b)1 through 4 below during the reporting year:

1. For EHSs appearing on the SARA Title III Section 302 list of extremely hazardous substances, as referenced in N.J.A.C. 7:1G-2.1(a)2, the Federal threshold of 500 pounds or the threshold planning quantity, whichever is less, present in aggregate at the facility at any one time shall apply.

2. For EHSs appearing on the list of unusually hazardous substances which are identified as explosive or radioactive in N.J.A.C. 7:1G-2.1(a)5ii and iii, a zero threshold shall apply and any quantity thereof shall be reported.

3. For EHSs which do not appear on the list of extremely hazardous substances or unusually hazardous substances as referenced in N.J.A.C. 7:1G-2.1(a)1 and 2.1(a)5ii and iii, a threshold of 500 pounds present in aggregate at the facility at any one time, shall apply.

4. The thresholds for reporting listed in (b)1, 2 and 3 above do not apply to container labeling pursuant to N.J.A.C. 8:59.

(c) For each EHS that met or exceeded the thresholds listed in (b) above, an employer shall provide all information on a Community Right to Know Survey form approved by the Department, which shall include, but is not limited to, the following:

1. The chemical name, Chemical Abstracts Service registry number and EHS number and USDOT number, if available, of each EHS which is present at the facility in a pure state or mixture;

2. For reporting, EHSs shall be grouped according to container type and location within the facility;

3. For EHSs present in the pure state, the quantity of each, in pounds, in terms of daily maximum and average daily amount, and the hazard code for the EHS;

4. EHSs in mixtures shall be reported as follows:

i. Each EHS comprising more than one percent of a mixture (or .1 percent if the EHS is carcinogenic) shall be reported with its quantity determined by multiplying the weight percent of the EHS by the mass, in pounds, of the entire mixture.

ii. EHSs in mixtures in the following generic categories may be reported using the generic name and the quantity of the entire mixture: gasoline, new and used petroleum oil, and hazardous waste;

5. The major methods of storage, including container type, temperature, pressure conditions, and locations shall be reported including the number of days the EHS was present onsite during the calendar year at the facility; and

6. If no EHS is present in a mixture, and the mixture is subject only to reporting pursuant to the Federal requirements of Section 312 of SARA (40 CFR 370), a product name may be used to report the substance.

(d) An employer or owner or operator of any facility subject to Federal hazardous chemical reporting under Section 312 of SARA (40 CFR 370) shall submit a completed Community Right to Know survey to the Department to satisfy these requirements.

7:1G-3.2 [Clarification of completed Environmental Survey] Reporting exemptions

[The Department may require an employer to submit information clarifying any statement made on Part I and Part II of the Environmental Survey. The Department shall transmit this clarifying information to the county health department (or county clerk if there is no county health department), as it deems necessary. Submission of the clarifying information by the employer to the Department is mandatory within 14 days of notification, or other date specified by the Department.]

(a) EHSs meeting any of the following criteria are exempt from chemical inventory reporting on the Community Right to Know Survey:

1. EHSs present at a facility in quantities that do not meet or exceed the thresholds for reporting found at N.J.A.C. 7:1G-3.1;

2. EHSs located within a research and development laboratory as defined in N.J.A.C. 7:1G-1.2 and used for R&D activities are exempt from reporting on the Community Right to Know Survey provided the employer has obtained a research and development laboratory exemption from the Department, which may be obtained in accordance with the following procedure:

i. The employer shall submit to the Department for evaluation and approval a completed research and development laboratory exemption application, on forms approved by the Department, containing the following information:

(1) The facility name, location and New Jersey Employer Identification Verification Number;

(2) An 8½ × 11 inch map of the facility indicating the designated research and development area(s) of the facility. The map should indicate if R&D activities are limited to specific locations within the facility or if the entire facility is dedicated to R&D activities;

(3) The percentage of total work hours devoted to R&D activities in the designated area;

(4) Written verification from the local fire department that an acceptable communications program has been established with them to assist in responding to emergencies at the research and development laboratory;

(5) A description of the technical qualifications of each supervisor of the R&D laboratory; and

(6) A signed certification that the information contained in the R&D laboratory exemption application is true, accurate and complete;

3. EHSs which are an integral part of a facility structure or furnishings;

4. EHSs which are the personal property and are for the personal use of an employee are not required to be reported on the Community Right to Know Survey; or

5. Ammunition when on the person of security personnel.

(b) The exemption from reporting at (a) above does not apply to container labeling pursuant to N.J.A.C. 8:59.

(c) An employer exempt from chemical inventory reporting in accordance with (a) above shall complete and return the first page of the Community Right to Know Survey indicating that an exemption from reporting is being claimed.

(d) An employer exempt from chemical inventory reporting in accordance with (a)1 and 2 above is subject to the Right to Know fee assessment pursuant to N.J.S.A. 34:5A-26.

(e) An employer having no EHSs is exempt from the annual Right to Know fee assessment in accordance with N.J.S.A. 34:5A-26.1 provided non-user status is indicated on the annual Community Right to Know Survey transmitted to the Department.

(f) An employer engaged only in administrative office activities is exempt from the annual Right to Know fee assessment and the requirement to annually transmit the Community Right to Know Survey after initial notification to the Department indicating such status is made.

[7:1G-3.3 Updating of Environmental Survey]

(a) Every employer shall update a complete Part I and II of the Environmental Survey for his facility every other year. If there is any significant change during a nonreporting year in the information

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reported on his Environmental Survey, the employer shall inform the Department of the change.

(b) The Department may require an employer to update the Environmental Survey for his facility every year.

SUBCHAPTER 4. [HAZARDOUS MATERIALS LIST] RELEASE AND POLLUTION PREVENTION REPORT

7:1G-4.1 [Designation of Hazardous Materials] Completion of Release and Pollution Prevention Report

(a) The substances contained in the Optional Materials Table in Title 49 of the code of Federal Regulations, Part 172.102, as amended by publication in the Federal Register, 48 Fed. Reg. Vol. 48, No. 211, pp. 50234-50279 (October 31, 1983) are designated, by reference, as Hazardous Materials pursuant to the Worker and Community Right To Know Act, P.L. 1983, c.315, N.J.S.A. 34:5A-1 et seq.

(b) The substances contained in the Hazardous Materials Table in Title 49 of the Code of Federal Regulations, Part 172.101, as amended by publication in the Federal Register, 49 Federal Register, Vol. 49, No. 189, pp. 1189, pp. 38133-38134 (September 27, 1984) are designated, by reference, as Hazardous Materials pursuant to the Worker and Community Right to Know Act, P.L.1992, c.315, N.J.S.A. 34:5A-1 et seq.]

(a) An employer who is subject to the reporting requirements of SARA Title III Section 313, or other criteria established by the Department in accordance with the Administrative Procedures Act, shall submit to the Department a Release and Pollution Prevention Report by July 1 of the year following the reporting year.

(b) An employer shall complete a Release and Pollution Prevention Report subject to the threshold(s) for reporting established pursuant to the Pollution Prevention Act (N.J.S.A. 13:1D).

(c) An employer shall provide the environmental release, throughput, waste transfer and pollution prevention information required by the Environmental Survey as defined at N.J.A.C. 7:1G-1.2 and any pollution prevention information deemed appropriate pursuant to the Pollution Prevention Act (N.J.S.A. 13:1D-6b) on the Release and Pollution Prevention Report component of the Environmental Survey.

[7:1G-4.2 Amendments to Hazardous Materials List

(a) The Department intends to establish a procedure for annually receiving information, advice, testimony, and recommendations from the Right to Know Advisory Council established pursuant to the Act, the public, and any other interested party, concerning the implementation of the Act. This procedure shall include a mechanism for revising the Hazardous Materials List.

(b) The Department will publish in the New Jersey Register, any revisions by the United States Department of Transportation (USDOT) to the Optional Materials Table and Hazardous Materials Table in Title 49 of the Code of Federal Regulations, as amended. Effective upon such publication in the Register, such amendments by the USDOT shall be incorporated into N.J.A.C. 7:1G-4.1.]

SUBCHAPTER 5. [EMERGENCY SERVICES INFORMATION (ESI) SURVEY] SUBMITTAL OF THE COMMUNITY RIGHT TO KNOW SURVEY AND RELEASE AND POLLUTION PREVENTION REPORT

7:1G-5.1 [Completion of ESI Survey] Survey submittal

[Within 90 days of receipt of an Emergency Services Information survey, an employer shall complete the survey concerning each of the Hazardous Materials at his facility, and transmit a copy of the completed survey to the Department of Environmental Protection, the local fire department and the local police department. This deadline shall be extended for an additional period not to exceed 30 days, at the discretion of the department for good cause shown by the employer.]

(a) An employer subject to reporting under the Worker and Community Right to Know Act who does not meet the Federal

requirements for reporting shall transmit a Community Right to Know Survey for each covered facility to the Department by March 1 of the year following the reporting year. A copy shall also be transmitted to the local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency of the county in which the facility is located.

(b) An employer subject only to the reporting requirements of Section 312 of SARA shall transmit an original Community Right to Know Survey for each covered facility to the Department by March 1 of the year following the reporting year. A copy shall also be transmitted to the local fire department and local emergency planning committee.

(c) An employer shall transmit an original completed Release and Pollution Prevention Report to the Department by July 1 of the year following the reporting year. A copy shall also be transmitted to the county lead agency of the county in which the facility is located.

(d) An employer shall retain a copy of the Community Right to Know Survey and/or Release and Pollution Prevention Report at the facility and make it available to facility employees and representatives of the Department.

7:1G-5.2 [Clarification of completed ESI Survey] Submittal of Clarifying Information

[The Department may require an employer to submit information clarifying any statement made on the Emergency Services Information Survey. The Department shall transmit this clarifying information to the local fire department and police department as it deems necessary. Submission of the clarifying information by the employer to the Department is mandatory within 30 days of notification, or other date specified by the Department.]

The Department may require an employer to submit information clarifying any statement made on the Community Right to Know Survey and/or Release and Pollution Prevention Report, subject to the trade secret provision of N.J.S.A. 34:5A-15. The Department shall transmit such clarifying information to the county health department, local fire department and police department as it deems necessary. Clarifying information shall be submitted within 30 days of notification, or subsequent date specified by the Department.

[7:1G-5.3 Updating of ESI Survey] (Reserved)

[(a) Every employer shall update the Emergency Services Information (ESI) Survey for his facility every other year. If there is any significant change during a nonreporting year in the information reported on his ESI Survey, the employer shall inform the Department of the change.

(b) The Department may require an employer to update the ESI Survey for his facility every year.]

7:1G-5.4 (Reserved)

SUBCHAPTER 7. [ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES] ISSUANCE OF ADMINISTRATIVE ORDERS AND NOTICES OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

7:1G-7.1 Authority and scope

(a) This subchapter is promulgated to provide for the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments and to establish a schedule and procedures for the assessment of Civil Administrative Penalties as provided in the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., at N.J.S.A. 34:5A-31(a) and (b) and (d).

[(b) N.J.S.A. 34:5A-31(a) provides four options for enforcement actions whenever an employer is in violation of the Worker and Community Right to Know Act, or any rule or regulation issued pursuant to the Act. One of the options is to levy a civil administrative penalty in accordance with N.J.S.A. 34:5A-31(d). Under that section, the Commissioner is authorized to assess a penalty of not more than \$2,500 for each violation, and additional penalties of not more than \$1,000 for each day during which a violation continues after receipt of an order from the Department. N.J.S.A. 34:5A-31(d) further provides that, "Any amount imposed under this subpara-

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graph shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration." This subchapter establishes those ranges.]

(b) Pursuant to N.J.S.A. 34:5A-31(a), the Commissioner or his or her designee is authorized to issue an Administrative Order and Notice of Civil Administrative Penalty Assessment whenever any employer is in violation of the Act or any rule or regulation promulgated pursuant to the Act. The Commissioner is authorized to issue a Civil Administrative Penalty of not more than \$2,500 for each violation, and additional penalties of not more than \$1,000 for each day during which a violation continues after the compliance date of an Administrative Order from the Commissioner to cease such violation pursuant to N.J.S.A. 34:5A-31(d).

(c) This subchapter shall govern the [assessment of civil administrative penalties] issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments for violations of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or of any rule or regulation issued pursuant to [that] this Act by the Department of Environmental Protection and Energy.

7:1G-7.2 [Definitions] (Reserved)

[In addition to the definitions set forth in N.J.A.C. 7:1G-1.2, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Completed survey" as used in N.J.S.A. 34:5A-7 and this subchapter, means a survey form entirely filled out, and free from deficiencies, errors or omissions.

"Inventory range" means the range in which the quantity of the hazardous substance and material at the facility is reported on the Environmental Survey or on the Emergency Services Information Survey.

"Non-time related violation" means a violation other than a time related violation. These may occur when there is a failure to carry out a duty imposed by statute, order, or regulation. Examples of such violations include the failure to list all reportable substances and misrepresentation of information.

"Order" means any and all orders issued or entered into by the Department including, but limited to, Administrative Orders and Administrative Consent Orders.

"Reportable substance" means those substances and/or materials which are on the Environmental Hazardous Substance List set forth in N.J.A.C. 7:1G-2 or the Hazardous Materials List set forth in N.J.A.C. 7:1G-4.

"Time related violation" means that type of violation that occurs when there is a failure to meet a time limit or deadline imposed by statute, order or regulation. Examples of such violation are failure to submit the Environmental Survey or Emergency Services Information Survey within the required time frame and failure to supply clarifying information as requested by the Department within the required time frame.]

7:1G-7.3 Procedures for [assessment of civil administrative penalties] the issuance of Administrative Orders and Notices of Civil Administrative Penalty Assessments

[(a) Before any assessment is levied pursuant to this subchapter, the alleged violator shall be notified by certified mail, return receipt requested, or by personal service. Such notice shall include:

1. A reference to the statute, regulation, and/or order violated;
2. A concise statement of the facts alleged to constitute the violation;
3. A statement of the amount of civil administrative penalties sought to be imposed; and
4. A statement of the alleged violator's right to an adjudicatory hearing and notice of the procedure for requesting an adjudicatory hearing.]

(a) The Commissioner may issue an Administrative Order upon finding that an employer is in violation of N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto. Such an order shall:

1. Specify the provision or provisions of the Act, the rule or regulation adopted pursuant thereto of which the employer is in violation;

2. Cite the action which caused the violation;
3. Require compliance with the provision of the Act or the rules or regulations adopted pursuant thereto of which the employer is in violation; and

4. Give notice to the employer of the right to an adjudicatory hearing on the matters contained in the order and specify the procedures for requesting an adjudicatory hearing.

(b) A [notice of assessment of a civil administrative penalty] Notice of Civil Administrative Penalty Assessment may be issued separately or as part of an [administrative order] Administrative Order issued pursuant to N.J.S.A. 34:5A-31(b) requiring the alleged violator to take [affirmative] necessary action to comply with the Worker and Community Right to Know Act or a rule or regulation issued pursuant to the Act. Such Notice shall include:

1. A reference to the section of the Act, rule, regulation or order violated;
2. A concise statement of the facts alleged to constitute a violation;
3. A statement of the amount of the administrative penalty to be imposed; and
4. A statement of the employer's right to an adjudicatory hearing and notice of the procedure for requesting an adjudicatory hearing.

(c) The alleged violator shall have 20 calendar days from receipt of the Administrative Order and/or [notice of civil administrative penalty assessment] Notice of Civil Administrative Penalty Assessment within which to deliver a written request for [a] an adjudicatory hearing to:

[Assistant Director
Environmental Enforcement
Division of Environmental Quality
CN027
Trenton, New Jersey 08625]
Office of Legal Affairs
Attention: Adjudicatory Hearings
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

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

(g) The adjudicatory hearing shall be held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

(h) After [a] an adjudicatory hearing, and upon finding that a violation has occurred, the Commissioner or his or her authorized representative may issue a final assessment of the amount of the [fine] penalty specified in the notice or such lesser amount as [he] may assessed pursuant to the provisions on compromise of N.J.S.A. 34:5A-31(d). If no hearing is requested or if the Department denies the request, the original [notice of] Administrative Order and Notice of Civil Administrative Penalty Assessment becomes a final order upon the 21st calendar day following its receipt.

(i) Payment of an assessed civil administrative penalty is due when a final order is issued by the Commissioner or the notice becomes a final order. If the alleged violator fails to pay the penalty to the Department or to make acceptable arrangements to pay the penalty within a reasonable period of time thereafter, the Department may institute a civil action pursuant to N.J.S.A. 34:5A-31(e) for a civil penalty not to exceed \$2,500 for each day during which the violation continues.

7:1G-7.4 Compromise of penalties

(a) At his or her discretion, the Commissioner or his or her authorized representative may compromise a penalty assessed pursuant to this subchapter in whole or part, in the following circumstances and on the following terms and conditions:

- 1.-2. (No change.)
3. Upon any other terms or conditions acceptable to the Commissioner or his or her authorized representative[.];
4. Any other circumstances or conditions acceptable to the Department.

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7:1G-7.5 Alternative remedies

Neither the [assessment of a civil administrative penalty] issuance of an Administrative Order and Notice of Civil Administrative Penalty Assessment nor the payment of any such penalty shall be deemed to affect the availability to the Department of any enforcement provision provided for by N.J.S.A. 34:5A-31, or any other statute, in connection with the violation for which the assessment is levied.

7:1G-7.6 [Records of assessments] (Reserved)

[(a) In order to promote consistency in the application of this subchapter, the Department shall collect and maintain in a discrete file a record of each assessment made pursuant to this subchapter. Such file shall be a public record and shall be kept available for public inspection pursuant to N.J.S.A. 47:1A-1 et seq.

(b) The file shall, at a minimum, include a copy of each notice and all final orders issued pursuant to N.J.A.C. 7:1G-7.3, and the terms of any compromise agreed to pursuant to N.J.A.C. 7:1G-7.4.]

7:1G-7.7 [Penalty for time related violations] Penalties

[(a) The assessed penalty for a time related violation is determined by the number of weeks or fraction thereof that the Environmental Survey, the Emergency Services Information Survey or the clarifying information requested by the Department is overdue. The following table shall be used to determine the penalty:

1. Less than four weeks late	\$100.00
2. Four weeks to six weeks late	\$500.00
3. Six weeks to eight weeks late	\$1000.00
4. Eight weeks to ten weeks late	\$1500.00
5. Ten weeks to twelve weeks late	\$2000.00
6. More than twelve weeks late	\$2500.00]

(a) Failure to submit a Community Right to Know Survey pursuant to N.J.S.A. 34:5A-1 et seq. shall result in the assessment of a civil administrative penalty of \$1,000.

(b) Failure to submit a Release and Pollution Prevention Report pursuant to N.J.S.A. 34:5A-1 et seq. shall result in the assessment of a civil administrative penalty of \$1,000.

(c) Failure of an employer to report all EHSs pursuant to these regulations on the Community Right to Know Survey or Release and Pollution Prevention Report shall result in the assessment of a civil administrative penalty based on the number of substances omitted as follows: one to 10 substances, \$500.00; 10 or more substances, \$1,000.

(d) Failure to respond to the Department's request for clarifying information shall result in the assessment of a civil administrative penalty of \$1,000.

(e) Failure to submit a copy of a Community Right to Know Survey or a Release and Pollution Prevention Report to any required agency pursuant to N.J.A.C. 7:1G-5 shall result in the assessment of a civil administrative penalty in the amount of \$500.00.

(f) Failure of an employer to maintain or make available copies of the current Community Right to Know Survey or Release and Pollution Prevention Report at his or her facility pursuant to N.J.S.A. 45:5A-12 shall result in the assessment of a civil administrative penalty of \$500.00.

7:1G-7.8 Penalty for non-time related violations

(a) The penalty which may be assessed for a non-time related violation under this subchapter is \$2,500 or a fraction thereof, to be determined pursuant to N.J.S.A. 34:5A-31(d) by application of factors indicative of the type, seriousness, and duration of the violation, as described below:

1. Seriousness factor: The seriousness of a violation is determined with reference to the maximum inventory of a chemical stored, handled, or manufactured at any one time at the facility but not reported or inaccurately reported. There are three degrees:

i. Major: The maximum inventory of a chemical stored, handled, or manufactured at the facility at any one time is within inventory range 13 to 20, inclusive (greater than 1,000), as defined in N.J.A.C. 7:1G-7.2.

ii. Moderate: The maximum inventory of a chemical stored, handled, or manufactured at the facility at any one time is within inventory range 11 or 12 (10 to 1,000).

iii. Minor: The maximum range of a chemical stored, handled, or manufactured at the facility at any one time is within inventory range 10 (less than 10).

2. Type factor: The type factor reflects the circumstances of the violation and the responsibility of the violator. There are three degrees:

i. Willful: A willful violation is one which is the result of some deliberate, knowing or purposeful action or inaction by the violator.

ii. Unintentional but foreseeable: An unintentional but foreseeable violation is one which the violator, by the exercise of reasonable diligence, could have or should have foreseen and prevented but was not caused by a deliberate, knowing, or purposeful action or inaction by the violator.

iii. Unintentional and unforeseeable: An unintentional and unforeseeable violation is one which the violator could not be expected to have foreseen, even by the exercise of reasonable diligence.

3. Schedule of factor values: Penalties for non-time related violations shall be computed after assigning values to the seriousness and type factors from the table below:

i. Seriousness:	Values
(1) Major	1.00
(2) Moderate	0.50
(3) Minor	0.25
ii. Type:	Values
(1) Willfull	1.00
(2) Unintentional but foreseeable	0.50
(3) Unintentional and unforeseeable	0.25

4. In the event that the Department becomes aware through an environmental release of a reportable substance which was not reported or inaccurately reported to the Department on a survey, an additional value between 0.10 and 0.25, depending on inherent toxicity or harmful characteristics of the substance, shall be added to the type factor.

(b) Computation of penalty: The penalty for non-time related violations shall be computed as follows:

$$(\text{seriousness}) \times (\text{type}) \times (\$2,500) = \text{penalty}$$

1. If the penalty computed by this method is greater than \$2,500 for any violation the \$2,500 maximum penalty shall be assessed for each such violation.

7:1G-7.9 Daily penalty

(a) After receipt of an Administrative Order from the Department to cease a violation, either time related or non-time related, and for each day during which the violator fails to comply with the terms of the Administrative Order, a daily penalty shall be assessed, in addition to any other penalties provided for in this subchapter, based on the following table:

1. During first week after deadline	\$100.00/day
2. During second week after deadline	\$200.00/day
3. During third week after deadline	\$500.00/day
4. During fourth week after deadline and subsequently	\$1000.00/day

7:1G-7.10 Violations which are both time and non-time related

(a) In some cases a single offense may constitute both a time related and a non-time related violation. In such cases, the Department may elect to:

1. Assess penalties for the time related violation only; or
2. Assess penalties for the non-time related violation only; or
3. Assess penalties for both the time related violation and the non-time related violation.]

(a)

**ENVIRONMENTAL REGULATION—LAND USE
REGULATION ELEMENT**

**Freshwater Wetlands Protection Act Rules
Definition of Project**

Proposed Amendments: N.J.A.C. 7:7A-1.4 and 2.7

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

Authority: N.J.S.A. 13:9B-1 et seq. (P.L. 1987, c.156).

DEPE Docket Number: 22-93-03.

Proposal Number: PRN 1993-220.

A public hearing concerning these proposed amendments will be held on:

Wednesday, May 12, 1993 at 1:00 P.M.
Department of Environmental Protection and Energy
Public Hearing Room
401 East State Street
Trenton, New Jersey 08625

Submit written comments by May 19, 1993 to:

Robert Santaloci, Esq.
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On March 16, 1992, at 24 N.J.R. 912(b), the New Jersey Department of Environmental Protection and Energy (Department) proposed amendments to its rules implementing the Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq. These amendments included a definition of the term "project" as it is used in the context of exemptions from the Act pursuant to N.J.A.C. 7:7A-2.7. In response to public comments on the proposed definition (see the notice of adoption published elsewhere in this issue of the New Jersey Register), the Department determined that further amendments to the definition were necessary. These amendments are discussed below.

N.J.A.C. 7:7A-2.7(d)1 and 2 exempt certain projects from the permit requirements of N.J.A.C. 7:7A. The exemptions are based upon an application or approval of a site plan or subdivision for the project from local authorities. To clarify the rule, the Department has determined that it is necessary to elaborate upon the definition of the term "project." After additional consideration of the advice provided by the Attorney General in Formal Opinion No. 3 (1990), and Formal Opinion No. 3: Reprise (1991) and subsequent advice provided by his Office, the Department has modified the definition of "project" published in the March 16, 1992 New Jersey Register to reflect the concerns expressed by the public in response to that proposal, to the extent legally permissible under the Freshwater Wetlands Protection Act, as determined by the Attorney General's Office. With regard to exemptions based on subdivision application or approval, the proposed amendments define "project" as the proposed economic development for which preliminary subdivision approval was sought or granted. The project is limited to development on portions of a tract of land that are the focus of the qualifying subdivision application or approval. Development of other portions of the parcel, or on adjacent property under common ownership, is not considered part of the "project" under this definition. The definition also describes the bases for the Department's determination of what portion of a parcel is included in the project, and provides examples of how the definition would be applied in a variety of circumstances. With regard to exemptions based on site plan applications or approvals, the proposed amendments define "project" generally as all land use activities documented on approved site plans.

Social Impact

The proposed revisions are intended to have a positive social impact by providing the desired clarity to the exemption provisions of the regulations.

Economic Impact

The proposed definition of "project" will have a positive economic impact on persons who are interested in pursuing an exemption from

the Act. Clarifying the criteria on which an exemption is based will allow applicants to make an informed decision about whether to apply, thus saving time and money in those cases where an exemption will obviously not be granted.

Environmental Impact

The proposed definition of "project" will have no significant environmental impacts because it reflects a clarification in language and is not of a substantive nature.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that of the 500 applicants for exemptions per year who are affected by the proposed amendment, approximately 450 will be small businesses as defined therein, including small developers and contractors of single family residences. The proposed clarification will better allow potential applicants to determine whether it is financially beneficial to expend time and money to submit applications for exemptions. No additional capital costs or professional services would be required.

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

7:7A-1.4 Definitions

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

...

"Project" means the following:

1. For an exemption under N.J.A.C. 7:7A-2.7(d) based on the application for or the grant of preliminary site plan approval, "project" means all buildings, structures, pavements, and other improvements specifically depicted on the site plans referenced in the resolution approving the site plan.

2. For an exemption under N.J.A.C. 7:7A-2.7(d) based on the application for or the grant of preliminary subdivision approval, "project" means:

i. Where subdivision approval is the last stage of municipal review before the owner/applicant may apply for a building permit to begin construction, the "project" is the development of the subdivision consistent with the lot coverage, use, and density restrictions of the zoning ordinance in effect at the subdivision approval; or

ii. Where site plan approval is required prior to construction, "project" means the proposed economic development, whether commercial, industrial or residential, intended to be constructed on that portion of a tract of land that is the focus of the qualifying approval. Although "project" is not limited to specific structures shown on the subdivision plans, it is limited to development on those portions of a tract of land that were the focus of the qualifying subdivision application or approval. Development on other lands, such as development on the remainder of a larger tract or on a contiguous property in common ownership, are not included within a "project."

In order to determine if an applicant qualifies for an exemption under this definition, the Department will determine the existence of a proposed economic development at the time of the subdivision application. Because the purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents, where the subdivision is merely a division of land and no substantial investment was made in planning or development, there can be no exempted project. Therefore, an application for the subdivision of lands simply for future development, yet to be planned, or simply for resale shall not qualify for an exemption. To determine the existence of a proposed economic development and to determine which portion of a tract was the focus of subdivision approval or application, the Department will examine the resolution granting approval and any documentation submitted with the application, including, but not limited to, drainage, engineering, traffic, utility, landscaping, soil and environmental plans and reports as well as the subdivision plan. In cases where the above information is unclear, the Department may consider money spent or obligated on engineering and design in the preparation of the subdivision application to determine if a substantial investment has been made

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in an economic development. Money spent or obligated for the initial purchase, carrying costs, or legal services will not be considered in determining the existence of a proposed economic development.

The following are examples of how the Department will determine the "project" exempted on the basis of the application for or grant of preliminary subdivision approval:

(1) Where a project was to be developed in three sections but a complete application for preliminary approval was submitted, accepted and subsequently approved for only one section, only the development planned for that section is exempt and the development envisioned for sections two and three is not exempt. This is not altered by the fact that some depiction of that future development on the remainder of the parcel might be required by a local planning board in concept or sketch form.

(2) Where an entire parcel is subdivided into five conforming residential lots, the residential development planned on all five lots is exempt. However, where the focus of the subdivision application and approval is on less than the entire tract of land, which lesser portion is divided into five single family house lots, and the remainder of the tract is left as a bulk parcel for further subdivision or other planning board approval, only development on the five lots is exempt. It is irrelevant that the configuration of the remainder lot has been changed by the subdivision or that the remainder lot has been renumbered.

(3) Where the land to be divided for a commercial industrial park straddles two townships and the developer received approval to subdivide the land in township A and sold the unsubdivided portion in township B to another developer, only the development on the land in township A could be considered the subject of township A's subdivision approval. Therefore, only the development on the land in township A is exempt. It is irrelevant that the original developer had, from the start, contemplated a commercial industrial park for the property in both townships or that the office building contemplated on the land in township B did not require further subdivision.

(4) Where land is divided for the sole purpose of bequeathing it sometime in the future to one's children to be developed as they wish, no economic development was contemplated when the application was made or approval granted. After the land passes to the children and one of them decides to build, that development is not exempt. The purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents. Where the subdivision is merely a division of land and no investment was made in the planning or development, there can be no exempted project.

(5) Where land is subdivided but requires further subdivision, other than de minimus changes for road right of ways or other infrastructure, before the applicant can proceed to the next step of municipal approval (either building permits or site plan approvals), there is no evidence of intended economic development at the time of initial subdivision application or approval, because the proposed economic development only comes into being with the subsequent, untimely subdivision. Therefore, there is no basis for exemption.

For all development determined to be exempt by the Department, it should be noted that once the development is constructed, the exempted "project" has been built. If, for example, the owner of a commercial building decides afterward that it is necessary to construct an addition, and goes back to the municipal authority for a new or amended site plan or subdivision approval, the exemption has been "used up" and the addition is subject to the permitting requirements of the Act. Similarly, for residential approvals, once the houses and any accessory structures planned along with the house (for example, detached garages, barns, storage sheds, pools) are constructed, the exemption has been exhausted and any later additions or structural improvements are subject to the permitting requirements of the Act. Note that if there is an interruption of more than one year before construction of an accessory structure claimed to have been planned along with the house, there is a rebuttable presumption that the structure constitutes a later ad-

dition and will require a permit. See also N.J.A.C. 7:7A-2.7(e)1 and 2 for changes that void exemptions for projects still in the local approval process.

...

7:7A-2.7 Activities exempted from permit requirement

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

(d) Subject to the limitations of this section, the following are exempt from the requirements of the Act until the State assumes the Federal 404 program. These activities may need Federal 404 permits and/or a WQC:

1. Projects (as defined in N.J.A.C. 7:7A-1.4) for which preliminary site plan or subdivision applications have received formal preliminary approvals from local authorities pursuant to the "Municipal Land Use Law," N.J.S.A. 40:55D-1 et seq., prior to July 1, 1988 provided those approvals remain valid under the Municipal Land Use Law. This excludes approvals which were given prior to the August 1, 1976 effective date of the Municipal Land Use Law. To qualify for an exemption under this N.J.A.C. 7:7A-2.7(d)1, a project must have received preliminary approval (as defined in N.J.S.A. 40:55D-6) of a subdivision or site plan. Sketch plat approval, a classification determination, or any other types of approvals referred to in the Municipal Land Use Law (e.g., building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this N.J.A.C. 7:7A-2.7(d)1.

2. Projects (as defined in N.J.A.C. 7:7A-1.4) for which preliminary site plan or subdivision applications [as defined] (as the term is used in N.J.S.A. 40:55D-1 et seq.) have been submitted to the local authorities prior to June 8, 1987 and subsequently approved. If a project meets all criteria under this subsection to qualify for an exemption, except that the project has not yet received municipal approval, the Department will issue a letter certifying that the qualifying application was filed prior to June 8, 1987 and the project will receive an exemption upon receipt of preliminary approval from the municipality. To qualify for an exemption under this N.J.A.C. 7:7A-2.7(d)2, an application for preliminary approval must have been in proper form, must have been accompanied by all plans, data and information called for by the local land use ordinance and by statute for either a subdivision or site plan, as the case may be, and thus must have been in fact complete prior to June 8, 1987. An application for sketch plat approval, classification determination, or any of the other types of approvals referred to in the Municipal Land Use Law (e.g., building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this N.J.A.C. 7:7A-2.7(d)2;

3. (No change.)

(e)-(i) (No change.)

(a)

**NEW JERSEY WASTEWATER TREATMENT TRUST
Sewage Infrastructure Improvement Act Grants
Construction Grants for Wastewater Treatment
Facilities**

**Proposed Amendments: N.J.A.C. 7:22-9.1, 9.2, 9.4,
9.11, 9.12, 9.13, 9.14, 9.15, 10.1, 10.2, 10.4, 10.5
and 10.6; N.J.A.C. 7:22A-1.4, 1.5, 1.7, 1.12, 1.15,
1.16, 2.4, 2.5, 2.6, 2.8, 3.4, 4.2, 4.5, 4.8, 4.11, 6.1,
6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.11, 6.12, 6.14
and 6.15**

Proposed New Rules: N.J.A.C. 7:22A-7

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy, as to N.J.A.C. 7:22-9 and 10 and N.J.A.C. 7:22A-1, 2, 3, 4, 6 and 7; and New Jersey Wastewater Treatment Trust, Ellis S. Vieser, Chairman, as to N.J.A.C. 7:22-9.

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Authority: N.J.S.A. 58:25-23 et seq., 40:55D-93 et seq., 58:10A-1 et seq., 58:11A-1 et seq., 58:11B-1 et seq. and 13:1D-1 et seq.
 DEPE Docket Number: 23-93-03.
 Proposal Number: PRN 1993-231.

A public hearing concerning this proposal will be held as follows:

Friday, May 21, 1993 at 1:00 P.M.
 Ocean County Library, Large Meeting Room
 101 Washington Street
 Toms River, New Jersey

Submit written comments, identified by the Docket Number given above, by May 28, 1993, to:

Janis E. Hoagland, Administrative Practice Officer
 Department of Environmental Protection
 and Energy
 CN 402
 Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing new rules at N.J.A.C. 7:22-7 to implement a component of the New Jersey Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq. ("Act"). The Act authorized the Department to provide up to 90 percent grants to affected municipalities in Atlantic, Cape May, Monmouth and Ocean counties for planning and design of projects for the elimination of interconnections/cross-connections. This proposed rule establishes the Department's program to implement this provision of the Act. An amount of \$4.7 million has been targeted for the interconnection/cross-connection abatement aspects of the Act. In order to ensure that some financing will be available to any of the 94 affected municipalities which identify an interconnection or cross-connection abatement moneys will be awarded in two distinct components. In the first component, each of the 94 affected municipalities are eligible to apply for an initial planning grant. The amount of the initial grant award will be based on the number of outfalls (as a relative indicator of potential interconnection/cross-connection problems) as follows:

Number of stormwater outfalls in affected municipality	Initial grant amount
0-50	\$15,000
51-100	\$30,000
Greater than 100	\$50,000

Approximately \$2.3 million is available for the second component or round of grant awards. These grant awards may be for additional planning activities (which were not covered by the initial planning grant) or for design activities. The Department may establish one or more application deadlines for second-round grants. During the first funding cycle (with an application deadline of December 15, 1993) for second-round grants, only planning grant applications will be considered for funding and design grant applications will not be accepted. If sufficient funds remain in the Interconnection/Cross-Connection Abatement Account, design grant application deadlines may be established at some time in the future through the Department's annual Priority System, Intended Use Plan and Project Priority List proposal. Second-round grants will be prioritized based on a project ranking system (as indicated in N.J.A.C. 7:22-7.5) which gives highest priority to ocean, then back bay, stormwater discharges in municipalities in which beach closures occurred. Lower priority will be given to projects with stormwater discharges in those municipalities where no beach closures occurred, and then to projects with discharges to shellfish growing waters. The rules also include grant application procedures, grant award conditions, disbursement criteria and similar program provisions. A more detailed summary of the provisions of the rules is presented below.

The Department recognizes that, in some cases, the initial planning grants may not provide sufficient funds to fully address the planning for the abatement of all interconnections/cross-connections in an affected municipality. While those affected municipalities sponsoring the top priority projects will be eligible to receive additional funds for planning (and possibly design) activities under the second round of this program, those affected municipalities which sponsor lower priority projects will generally not qualify for additional grant monies under the Sewage Infrastructure Improvement Act. However, when a lower priority project pursues financial assistance under one of the Department's financial

assistance programs for the actual construction of the project, the affected municipality will be able to qualify for a planning and design allowance (less the amount of its initial planning grant) as a component of its financial assistance package.

In order to better clarify how the proposed rules interrelate with other provisions of the Sewage Infrastructure Improvement Act, an overview of the Act follows:

The Act, which became effective on August 3, 1988, is designed to address nonpoint and point sources of pollution which discharge from stormwater sewer systems and combined sewer overflow points. The New Jersey Legislature has declared that these sources of pollution contribute greatly to the biological and chemical degradation of coastal and surface waters of the State. The Act recognizes that nonpoint sources of pollution create public health dangers and mandate beach closings by contributing high levels of bacteria to surface waters through stormwater sewer systems. The Act also recognizes that overflows of raw sewage from combined sewer systems are another major source of water pollution.

The Act establishes various requirements for affected municipalities and public entities to address these pollution problems. The Act requires all municipalities with stormwater sewer systems discharging into the salt waters of Monmouth, Ocean, Atlantic or Cape May counties ("affected municipalities") to adopt a final map of their stormwater sewer systems. The final map is required to locate all stormwater sewer lines within the geographical boundaries of the municipality. The final maps must also identify all cross-connections and known interconnections between stormwater and sanitary sewer systems and indicate whether the cross-connections have received a permit from the Department. The specific requirements related to preliminary mapping grant awards and final mapping/investigative monitoring grant awards are contained in N.J.A.C. 7:22A-3 and 4, respectively. The affected municipalities are also required to monitor the water quality at the outfall locations for any stormwater sewer systems that discharge to salt waters. The Act additionally requires the affected municipalities to eliminate or cause to be eliminated all unpermitted cross-connections and interconnections between stormwater sewer systems and sanitary sewer systems within the municipalities. In order to provide financial assistance to affected municipalities for the remediation of interconnections and/or cross-connections, these proposed new rules were developed to set forth the procedures and requirements for the application and award of planning or design grants from the Interconnection/Cross-Connection Abatement Account (a component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund).

The Act also requires all public entities which own or operate a combined sanitary and stormwater sewer system to provide appropriate abatement measures approved by the Department at any combined sewer overflow point where a permit is required. N.J.A.C. 7:22A-6 includes provisions regarding grant awards for combined sewer overflow abatement projects.

Chapter 22A

Sewage Infrastructure Improvement Act Grants

Subchapter 7. Interconnection/Cross-Connection Abatement Account Procedures and Requirements

The applicability of this subchapter is established in N.J.A.C. 7:22A-7.1. All affected municipalities as defined by N.J.A.C. 7:22A-1.4 are eligible to receive grants for the planning or design of interconnection/cross-connection abatement facilities in accordance with the requirements of this subchapter, provided that the final map and the additional information developed by the affected municipality under N.J.A.C. 7:22A-4.3 indicates the presence of interconnections and/or cross-connections. N.J.A.C. 7:22A-7.2 sets forth the general criteria by which eligibility for grant awards from the Interconnection/Cross-Connection Abatement Account is determined. The terms of financial assistance from the Interconnection/Cross-Connection Abatement Account for the planning or design of interconnection/cross-connection abatement facilities are established in N.J.A.C. 7:22A-7.3.

Initial planning grants will be available to each of the affected municipalities based on the number of outfalls in that municipality and will be in the amounts of \$15,000, \$30,000 or \$50,000 in accordance with the criteria identified in N.J.A.C. 7:22A-7.4. Initial planning grant applications may be submitted as of June 15, 1993, but no later than December 15, 1993, unless an affected municipality submits a request for an extension to the Department by December 15, 1993. Any request for an extension must specify a proposed application submittal date and the reasons for the extension. Based upon this information, the Department

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will determine whether to approve the extension and establish a revised grant application deadline. Approximately \$2.4 million is targeted for initial planning grants. Since the Department anticipates that sufficient funds will be available to award an initial planning grant to all affected municipalities with an interconnection/cross-connection abatement need, initial planning grant award offers may be made upon the Department's certification of an affected municipality's initial planning grant application.

N.J.A.C. 7:22A-7.5 identifies the project priority approach for ranking second-round grant applications for financial assistance pursuant to this subchapter. The project priority approach is used since, unlike the initial planning grants, the Department does not expect that sufficient funds will be available to address all second-round planning and design needs in the affected municipalities. The Department has also established an application/request for extension deadline for second-round planning grants of December 15, 1993. At that time, most of the affected municipalities' final maps are anticipated to be completed and an investigation of one-third of the municipalities' top priority stormwater sewer outfalls will have been performed. Approximately \$2.3 million is targeted for second-round use.

N.J.A.C. 7:22A-7.6 establishes eligibility limitations with regard to financing under other programs. Those municipalities which receive an initial planning grant pursuant to this subchapter will be eligible to receive a planning and design allowance under the Wastewater Treatment Financing Program or the Pinelands Infrastructure Trust Financing Program pursuant to N.J.A.C. 7:22-5 or 7:22-7, less the amount of their initial planning grant. Those municipalities which receive second-round planning (or design) grants from the Interconnection/Cross-Connection Abatement Account are ineligible to receive financial assistance for planning (or design) for the same scope of work under the State's other financing programs.

Affected municipalities are urged to familiarize themselves with the application procedures and are required to be present at a pre-application conference in accordance with the procedures as set forth in N.J.A.C. 7:22A-7.7. The specific application procedures for Interconnection/Cross-Connection Abatement Account moneys for planning or design are established in N.J.A.C. 7:22A-7.8. Planning applications must include all information developed under N.J.A.C. 7:22A-4.3, including a plan of study presenting the planning area, identification of the entities which will conduct the planning, a scope of work for planning activities and the proposed public participation program. Also required are draft engineering agreements, all relevant comments and approvals from affected local, State, and Federal agencies and a schedule for the initiation and completion of the planning, design and building of the project.

The design applications will be required to include all planning documentation approvals as well as evidence of compliance with appropriate Water Quality Management Plans and the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10). All design work must be in conformance with approved planning documentation.

Each application for planning or design moneys is subject to preliminary administrative, technical and scientific reviews as set forth at N.J.A.C. 7:22A-7.9. Supplemental information may be required for each application as set forth at N.J.A.C. 7:22A-7.10.

N.J.A.C. 7:22A-7.11 establishes Interconnection/Cross-Connection Abatement Account disbursement criteria which require that specific planning milestones must be met to warrant disbursements greater than 50 percent of the grant amount. N.J.A.C. 7:22A-7.12 requires each recipient to expeditiously initiate and complete the project in accordance with the project schedule. N.J.A.C. 7:22A-7.13 states that all work performed that is not in compliance with approved planning or design scopes of work will be deemed an unallowable project cost. Under N.J.A.C. 7:22A-7.14 and 7.15, the recipient must secure the Department's prior written approval for use of a force account for work related to the scope of work for which the grant was awarded where costs exceed \$25,000 and must conduct value engineering for the project if estimated building costs exceed \$10 million.

Chapter 22A

Sewage Infrastructure Improvement Act Grants

- Subchapter 1. General Provisions**
- Subchapter 2. Grant Agreement Procedures and Requirements**
- Subchapter 3. Preliminary Mapping and Inventory**
- Subchapter 4. Final Mapping**

Subchapter 6. Combined Sewer Overflow Account Procedures and Requirements

The proposed amendments to these subchapters remove the term "Fund" when referring to the Combined Sewer Overflow Fund and replace it with the term "Account." The term "Fund" has a distinct connotation from an accounting and financial perspective which is inconsistent with the manner in which it was used in these subchapters. Other changes are made to ensure consistency with other provisions of this proposal and to reflect a recent reorganization within the Department of Environmental Protection and Energy, which placed several elements and bureaus previously in the Division of Water Resources under other Departmental units. In addition, minor changes are made in two sections of subchapter 1: (1) to implement the interconnection/cross-connection aspects of the rule and to modify certain definitions to be consistent with other Departmental rules and (2) to require that all affected municipalities, in order to complete the maps and investigations required by these rules, ensure that they have access to stormwater and sanitary sewer systems that are not municipally owned or operated. To achieve this end, municipalities may choose to enact an ordinance in accordance with N.J.S.A. 40:48-2, or through their local board of health in accordance with N.J.S.A. 26:3-33 or 3-64. If there is limited need for access, the municipalities may choose to enter into private agreements or establish other means of access in order to implement these rules. Further, due to unforeseen delays in the execution of final mapping grant agreements, the deadlines established in subchapter 4 for the submission of final maps and related information have been relaxed to be consistent with the timeframe envisioned by the Department when the rules were initially adopted. Subchapter 4 is also modified to identify a timeframe of 10 working days by which (investigative and quarterly monitoring) sampling data collected by an affected municipality must be submitted to the Department and to require affected municipalities to notify the Department within 24 hours of the finding of an interconnection/cross-connection.

Thus, these amendments reflect the organizational changes (that is, the deletion of references to Division, Director, etc. and replacement simply with Department), the relaxation of certain deadlines contained in the existing rules and the establishment of a timeframe for sampling data submissions and other "clean-ups."

Chapter 22

Construction Grants for Wastewater Treatment Facilities

Subchapter 9. Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals

Subchapter 10. Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities

Projects which receive financial assistance from the Interconnection/Cross-Connection Abatement Account will be required to comply with certain rules contained in N.J.A.C. 7:22 as required in N.J.A.C. 7:22A-7.8. Amendments to the applicable subchapters of those rules are being proposed. In addition, it should be noted that the New Jersey Wastewater Treatment Trust (Trust) is a co-sponsor of this proposal with respect to subchapter 9. Subchapter 9 is one of several subchapters within N.J.A.C. 7:22 which was jointly proposed and adopted by the Department and the Trust. In general, the changes to subchapters 9 and 10 ensure that the rules governing the award of contracts to socially and economically disadvantaged businesses at N.J.A.C. 7:22-9 and the environmental assessment requirements at N.J.A.C. 7:22-10 are applied to projects which receive funding for interconnection/cross-connection abatement facilities under N.J.A.C. 7:22A.

Social Impact

The proposed new rules will have a beneficial social impact. The stormwater mapping requirements will give the municipalities a technical database with which to subsequently implement pollution abatement measures for interconnection and/or cross-connections within their boundaries. The grants available to local government units under these rules will be beneficial to the citizens of New Jersey, as well as the seasonal visitors to the State through improvements to the health, safety, aesthetic value and recreational attributes of the surface waters of the State.

Economic Impact

The proposed new rules in N.J.A.C. 7:22A, by providing approximately \$4.7 million in grants for interconnection and cross-connection abate-

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ment, will enable the affected municipalities to improve their stormwater sewer systems. All affected municipalities are eligible to apply for a grant to cover up to 90 percent of the planning or design costs related to interconnection/cross-connection abatement. The grant recipients will be responsible for at least 10 percent of the project costs. These new rules will provide a positive economic impact by providing funding to begin the process of upgrading estuarine and coastal water quality. By maintaining the unique recreational and aesthetic value that a clean coastal environment creates, real estate and tourism income will not be adversely affected.

Environmental Impact

The proposed new rules will have a positive environmental impact by establishing a funding program to provide the affected municipalities with money for the remediation of stormwater sewer system pollution sources. Untreated sewage and nonpoint source pollution are discharged from stormwater sewer systems during and after storm events. The coastal waters of the State are, in turn, subject to elevated levels of bacteria, nutrients, toxics, oil and grease, and other pollutants. Controlling these pollution sources by elimination, or causing to be eliminated, point and nonpoint sources of pollution introduced into a stormwater sewer system will result in coastal water quality improvements. The improvement in water quality will benefit the coastal environment through improvements in the health and preservation of the aquatic ecosystem. This will preserve the natural value of coastal resources including shellfish, finfish and other aquatic life.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rules will not impose reporting, recordkeeping or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The purpose of these new rules is to provide certain municipalities with grants for the improvement of stormwater sewer systems.

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

7:22-9.1 Scope and purpose

(a) This subchapter establishes procedures for providing opportunities for socially and economically disadvantaged ("SED") contractors and vendors to supply materials and services under State financed construction contracts for wastewater treatment facilities. To implement the policies established in N.J.S.A. 58:11B-26, N.J.S.A. 40:11A-41 et seq., and N.J.S.A. 52:32-17 et seq., this subchapter applies to wastewater treatment projects receiving financial assistance from the New Jersey Department of Environmental Protection and Energy and the New Jersey Wastewater Treatment Trust pursuant to N.J.A.C. 7:22-3, 7:22-4, 7:22-6 [and], 7:22A-6 and 7:22A-7. Under the provisions of N.J.A.C. 7:22-3, 7:22-4, 7:22-6 [and], 7:22A-6 and 7:22A-7, the Department and the Trust require recipients of Trust and Fund loans and other assistance to establish such programs for socially and economically disadvantaged small business concerns, to designate a public agency compliance officer, and to submit to the Department and Trust procurement plans for implementing the SED program. In addition, N.J.A.C. 7:22-3.17(a)24, 4.17(a)24, 6.17(a)24 and 7:22A-2.4(a) provide that a goal of not less than 10 percent of the total amount of all contracts for building, materials and equipment, or services for a construction project must be awarded to small business concerns owned and controlled by one or more socially and economically disadvantaged individuals. Where a local government unit has a SED participation goal which exceeds 10 percent of the total amount of all contracts, the local government unit must comply with both the Department's rules and the local set-aside ordinance.

(b) (No change.)

7:22-9.2 Definitions

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

...

"New Jersey wastewater treatment financing program" means financing provided to local government units pursuant to N.J.A.C. 7:22-3, 4 and 6, and 7:22A-6 and 7.

...

"Public agency compliance officer" means an officer or employee of the local government unit, who may be an existing officer or employee, who is designated by the local government unit to monitor and enforce compliance with the affirmative action and SED requirements of [N.J.A.C. 7:22-3.1 et seq., 7:22-4.1 et seq. and 7:22-6.1 et seq.] **the applicable program rules** and this subchapter.

...

7:22-9.4 Requirement to develop SED Utilization Plan

(a) Each local government unit shall develop, in consultation with the Office, a plan for achieving its SED utilization requirements (the "project plan"). Development of a plan shall be completed before the Department and, when relevant, the Trust may approve an application pursuant to [N.J.A.C. 7:22-3.13, 7:22-4.13 and 7:22-6.13] **the applicable program rules**.

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

(d) If the contractor does not comply with the requirements of the contractor's plan and the local government unit does not take steps to otherwise comply with N.J.A.C. 7:22-9.3(a)[, above], the Department and, in the case of a Trust loan, the Trust, may take any of the actions or combinations thereof specified in N.J.A.C. 7:22-3.40 through 3.44, 7:22-4.40 through 4.44 [and], 7:22-6.40 through 6.44 and 7:22A-1.8 through 1.13.

(e) (No change.)

7:22-9.11 Public agency compliance officer

(a) (No change.)

(b) The public agency compliance officer shall be responsible for coordinating SED utilization efforts on the project and for monitoring and enforcing compliance with the affirmative action and SED requirements of [N.J.A.C. 7:22-3.1 et seq., 7:22-4.1 et seq. and 7:22-6.1 et seq.] **the applicable program rules**.

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

7:22-9.12 Reports

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

(g) Failure to comply with the reporting requirements of (a) through (d) and (f) above may subject the local government unit to the remedies for noncompliance with State and Trust loan or grant conditions specified in [N.J.A.C. 7:22-3.40 through 3.44, 7:22-4.40 through 4.44, and 7:22-6.40 through 6.44] **the applicable program rules**.

7:22-9.13 Assessment of compliance

(a) Where the Office determines that a local government unit has failed or is failing to meet the 10 percent SED utilization requirement, the local government unit shall, upon the written request of the Office, submit the following:

1.-7. (No change.)

8. Proof that the assistance of State Agencies was solicited, including:

Office of Equal Opportunity and Public Contract Assistance
 New Jersey Department of Environmental Protection and Energy
 440 East State Street
 Trenton, New Jersey 08625
 Division for the Development of Small Businesses and Women Businesses and Minority Businesses
 New Jersey Department of Commerce and Economic Development
 CN-835
 1 West State Street
 Trenton, New Jersey 08625

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

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7:22-9.14 Penalties

Whenever a local government unit or a contractor has failed to comply with the requirements of this subchapter, including the 10 percent requirement for SED utilization, the Department, or the Department and the Trust, in the case of a Trust loan recipient, may withhold all of the loan or grant money, or a portion thereof, and may take any of the other actions or combinations thereof specified in N.J.A.C. 7:22-3.40 through 3.44, 7:22-4.40 through 4.44 [and], 7:22-6.40 through 6.44 and 7:22A-1.8 through 1.13 which are remedies for noncompliance with any of the conditions of a loan or grant.

7:22-9.15 [Adjudicatory] Administrative hearings

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

7:22-10.1 Scope and construction

(a) This subchapter constitutes the rules of the New Jersey Department of Environmental Protection and Energy regarding the environmental assessment requirements for projects receiving financial assistance pursuant to N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6 and 7.

(b) (No change.)

(c) This subchapter is promulgated for the following purposes:

1. (No change.)

2. To establish environmental assessment requirements which must be complied with in order to receive financial assistance provided pursuant to N.J.A.C. 7:22-3, 4 and 6, and N.J.A.C. 7:22A-6 and 7;

3-4. (No change.)

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 and 6 and N.J.A.C. 7:22A-1. Additional definitions are as follows:

...

7:22-10.4 Level 1 environmental review

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

(d) The Department will review the environmental planning document submitted by the local government unit and will make one of the following determinations:

1. The Level 1 environmental planning document is complete, acceptable, and verifies the preliminary determination to proceed with this level of environmental review. In this case, the Department will prepare and issue a Level 1 decision statement as set forth in (e) below which will be sent to a project mailing list developed in accordance with N.J.A.C. 7:22-10.10(c). The local government unit shall publish a notice in a newspaper of general circulation in the planning area within two weeks of the date of the Department's decision statement. The notice must describe the proposed action, indicate the decision by the Department to approve the project, and advise the public that the local government unit shall, upon written request, make available for public review both the planning documents and the Department's decision statement. Upon issuance of the decision statement, planning is approved and the Department may proceed with award of a loan, subject to the provisions of (e) below, and provided the other requirements of the program have been met as specified in [N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6] **the applicable program rules.**

2-3. (No change.)

(e)-(f) (No change.)

7:22-10.5 Level 2 environmental review

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

(d) When appropriate, in accordance with (c)1 above, the Department will prepare and issue a preliminary Level 2 decision statement and environmental appraisal to the mailing list developed for the project in accordance with N.J.A.C. 7:22-10.10(c). The Department will take no further administrative action until after the conclusion of a 30-day comment period on the decision statement. If no significant adverse comment is received at that point, the Department will approve the planning and may proceed with an offer of loan as-

sistance, provided the other requirements of the program, as set forth [at N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6] **in the applicable program rules** have been met.

(e) (No change.)

7:22-10.6 Level 3 environmental review

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

(c) If a Level 3 environmental review is required by the Department prior to completion of a Level 2 environmental information document, then an environmental information document must be prepared in accordance with N.J.A.C. 7:22-10.5(b). In addition, an environmental impact statement must be prepared under a Level 3 environmental review. Environmental impact statements shall be prepared by the local government unit. The Department must approve the scope, content and conclusion of both draft and final environmental impact statements prior to publication. The procedure will be as follows:

1.-9. (No change.)

10. After the conclusion of the comment period for the final environmental impact statement, the Department will prepare a Level 3 decision statement which will respond to comments received on the final environmental impact statement, set forth the decision made by the Department, and the basis for the decision. No administrative action will be taken by the Department prior to the conclusion of a 30-day comment period for the decision statement. If no further significant adverse comment is received during the comment period for the decision statement, the Department will approve the planning and the Department may proceed with an offer of assistance, provided other program requirements as set forth in [N.J.A.C. 7:22-3, 4 and 6 and N.J.A.C. 7:22A-6] **the applicable program rules** [,] have been met. If adverse comment is received which was not adequately addressed in the environmental impact statement process, the Department may require a supplemental evaluation and decision statement or may determine not to participate in the proposed project.

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

7:22A-1.4 Definitions

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

...

“Combined sewer system” means a sewer system [which carries wastewater] **that is designed to carry sanitary sewage** at all times and [which] **that is also** [serves as the collector and transporter of] **designed to collect and transport** stormwater from streets [or] and other sources, thus serving a combined purpose.

...

“Combined Sewer Overflow [Fund] Account” means the component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund as determined by the Department [specifically dedicated] **which will be used to** [providing] **provide** grants to local government units for the planning and design of combined sewer overflow abatement facilities.

...

“Department” means the New Jersey Department of Environmental Protection **and Energy and its successors and assigns.**

...

[“Director” means the Director of the Division of Water Resources.]

...

[“Division” means the Division of Water Resources in the Department.]

...

“Interconnection/cross-connection abatement facilities” **includes, but is not limited to, any equipment, plants, structures, machinery, or apparatus, or any combination thereof, acquired, used, constructed or operated by, or on behalf of, an affected municipality for storage, collection, reduction, recycling, disinfection, reclamation, disposal, separation or other treatment essential to the abatement of interconnections and/or cross-connections.**

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“Interconnection/Cross-Connection Abatement Account” means the component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund as determined by the Department which will be used to provide grants to affected municipalities for the planning or design of interconnection/cross-connection abatement facilities.

...

7:22A-1.5 Fund procedures

(a) The moneys appropriated pursuant to the Act and any interest earned thereon shall be deposited in a separate interest bearing account known as the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund. [This non-lapsing fund shall terminate upon disbursement of all moneys appropriated pursuant to the Act.]

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

7:22A-1.7 Enforcement

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

(c) **In order to implement this chapter, all affected municipalities shall ensure that they have access to stormwater and sanitary sewer systems that are not municipally owned and operated. Affected municipalities may ensure such access by adopting an ordinance in accordance with N.J.S.A. 40:48-2; by adopting an ordinance, through their local board of health, in accordance with N.J.S.A. 26:3-33 or 3-64; by entering into agreements with private parties; or by other means that provide municipal access.**

7:22A-1.12 Termination of the grant agreement

(a) (No change.)

(b) Termination of the grant agreement by the recipient shall be conducted as follows:

1. A recipient shall not unilaterally terminate the project work for which grant moneys have been awarded except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the [Director] **Department** of any complete or partial termination of the project work by the recipient or intent thereof. The term “good cause” shall include, but not be limited to, circumstances beyond the control of the recipient such as fire, flood, riot or strike.

2.-3. (No change.)

(c)-(e) (No change.)

7:22A-1.15 Debarment

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

(d) Any person included on the State Treasurer’s list as a result of action by a State agency, who is or may become a bidder on any subagreement which is or shall be funded from the Fund under this chapter, may present information to the Department why this section should not apply to such a person. If the [Commissioner] **Department** determines that it is essential to the public interest and files a finding thereof with the New Jersey Attorney General, the [Commissioner] **Department** may grant an exception from the application of this section with respect to a particular contractor in keeping with N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22A-1.16 Administrative hearings

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

(d) During the pendency of the review and hearing, the challenged Department decision or action shall remain in full force and effect, unless a stay has been requested in writing and granted by the [Director] **Department**.

(e)-(f) (No change.)

7:22A-2.4 Grant conditions

(a) The following requirements, as well as such statutes, rules, terms and conditions which may be applicable, are conditions of each grant, and conditions to each disbursement under the grant agreement:

1.-2. (No change.)

3. The recipient[, for] of grants for combined sewer overflow[s], and interconnection/cross-connection abatement projects shall

comply with the rules [for] entitled **Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals**, N.J.A.C. 7:22-9;

4.-7. (No change.)

8. An amount of any grant disbursement equal to 100 percent of any unpaid portion of a **finally determined** State assessed civil administrative penalty pursuant to N.J.A.C. 7:14-8 shall be withheld until said penalty is paid in full;

9.-14. (No change.)

15. The recipient shall comply with the Department’s standards of conduct (N.J.A.C. 7:22-8) governing public bodies or utilities created pursuant to New Jersey law to treat wastewater within the territorial boundaries of a service area and the **Local Government Ethics Law (P.L. 1991, c.29; N.J.S.A. 40A:9-22)**;

16. The recipient shall comply with the Environmental Assessment Requirements for State Assisted [Projects] **Wastewater Treatment Facilities** (N.J.A.C. 7:22-10);

17. (No change.)

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

(d) Recipients shall include the following statement in each subagreement awarded pursuant to this chapter:

“This contract or subcontract is or may be funded in part with funds from the New Jersey Department of Environmental Protection and Energy. Neither the State of New Jersey nor any of its 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 requirements contained in N.J.A.C. 7:22A.”

(e) (No change.)

7:22A-2.5 Project changes and modifications to grant agreements

(a) (No change.)

(b) The recipient shall promptly notify the [Division] **Department** in writing (certified mail, return receipt requested) of events or proposed changes which may require modifications, including, but not limited to:

1.-6. (No change.)

(c) If the Department decides [a formal] **an** amendment is necessary, the recipient shall be notified and a [formal] grant amendment shall be processed in accordance with N.J.A.C. 7:22A-2.6. If the Department decides a [formal] grant amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22A-2.7 or 2.8, as applicable.

7:22A-2.6 [Formal grant] Grant amendments

(a) The Department shall require a [formal] grant amendment to change principal provisions of a grant agreement where project changes substantially alter the objective or scope of the project or time of performance of the project or any major phase thereof.

(b) The State and recipient shall effect a [formal] grant amendment only by a written amendment to the grant agreement executed by the State and the recipient.

7:22A-2.8 Other changes

All other project changes, which do not require [formal] a grant amendment[s] as stated in N.J.A.C. 7:22A-2.6, shall be undertaken only upon written approval of the Department.

7:22A-3.4 Pre-application procedures

[(a)] Applicants may request a pre-application conference to discuss application procedures, prior to submission of a grant application. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

[(b)] Unless otherwise specified, any questions concerning the preliminary mapping and inventory requirements of this subchapter shall be directed to the Department of Environmental Protection, Division of Water Resources, Planning and Standards Elements, CN-029, Trenton, New Jersey 08625, (609) 633-7010.]

7:22A-4.2 Reporting requirements

(a) On or before June 17, 1992 or within [the timeframe established in an executed] **one year from the date of execution of**

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the final mapping grant agreement, whichever comes later, all affected municipalities shall submit a copy of the final map, adopted by the governing body of the affected municipality and prepared in accordance with N.J.A.C. 7:22A-4.3, to the [Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625] **Department**. The affected municipality shall submit any other submittals required by N.J.A.C. 7:22A-4.3 at the time of submittal of the final map.

(b) Within 12 months of the submittal of the final map in (a) above and yearly thereafter, all affected municipalities shall submit updated portions of the final map in accordance with N.J.A.C. 7:22A-4.3[(l)](g), to the [Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625] **Department**.

(c) On or before October 17, 1991, all affected municipalities which did not receive a grant for preliminary mapping shall submit the information required under N.J.A.C. 7:22A-3.10 and 3.11 to the [Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625] **Department**.

(d) On or before October 17, 1991, all affected municipalities shall submit an investigative priority list in accordance with N.J.A.C. 7:22A-4.4 to the [Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625] **Department**.

(e) All affected municipalities shall submit a copy of the sampling data collected in accordance with N.J.A.C. 7:22A-4.5 to the [Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625] **Department within 10 working days of collection**.

(f) At any time prior to, but no later than one month after, the adoption of the final map in (a) above, all affected municipalities shall submit a priority list for quarterly monitoring in accordance with N.J.A.C. 7:22A-4.8(b) to the [Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625] **Department**.

(g) All affected municipalities shall submit a copy of the quarterly monitoring data collected in accordance with N.J.A.C. 7:22A-4.8 to the [Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625] **Department within 10 working days of collection**. The submission shall note where sample analysis indicates that there are excessive levels of bacteria, as specified in N.J.A.C. 7:22A-4.7.

(h) All affected municipalities shall submit a quality assurance program plan and have the plan approved by the Department, in accordance with N.J.A.C. 7:22A-4.6(a), prior to taking any grab samples as required by N.J.A.C. 7:22A-4.5 and 4.8. The affected municipalities shall include the project specific information and submit the completed quality assurance program plan to the [Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625] **Department**.

(i) **All affected municipalities shall submit to the Department a notice of any interconnection and/or cross-connection that is found within 24 hours of the finding thereof. The notice shall include the location of the interconnection or cross-connection and the owner and operator of the system where the interconnection or cross-connection is found.**

7:22A-4.5 Identification of interconnections and cross-connections

(a) (No change.)

(b) Prior to the submission of the final map in accordance with N.J.A.C. 7:22A-4.3, all affected municipalities shall investigate at least one-third of the stormwater outfalls in accordance with (c) and (d) below. The affected municipality shall investigate the remaining stormwater outfalls **by June 17, 1994** or within [the timeframe established in an executed] **three years of the date of the execution of the final mapping grant agreement, whichever comes later.**

(c)-(e) (No change.)

7:22A-4.8 Quarterly monitoring

(a) All affected municipalities shall initiate the quarterly monitoring of their stormwater outfall lines in the first month following the submittal of the final map [or in July 1992, whichever comes first].

The affected municipality shall, on a quarterly basis, take a grab sample at all stormwater outfalls for any stormwater sewer system discharging into salt water in accordance with N.J.A.C. 7:22A-4.6(d)1.

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

7:22A-4.11 Pre-application meeting

[(a)] Prior to submission of a grant application, applicants may request a pre-application conference to discuss application procedures. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

[(b)] Unless otherwise specified, any questions concerning the final mapping requirements shall be directed to the Department of Environmental Protection, Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625, (609) 633-7021.]

SUBCHAPTER 6. COMBINED SEWER OVERFLOW [FUND] ACCOUNT PROCEDURES AND REQUIREMENTS

7:22A-6.1 Applicability

This subchapter [shall] constitutes the rules of the Department governing the award of grants pursuant to the Act to local government units for the planning and design of dry weather overflow elimination and solid/floatables reduction at combined sewer overflow points throughout the state. These rules prescribe the procedures for the award of grants from the Combined Sewer Overflow [Fund] Account.

7:22A-6.2 Combined Sewer Overflow [Fund] Account

(a) The moneys in the Combined Sewer Overflow [Fund shall be] **Account** are available for the planning and design of dry weather overflow elimination and solid/floatables reduction at combined sewer overflow points pursuant to the provisions of this subchapter.

(b) Any local government unit authorized to control or operate a combined sewer system shall be eligible to receive grant moneys from the Combined Sewer Overflow [Fund] **Account**. Grant moneys shall be provided to the extent available to local government units for the planning and design of dry weather overflow elimination and solids/floatables reduction at combined sewer overflow points based on the points awarded to the project in accordance with the Priority System ranking criteria and the submittal of the complete application within the prescribed time frames. As a component of the proposed Priority System, the Department may establish application deadlines for applicable funding cycles and a deadline by which new applications for planning and design grants for dry weather overflow elimination and solids/floatables reduction shall no longer be accepted or acted upon. Any remaining moneys in the Combined Sewer Overflow [Fund] **Account** would be available for other authorized purposes under the Act.

(c) The consideration for a grant award from the Combined Sewer Overflow [Fund] **Account** shall not be used as a defense by the local government unit to any action by any agency for the local government unit's failure to comply with the Act or to obtain and comply with all requisite permits, licenses and operating certificates.

7:22A-6.3 Terms of financial assistance from the Combined Sewer Overflow [Fund] Account

(a) The Department may offer grants from [moneys made available pursuant to the Act] **the Combined Sewer Overflow Account** for up to 90 percent of the allowable costs for the planning and/or design of combined sewer overflow abatement facilities.

(b) Moneys will be disbursed to recipients [at intervals], **upon request**, as work progresses and expenses are incurred and approved by the Department unless otherwise restricted by N.J.A.C. 7:22A-6.11 or unless otherwise indicated in the grant agreement. Local government units shall submit vouchers and other documentation as may be required by the Department in support of their request for disbursement of funds.

(c) (No change.)

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7:22A-6.4 Criteria for project priority

(a) Each year, the [Division] **Department** shall develop a Priority System, Intended Use Plan and Project Priority List for the forthcoming federal Fiscal Year. The Priority System shall provide the ranking methodology which evaluates wastewater treatment facilities (including combined sewer overflow abatement facilities) individually for their anticipated impacts on existing and potential water uses in combination with present water quality conditions.

(b) (No change.)

[(c) All requests for inclusion on the Project Priority List shall be sent to:

Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
New Jersey Department of Environmental Protection
CN-029
Trenton, New Jersey 08625]

[(d)](c) Only those local government units committing to the project document submittal or application deadlines shall have their project considered for financial assistance in the forthcoming funding cycle.

7:22A-6.5 State and Federal funding

Local government units which receive grants from the Combined Sewer Overflow [Fund] **Account** shall be ineligible to receive financial assistance for the same scope of work (planning or design) for the project in the form of a federal grant, State Matching Funds pursuant to 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those local government units which receive financial assistance in the form of a federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive grant moneys for the same scope of work (planning or design) for the project pursuant to this subchapter.

7:22A-6.6 Project bypassing

(a) (No change.)

(b) Written notice of a bypass action shall be forwarded to the local government unit. As a result of such action, the project on the Project Priority List shall become ineligible to receive Combined Sewer Overflow [Fund] **Account** moneys in the applicable funding cycle. This action may allow the next highest ranked project to fall within the fundable range on the Project Priority List. A bypassed project shall remain on the Project Priority List for consideration of financial assistance in future funding cycles.

7:22A-6.7 Pre-application procedures

(a) (No change.)

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for Combined Sewer Overflow [Fund] **Account** moneys. During the conference, the Department shall identify and explain all application documents. This conference is not part of the application procedures and verbal statements made during the application procedures and verbal statements made during the conference shall not bind the Department.

[(c) Questions concerning the program and requests for a pre-application conference should be directed to:

Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
NJ Department of Environmental Protection
CN-029
Trenton, NJ 08625
(609) 292-8961]

7:22A-6.8 Application procedures

(a) For the initial funding cycle, completed applications by local government units requesting Combined Sewer Overflow [Fund] **Ac-**

count moneys must be received [by the Division] by April 6, 1990 or as otherwise extended by the Department. Since the project's rank on the Project Priority List is the first step in determining eligibility for Combined Sewer Overflow [Fund] **Account** moneys, sponsors of projects which are not on the current Project Priority List shall provide the information listed in N.J.A.C. 7:22A-6.4(b) before or concurrently with the complete application and in conformance with applicable deadlines.

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

(d) Any local government unit, which sponsors a project in a jurisdiction in which it is not the governmental entity responsible for the wastewater conveyance and treatment facilities pursuant to the Water Quality Management Plans, to which the combined sewer system contributes shall obtain a resolution from such governmental agency consenting to the undertaking of the local government unit's project prior to or concurrently with the application for Combined Sewer Overflow [Fund] **Account** moneys.

(e) Each application for Combined Sewer Overflow [Fund] **Account** moneys shall be submitted to the [Division] **Department** in conformance with the time period specified or as otherwise extended by the Department and shall include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(f) (No change.)

(g) The following shall be submitted when applying for a Combined Sewer Overflow [Fund] **Account** grant for the planning of dry weather overflow elimination and solids/floatables reduction:

1. An application for a Combined Sewer Overflow [Fund] **Account** grant for planning activities. Each application [shall] constitutes an agreement to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Combined Sewer Overflow [Fund] **Account** moneys and specifying the individual authorized to sign the application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

3.-5. (No change.)

6. Draft engineering agreements and related cost documentation associated with specific planning activities. Project sponsors must receive authorization to award any subagreement from the [Municipal Wastewater Assistance Element within the Division] **Department** prior to the award of any subagreement for which cost reimbursement is sought. Note that the local government unit shall be required to execute the approved **engineering** subagreements prior to or concurrently with the award of a Combined Sewer Overflow [Fund] **Account** grant for planning activities;

7.-10. (No change.)

(h) In addition to evidence of planning documentation approval (including evidence of compliance with appropriate Water Quality Management Plans and the Environmental Assessment [Regulations] **Requirements for State Assisted Wastewater Treatment Facilities** (N.J.A.C. 7:22-10)), the following shall be submitted when applying for a Combined Sewer Overflow [Fund] **Account** grant for the design of dry weather overflow elimination and solids/floatables reduction:

1. An application for a Combined Sewer Overflow [Fund] **Account** grant for design activities. Each application [shall] constitutes an offer to accept the requirements of this subchapter;

2. A resolution passed by the local government unit authorizing the filing of an application for Combined Sewer Overflow [Fund] **Account** moneys and specifying the individual authorized to sign the application on behalf of the local government unit. If two or more local government units are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

3.-5. (No change.)

6. Draft engineering agreements and related cost documentation associated with specific design activities. Project sponsors must receive authorization to award any subagreement from the [Municipal Wastewater Assistance Element within the Division] **Department**

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prior to the award of any subagreement for which cost reimbursement is sought. Note that the local government unit shall be required to execute the approved **engineering** subagreements prior to or concurrently with the award of a Combined Sewer Overflow [Fund] Account grant for design activities;

7.-10. (No change.)

(i) (No change.)

[(j) All applications shall be sent to
Assistant Director
Municipal Wastewater Assistance Element
Division of Water Resources
NJ Department of Environmental Protection
CN-029
Trenton, NJ 08625]

7:22A-6.9 Evaluation of application

(a) (No change.)

(b) Upon the completion of a full review and evaluation of each application, the [Division] **Department** shall either certify the project for funding or bypass the project for funding in the funding cycle for which the application was submitted.

(c) The [Division] **Department** shall promptly notify an applicant by certified mail if its project has been bypassed. As a result of a project bypass action, the next highest ranked project on the Project Priority List may fall within the fundable range.

7:22A-6.11 Combined Sewer Overflow [Fund] Account disbursements

(a) For dry weather overflow elimination and solids/floatables reduction planning or design grants, disbursements shall be limited as follows:

1.-4. (No change.)

5. Disbursement for allowable design costs shall not exceed 75 percent of the allowable design cost prior to receiving approval of the contract documents for the building of the project from the [Municipal Wastewater Assistance Element within the Division] **Department**.

7:22A-6.12 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the grant agreement. **Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this chapter.**

(b) The recipient shall not award any subagreement for planning or design of the project until authorization to award has been given by the [Municipal Wastewater Assistance Element within the Division] **Department**.

7:22A-6.14 Force account work

(a) A recipient [can] **shall** not use force account work for activities related to the scope of work for which the grant was awarded where costs [shall] **will** exceed \$25,000 unless the recipient has received the [Division's] **Department's** prior written approval therefor.

(b) (No change.)

7:22A-6.15 Value engineering

(a) Recipients of Combined Sewer Overflow [Fund] Account design grants shall conduct value engineering for the project if the total estimated building cost exceeds \$10 million.

(b) (No change.)

SUBCHAPTER 7. INTERCONNECTION/CROSS-CONNECTION ABATEMENT ACCOUNT PROCEDURES AND REQUIREMENTS

7:22A-7.1 Applicability

This subchapter constitutes the rules of the Department governing the award of grants pursuant to the Act to any municipality with a stormwater sewer system discharging directly into the salt waters of Monmouth, Ocean, Atlantic and Cape May counties (that is, an affected municipality as defined in N.J.A.C. 7:22A-1.4) for the planning or design of interconnection/cross-connection abatement

facilities. These rules prescribe the procedures for the award of grants from the Interconnection/Cross-Connection Abatement Account.

7:22A-7.2 Interconnection/Cross-Connection Abatement Account

(a) The moneys in the Interconnection/Cross-Connection Abatement Account are available for the planning or design of interconnection/cross-connection abatement facilities pursuant to the provisions of this subchapter.

(b) Any affected municipality with an interconnection or cross-connection of stormwater sewer systems and sanitary sewer systems is eligible to receive grant moneys from the Interconnection/Cross-Connection Abatement Account. Applications from those affected municipalities whose submittal under N.J.A.C. 7:22A-4.3 does not identify any interconnection or cross-connection within the municipality shall not be deemed complete by the Department and shall not be processed further.

(c) The consideration for a grant award from the Interconnection/Cross-Connection Abatement Account shall not be used as a defense by the applicant to any action by any agency for the affected municipality's failure to comply with the Act or to obtain and comply with all requisite permits, licenses and operating certificates.

7:22A-7.3 Terms of financial assistance from the Interconnection/Cross-Connection Abatement account

(a) The Department may offer grants from the Interconnection/Cross-Connection Abatement Account for up to 90 percent of the allowable costs for the planning or design of interconnection/cross-connection abatement facilities.

(b) Moneys will be disbursed to recipients, upon request, as work progresses and expenses are incurred and approved by the Department unless otherwise restricted by N.J.A.C. 7:22A-7.11 or unless otherwise indicated in the grant agreement. Affected municipalities shall submit vouchers and other documentation as may be required by the Department in support of their request for disbursement of funds.

(c) The specific terms and conditions of the financial assistance shall be incorporated into the grant agreement to be executed by the recipient and the State.

7:22A-7.4 Initial planning grants

(a) Any affected municipality which has identified an interconnection/cross-connection under N.J.A.C. 7:22A-4 is eligible for an initial planning grant from the Interconnection/Cross-Connection Abatement Account. Initial planning grant award offers may be made by the Department upon the certification of an affected municipality's initial planning grant application.

(b) Initial planning grant applications may be submitted to the Department as of June 15, 1993, but not later than December 15, 1993, unless an extension is granted by the Department. Any affected municipality which requires an extension of the December 15, 1993 initial planning grant application deadline must submit their request for such an extension to the Department by December 15, 1993. The request must state the reasons why an extension should be approved and must identify a proposed date for the submittal of a complete initial planning grant application. Based on this information, the Department will determine whether to approve the extension and establish a revised initial planning grant application deadline.

(c) Initial planning grant award amounts will be as follows:

Number of stormwater outfalls in affected municipality	Initial grant amount
0- 50	\$15,000
51-100	\$30,000
Greater than 100	\$50,000

In no case will the initial planning grant amount exceed 90 percent of the allowable planning costs.

7:22A-7.5 Project priority for second-round grants

(a) Any affected municipality which has identified an interconnection/cross-connection abatement under N.J.A.C. 7:22A-4 is also

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eligible for a second-round grant from the Interconnection/Cross-Connection Abatement Account. Second-round grant amounts will be based on the allowable planning or design costs, not to exceed 90 percent of the project costs.

(b) The Department may establish one or more application deadlines for second-round grants. For the first funding cycle, second-round planning grant applications must be submitted to the Department by December 15, 1993 unless an extension is granted by the Department. Second-round planning grant offers will not be made by the Department until all second-round planning grant applications or extension requests have been received and prioritized in accordance with (d) below. Any affected municipality which requires an extension of the December 15, 1993 second-round planning grant application deadline must submit a request for such an extension to the Department by December 15, 1993. The request must state the reasons why an extension should be approved, must identify a target date for the submittal of a complete second-round planning grant application, must include an estimated second-round planning grant amount and include sufficient information to prioritize the project in accordance with (d) below. In instances where a highly ranked project is granted an extension by the Department, the Department may reserve the estimated second-round planning grant amount identified in the affected municipality's extension request and award second-round planning grants to lower ranked projects to the extent sufficient funds are available.

(c) For future funding cycles, affected municipalities shall be notified of applicable second-round planning or design grant application deadlines through the Department's proposed Priority System, Intended Use Plan, and Project Priority List or through mailed notice by the Department.

(d) Second-round planning or design grant applications shall receive priority for financial assistance awards pursuant to this subchapter based on the following point system:

1. Applications which include one or more stormwater outfall discharges to an ocean beach or ocean beaches in municipalities that had ocean beach closures resulting from elevated bacteria levels (based on data from the Cooperative Coastal Monitoring Program administered by the Department) will be given five points for each day in which one or more ocean beaches within the municipality was closed from January 1, 1988, on. Where the Department has determined that an ocean beach closure occurred for causes other than a stormwater outfall discharge no points will be given for that ocean beach closure occurrence.

2. Applications which include one or more stormwater outfall discharges to an estuarine beach or estuarine beaches in municipalities that had estuarine beach closures resulting from elevated bacteria levels (based on data from the Cooperative Coastal Monitoring Program administered by the Department) will be given one point per year for each estuarine beach within the municipality which was closed from January 1, 1988, on. Where the Department has determined that an estuarine beach closure occurred for causes other than a stormwater outfall discharge, no points will be given for that estuarine beach closure occurrence.

3. Applications which include one or more stormwater outfall discharges to the following areas will receive points as follows:

Location of Discharge	Points
Ocean Beach(es)	0.9
Estuarine Beach(es)	0.7
Restricted Shellfish Growing Waters	0.5
Seasonal Shellfish Growing Waters	0.3
Approved Shellfish Growing Waters	0.1

4. Applications which include other stormwater outfall discharges and applications with discharges of equal priority will be prioritized based on the average bacteria level of the discharge(s) at the stormwater outfall(s). Applications which address outfalls with higher average bacteria levels will receive priority over those applications with lower average bacteria levels.

(e) Second-round planning or design applications which address stormwater outfall discharges in more than one of the above

categories will be assigned the sum total of the points which they are due based on the categories of discharge included in the application.

7:22A-7.6 State and Federal funding

Affected municipalities which receive second-round grants from the Interconnection/Cross-Connection Abatement Account shall be ineligible to receive financial assistance for the same scope of work (planning or design) for the project in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a New Jersey Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those affected municipalities which receive financial assistance in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a New Jersey Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive second-round grant moneys for the same scope of work (planning or design) for the project pursuant to this subchapter. Notwithstanding the provisions of N.J.A.C. 7:22-3, 4 and 5, projects which do not receive a second-round grant pursuant to this subchapter will be eligible to receive a planning and design allowance pursuant to N.J.A.C. 7:22-5 or 7:22-7, less the amount of their initial planning grant.

7:22A-7.7 Pre-application procedures

(a) Affected municipalities are urged to be familiar with the requirements of this subchapter and to contact the Department prior to the initiation of the planning process so that their projects are in a position to proceed in a timely manner.

(b) The Department requires a pre-application conference with potential applicants prior to submission of a formal application for Interconnection/Cross-Connection Abatement Account moneys. During the conference, the Department shall identify and explain all application documents. This conference is not part of the application procedures and verbal statements made during the conference shall not bind the Department.

7:22A-7.8 Application procedures

(a) Initial planning grant applications and second-round planning grant applications must be submitted in conformance with the schedule in N.J.A.C. 7:22A-7.4(b) and 7.5(b), respectively. Affected municipalities shall be notified of future second-round planning or design grant application deadlines through the Department's proposed Priority System, Intended Use Plan, and Project Priority List or through mailed notice by the Department. All applications must include full and complete documentation and any supplementary materials that the Department requires an applicant to furnish.

(b) Second-round planning or design grant applications will be prioritized by the Department in accordance with the criteria set forth at N.J.A.C. 7:22A-7.5. The award of second-round grants from the Interconnection/Cross-Connection Abatement Account will be based on the application's priority relative to other applications and the amount of available funds.

(c) Submissions which do not substantially comply with this subchapter or which are deemed incomplete shall not be processed further. Such applicants will be notified in a timely fashion as to the extent of deficiencies in their submissions.

(d) Processing of an Interconnection/Cross-Connection Abatement Account application generally requires 60 calendar days after receipt of a complete application by the Department.

(e) The following shall be submitted when applying for an initial or second-round grant from the Interconnection/Cross-Connection Abatement Account for the planning of interconnection/cross-connection abatement facilities.

1. An application for an Interconnection/Cross-Connection Abatement Account grant for planning activities. Each application constitutes an agreement to accept the requirements of this subchapter;

2. A resolution passed by the affected municipality authorizing the filing of an application for Interconnection/Cross-Connection Abatement Account moneys and specifying the individual authorized

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to sign the application on behalf of the affected municipality. If two or more affected municipalities are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

3. Assurance of compliance with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.A.C. 10:5-1 et seq.) (CGA Form LP-5);

4. The final map and the additional information developed under N.J.A.C. 7:22A-4.3 which identifies specific interconnections or cross-connections. In the case of an initial planning grant application, the final map and the additional information may be limited to the area or section of the municipality in which an interconnection/cross-connection abatement need has been identified;

5. A plan of study presenting:

i. The proposed planning area;

ii. An identification of the entity or entities that will be conducting the planning;

iii. The nature and scope of the planning of the proposed project as well as a schedule for the completion of identified tasks, including those tasks necessary to adequately assess the environmental impacts of the alternatives and the selected plan and the schedule for a proposed public participation program as set forth at the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10); and

iv. A description of the anticipated construction required for abatement and an estimate of construction costs (including an estimate of anticipated design costs);

6. Comments or approvals of relevant State, local and Federal agencies;

7. Draft engineering agreement(s) and related cost documentation associated with specific planning activities. Note that the affected municipality shall be required to execute the approved engineering subagreements prior to or concurrently with the award of an Interconnection/Cross-Connection Abatement Account grant for planning activities;

8. Adequate information to ensure compliance with the regulations entitled Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);

9. Proposed intermunicipal or other agreements necessary for the construction and operation of the proposed facilities, if applicable;

10. A schedule for initiation and completion of the planning, design, and building of the project, including milestones; and

11. Certification from the affected municipality that at least 10 percent of the planning costs for the project must be provided by the affected municipality.

(f) In order to qualify for a design grant, evidence of planning documentation approval (including evidence of compliance with appropriate Water Quality Management Plans and the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (N.J.A.C. 7:22-10)) must be provided. All project design work must be in conformance with the approved project planning work. Any variations shall be specifically addressed by the recipient and approved by the Department before the project design will be considered complete. The following information must be submitted when applying for an Interconnection/Cross-Connection Abatement Account grant for the design of interconnection/cross-connection abatement facilities:

1. An application for an Interconnection/Cross-Connection Abatement Account grant for design activities. Each application constitutes an agreement to accept the requirements of this subchapter;

2. A resolution passed by the affected municipality authorizing the filing of an application for Interconnection/Cross-Connection Abatement Account moneys and specifying the individual authorized to sign the application on behalf of the affected municipality. If two or more affected municipalities are involved in the project, a resolution is required from each, indicating the lead applicant and the authorized representative;

3. Assurance of compliance with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and the New Jersey Law Against Discrimination (N.J.A.C. 10:5-1 et seq.) (CGA Form LP-5);

4. A plan of study presenting:

1. The proposed project area;

ii. An identification of the entity or entities that will design the project;

iii. The nature and scope of the design of the proposed project as well as a schedule for the completion of identified tasks; and

iv. A description of the estimated building costs for the project;

5. Comments or approvals of relevant State, local and federal agencies;

6. Draft engineering agreement(s) and related cost documentation associated with specific design activities. Note that the affected municipality shall be required to execute the approved engineering subagreements prior to or concurrently with the award of an Interconnection/Cross-Connection Abatement Account grant for design activities;

7. Adequate information to ensure compliance with the regulations entitled Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (N.J.A.C. 7:22-9);

8. Proposed intermunicipal or other agreements necessary for the construction and operation of the proposed facilities, if applicable;

9. A schedule for initiation and completion of the construction of the project including milestones; and

10. Certification from the affected municipality that at least 10 percent of the design costs for the project must be provided by the affected municipality.

(g) All mapping related submittals must be made in a format compatible with the Department's geographical information system (GIS).

7:22A-7.9 Evaluation of application

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Technical and scientific evaluation to determine the merit and relevance of the project to the Department's objectives and the objectives of the Act;

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable; and

4. Final administrative evaluation.

(b) Upon the completion of a full review and evaluation of each application, the Department will either certify the project for funding or bypass the project application and notify the applicant of such action. As a result of a project bypass action, the next highest ranked project may fall within the fundable range.

7:22A-7.10 Supplemental information

At any stage during the evaluation process, the Department may require supplemental documents or information necessary to complete its full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22A-7.11 Interconnection/Cross-Connection Abatement Account disbursements

(a) For initial planning grants and second-round planning or design grants, disbursements shall be limited as follows:

1. Disbursements for allowable planning costs shall not exceed 50 percent of the grant amount prior to the submission of complete planning documentation;

2. Disbursements for allowable planning costs shall not exceed 75 percent of the grant amount prior to the issuance of an environmental assessment in accordance with N.J.A.C. 7:22-10;

3. Disbursements for allowable design costs shall not be made until all planning requirements have been completed to the Department's satisfaction;

4. Disbursements for allowable design costs shall not exceed 50 percent of the allowable design costs prior to the submittal of plans, specifications, contract documents and an engineer's technical design report for the project; and

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5. Disbursement for allowable design costs shall not exceed 75 percent of the allowable design costs prior to receiving approval of the contract documents for the building of the project from the Department.

7:22A-7.12 Project initiation

(a) The recipient shall expeditiously initiate and complete the project in accordance with the project schedule contained in the grant agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions included in this chapter.

(b) The recipient shall not award any subagreement(s) for planning or design of the project until authorization to award has been given by the Department.

7:22A-7.13 Allowable project costs

(a) Project costs shall be determined to be allowable to the extent permitted by this chapter and the grant agreement. Allowable project costs may include:

- 1. The costs of subagreements for planning or design of the project; and
- 2. The costs for establishing or using small, minority, and women's business liaison services.

(b) Notwithstanding (a) above, unallowable project costs shall include, but not be limited to:

- 1. The costs of subagreements for which authorization to award from the Department was not received in advance of the award of the subagreement for planning or design services;
- 2. The costs for work that the Department determines is not in compliance with the approved scope of work for the project identified in the grant agreement; and
- 3. The costs for work not in compliance with the applicable provisions of N.J.A.C. 7:22A-1, 2 and this subchapter or approved subagreements.

7:22A-7.14 Force account work

(a) A recipient shall not use force account work for activities related to the scope of work for which the grant was awarded where costs will exceed \$25,000 unless the recipient has received the Department's prior written approval therefor.

(b) The recipient shall demonstrate to the Department's satisfaction that:

- 1. The work can be accomplished cost effectively by the use of force account; or
- 2. Emergency circumstances necessitate its use.

7:22A-7.15 Value engineering

(a) The recipient shall conduct value engineering for the project if the total estimated building cost exceeds \$10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

(a)

**DIVISION OF SOLID WASTE MANAGEMENT
 Notice of Request for Public Input
 Department Determination of Convenient and
 Economically Feasible Mechanism for the
 Marketing and Recycling of Collected Beverage
 Containers Composed of Green Glass**

Authority: P.L. 1992, c.168.

Take notice that the New Jersey Department of Environmental Protection and Energy is requesting public input on conducting a study and submitting a report to the Legislature concerning the convenience and economic feasibility of green glass marketing and recycling.

Pursuant to P.L. 1992, c.168, enacted into law on December 2, 1992, the Department is required to conduct a study to determine whether a convenient and economically feasible mechanism for the marketing and recycling of collected beverage containers composed of green glass is available to counties and municipalities in the State. The Department is required to file a written report containing its findings and recommendations to the Governor and Senate Environment and Assembly Solid Waste Committee by December 2, 1993.

The report on green glass shall contain the following:

- 1. A comprehensive description of the market supply and demand for green, brown, and flint glass and cullet, the causes of any overabundance of green cullet, the monetary value of green, brown and flint cullet in the recycling market, and reasons for differences in value, if any;
- 2. Identification of the economic effect of the market for green cullet upon the solid waste disposal costs and recycling program costs of counties and municipalities;
- 3. A determination whether a convenient and economically feasible mechanism for the marketing and recycling of green glass beverage containers currently exists in the State;
- 4. An evaluation of the economic effects on consumers, the affected beverage industries, the State, and State, county and municipal source reduction and recycling programs of a prohibition on the sale or distribution in the State of beverage containers composed of green glass;
- 5. A listing and evaluation of the alternatives to a prohibition of the sale and distribution of beverages in containers composed of green glass that would promote the State's source reduction, recycling and solid waste disposal goals, and eliminate the overabundance of the unusable containers; and
- 6. Recommendations for legislative or administrative actions to implement the findings of the Department.

Interested persons are requested to submit comments, data, analyses, recommendations or any other pertinent information concerning the aforementioned study no later than July 1, 1993. Analyses should properly reference source(s) of information, specify all assumptions and identify the applicable timeframe of analysis. The Department requests the use of the period of January 1, 1993 through January 1, 1998 as a standard projection or forecast period. Please submit information to:

Guy Watson, Chief
 Bureau of Source Reduction and Market Development
 Division of Solid Waste Management
 840 Bear Tavern Road
 Trenton, New Jersey 08625

The Department will consider all relevant comments in making the appropriate findings, conclusions and recommendations in the report.

(b)

**DIVISION OF SOLID WASTE MANAGEMENT
 Notice of Public Hearing and Opportunity for Public
 Comment
 Regulated Medical Waste Management Plan**

DEPE Docket Number: 25-93-03.

Take notice that, pursuant to N.J.S.A. 13:1E-1 et seq., the Division of Solid Waste Management of the Department of Environmental Protection and Energy (DEPE) and the Division of Epidemiology, Environmental and Occupational Health Services of Department of Health (DOH) will hold a public hearing on the proposed New Jersey Regulated Medical Waste Management Plan as follows:

Wednesday May 26, 1993
 10 A.M. to 12 Noon, and
 1 P.M. to 5 P.M., and
 6 P.M. to 10 P.M.
 NJDEPE Public Hearing Room
 401 East State Street
 First Floor, East Wing
 Trenton, New Jersey

Submit written comments, identified by the Docket Number given above, by June 25, 1993 to:

Janis E. Hoagland, Administrative Practice Officer
 NJDEPE Office of Legal Affairs
 CN 402
 Trenton, New Jersey 08625-0402

The purpose of the hearing is to receive oral and written comments on Section II of the DEPE's Solid Waste Management Plan Update concerning regulated medical waste (hereafter RMW State Plan) which was jointly developed by the DEPE and DOH. Pursuant to N.J.S.A. 13:1E-1 et seq., the DEPE and DOH have formulated and developed a Statewide plan for the environmentally sound management of regulated medical wastes generated within New Jersey. The RMW State Plan includes the various guidelines, rules and regulations, and goals, objec-

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tives and policies of the DEPE; guidance for the solid waste management plans for regulated medical waste to be developed by the State's 21 counties; and other solid waste management planning and program components developed to address the state's regulated medical waste needs.

The major focus of the RMW State Plan is on goals, objectives and policies for the management of regulated medical waste which emanated from the adoption of the Comprehensive Regulated Medical Waste Management Act (P.L. 1989, c.34) on March 6, 1989. See N.J.S.A. 13:1E-48.1 through 48.28.

The purpose of the Act is to protect human health and the environment through proper management of regulated medical waste. The Act also directs DEPE and the counties to plan for the management of regulated medical waste by utilizing existing disposal capacity and developing new capacity on a regional basis to service all or a significant percentage of the regulated medical waste generated within the State of New Jersey. The DEPE and the counties will endeavor to achieve disposal self-sufficiency on a Statewide basis by December 31, 1997.

The RMW State Plan specifically:

Outlines the State's short and long-term goals and objectives in the areas of source reduction, recycling, regionalization, disposal self-sufficiency and other aspects of regulated medical waste management, as well as the legislative, regulatory and policy framework necessary to achieve those goals;

Describes the current status of regulated medical waste management in New Jersey and evaluates the effectiveness of these programs in light of the requirements of the Comprehensive Regulated Medical Waste Management Act; and

Describes how New Jersey's program fits within the national regulatory scheme for the management of regulated medical waste.

After the public hearing and the close of the comment period, the DEPE will carefully review all comments relevant to the RMW State Plan and prepare a document summarizing the comments and the DEPE's responses thereto, including revisions to the proposed RMW State Plan that the DEPE deems necessary and appropriate. Following this, the DEPE intends, with the concurrence of DOH, to adopt the RMW State Plan as Section II of the overall Solid Waste Management Plan.

Copies of the proposed RMW State Plan are available at all libraries in the State Library depository system and at all county solid waste management offices. In addition, copies may be obtained by writing to the DEPE's Division of Solid Waste Management, Bureau of Medical Waste, Residuals Management and Statewide Planning, 840 Bear Tavern Road, Trenton, New Jersey 08625-0414, or by calling the Division of Solid Waste Management at (609) 530-8599.

(a)

OFFICE OF ENERGY

Energy Conservation in State Buildings

Proposed New Rules: N.J.A.C. 7:32

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

Authority: Reorganization Plan No. 002-1991, paragraph 2(a), as set out under N.J.S.A 13:1D-1.

DEPE Docket Number: 27-93-033.

Proposal Number: PRN 1993-233.

The NJDEPE will hold **public hearings** on:

Tuesday, May 4, 1993 from 1:00 P.M. to 5:00 P.M. at the Bureau of Regulatory Commissioners Public Hearing Room, 101 Commerce Street, Newark, New Jersey.

Tuesday, May 11, 1993 from 1:00 P.M. to 5:00 P.M. at the DEPE Public Hearing Room, First Floor, 401 East State Street, Trenton, New Jersey.

Submit written comments, identified by the Docket Number given above, by May 19, 1993 to:

Janis E. Hoagland Esq., Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection and Energy (Department) is proposing new rules N.J.A.C. 7:32-1, Energy Conservation in State Buildings. These new rules supersede N.J.A.C. 14A:13, which expired February 2, 1992.

The State manages and maintains approximately 2,000 buildings including school and college buildings, institutions for the mentally handicapped, correctional facilities, State office buildings, and other structures. The current inventory of the State-owned buildings exceeds 24 million square feet. In addition, the State is responsible directly or indirectly for energy costs at a large number of leased buildings. While some of these buildings are modern, many are antiquated, turn-of-the-century buildings designed in an era when the supply of energy was thought to be inexhaustible and its price was minimal.

The high cost of energy, coupled with supply uncertainties, contributes to the current budget problems the State faces. The energy policies identified within the 1991 New Jersey Energy Master Plan confirm that the State is committed to make every reasonable effort to conserve energy. Energy conservation is a matter of prudent public policy, environmental policy and economic policy.

As part of the State's energy conservation effort, the Department proposes new rules N.J.A.C. 7:32 for the implementation of the Energy Conservation Bond Act of 1980, P.L. 1980 c.68. The Bond Act was created in the early 1980s in response to skyrocketing energy costs resulting from the oil crisis of the 1970s. State officials were forced to evaluate the physical structure, energy usage patterns and fuel requirements of State buildings. A decision was made to fund initiatives which would achieve a net reduction in energy consumption by reducing the amounts of fossil fuel and electricity used to heat, cool, and provide power and light in State facilities. The State Energy Conservation Bond Act of 1980 was passed by voter referendum on November 4, 1980. The bond issue provides for \$50.0 million to be used for energy audits and energy-conserving renovations in State buildings. To date the Department has completed cycles I and II of the program, which account for approximately 500 energy conservation renovations in buildings of nine State departments totaling \$20.61 million. The estimated dollar savings from these energy conservation projects is \$5.0 million per year. In addition, \$24.5 million of energy conservation renovations with an estimated savings of \$8.82 million per year have been obligated; these renovations are currently being installed under the third and final cycle of the program.

The proposed rules provide for the State to make available funds for energy audits and energy-conserving renovations of State buildings in order to achieve a net reduction in energy consumption. The rules set forth the procedures for State agencies to request energy audits and energy conservation renovations; the procedures for implementation of energy audits and energy conservation renovations; and the Department's responsibilities in overseeing and monitoring the energy conservation bond fund.

In an effort to improve program efficiency so that the State will better benefit from the use of energy conservation bond funds, the performance of program elements implemented under the first two cycles of the energy conservation bond fund was evaluated. Several areas for improvement were identified and have been addressed in these new rules.

The proposed new rules for the energy conservation bond fund will strengthen and improve the efficiency of the program and expedite implementation to enable the State to realize the benefits for which the Bond Fund was established. These rules will give the Department better control of the types of energy projects implemented to reflect changes in technology and result in state-of-the-art energy conservation renovations. The new rules will encourage the implementation of the latest generation of proven and economical energy saving strategies and thereby enable facilities to operate with a much greater efficiency than before. The new rules will streamline the implementation procedures to enable projects to be initiated more quickly in order that the State will realize the energy savings sooner. These rules will also facilitate the Department's statutory obligation to oversee and monitor the program.

A summary of the new rules and changes follows:

N.J.A.C. 7:32-1.1 Scope and purpose

There is no change to this section as it existed at N.J.A.C. 14A:13-1.1, which authorizes the issuance of bonds under the Energy Conservation Bond Act of 1980.

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This section defines terms used in the rules. The following are additions and modifications from the previous rule, N.J.A.C. 14A:13-1.2: The definition of "Commissioner" reflects that the Commissioner now heads the Department of Environmental Protection and Energy. The definition of "energy audit" previously had provided that only architectural/engineering firms may perform energy audits. The new rule provides that using agencies (audits performed in-house), independent professional engineers, and equipment or system vendors/manufacturers may perform energy audits. In the past the energy audit process was lengthy and time consuming; this change will give the State flexibility in choosing an energy auditor, especially when specific energy renovations are to be audited, and will also help reduce the time it takes for audits to be performed, which will speed implementation of energy renovations. The definition of "energy conservation renovation" has been changed to provide that only State buildings are eligible for energy conservation bond funds; the previous definition included the term "public building", which was confused with county and local government buildings that are not eligible for funding under this program. The definitions of "educational facilities" and "institutions" have been deleted since they fall under the definition of "State buildings." The definition of "NJDOE" has been deleted and replaced by "DEPE," which is the department that currently administers the Energy Conservation Bond Program. The definition of "payback" has been changed to reflect modern energy conservation strategies. The savings used in the payback calculation included in the old rules at N.J.A.C. 14A:13-1.2 could only be from energy savings; with current energy conservation strategies relating to demand savings and avoided cost savings, the State should be credited for these savings. The definition of "project" has been added for the purpose of identifying energy renovations. Previously the definition of "using agency" was the recipient of energy conservation bond funds. For administrative purposes, it is being changed to mean any State agency, department or facility that will be or is participating in the Energy Conservation Bond Program.

N.J.A.C. 7:32-1.3 Submission of plan to the Treasurer and the Commission

This provision requires that information pertaining to program performance and fund expenditures for the upcoming fiscal year be submitted to the Treasurer and the Commission on Capital Budgeting and Planning. There is no change to this section, which was previously N.J.A.C. 14A:13-1.3.

N.J.A.C. 7:32-1.4 Submission of plan to the Legislature

This section requires that the plan defined in N.J.A.C. 7:32-1.3 be submitted to the Legislature immediately following the Governor's annual budget message. There is no change to this section, which was previously N.J.A.C. 14A:13-1.4.

N.J.A.C. 7:32-1.5 Consultation with special joint legislative committee

This section requires the Commissioner to consult with the special joint legislative committee not less than 30 days prior to entering into any contract, lease, obligation, or agreement. There is no change to this section, which was previously N.J.A.C. 14A:13-1.5.

N.J.A.C. 7:32-1.6 Energy conservation renovation funding procedure

This section was previously N.J.A.C. 14A:13-1.6. It describes the procedure which agencies must follow when submitting funding requests. Language was added at subsection (b) to cross reference N.J.A.C. 7:32-1.7, which describes the energy audit procedures. Language was added to subsection (e) to provide a mechanism to ensure that the using agency maintains accurate records.

N.J.A.C. 7:32-1.7 Energy audit implementation procedure

Previously this section was N.J.A.C. 14A:13-1.7. It describes the procedure for the implementation of energy audits, and now requires that all audits be in compliance with N.J.A.C. 7:32-1.8, to ensure that the energy audit contents are acceptable.

N.J.A.C. 7:32-1.8 Energy audit contents

This section was previously N.J.A.C. 14A:13-1.3. There is no change to this section, which explains the content and format of the energy audit to be completed under N.J.A.C. 7:32-1.7.

N.J.A.C. 7:32-1.9 Energy conservation renovation funding request

Previously, this section was N.J.A.C. 14A:13-1.9. It describes the procedure, requirements and approval process for the funding of energy conservation renovations.

N.J.A.C. 7:32-1.10 Energy conservation renovation implementation procedure

Previously, this section was N.J.A.C. 14A:13-1.10. It describes the procedure for the implementation of energy conservation renovations and added to (a) the requirement that the using agency request, in writing, Energy Conservation Bond Program approval to start any project. This provides a mechanism to ensure that the using agency implements the energy conservation renovation for which funding was approved.

N.J.A.C. 7:32-1.11 Project review and control

This section was previously N.J.A.C. 14A:13-1.11. It lists the requirements and procedures with which each using agency must comply in order to continue to qualify for funding. This section also contains using agency reporting requirements. This section contains new and specific requirements that the using agency must submit quarterly reports to the Department containing financial and project status information. These reports will enable the Department to effectively comply with its statutory obligation of administering the energy conservation bond fund.

N.J.A.C. 7:32-1.12 Eligible energy-conserving renovations

This section lists renovations acceptable under the Energy Conservation Bond Program. It was previously N.J.A.C. 14A:13-1.12. The new rule includes renovations which will reduce the amount of dollars the State spends on its energy bills (previously the rule included only projects which resulted in a reduction in energy consumption). This will enable the State to better manage the amount it spends on energy bills by considering both energy and dollar savings resulting from energy conservation renovations.

N.J.A.C. 7:32-1.13 Designer qualifications

This section was previously N.J.A.C. 14A:13-1.14. It has been changed to apply only to the qualifications for an architectural/engineering firm to design energy projects under the program. The energy auditor definition was removed from this section, since it is contained in the definition of an energy audit.

These proposed new rules will allow the energy conservation bond fund to provide an improved mechanism by which all State facilities can obtain energy audits and install energy-conserving renovations to achieve a net reduction in the amount of energy the State consumes.

Social Impact

The proposed new rules will have a positive social impact. The Department expects that the new rules will streamline the Energy Conservation Bond Program procedures for processing funds for energy audits and renovations, resulting in a more rapid implementation of the energy-conserving measures. The resulting decreased energy consumption will lower overall operating energy costs for state buildings, and, consequently, will result in a better utilization of taxpayers dollars. Decreased use of energy translates to a decreased demand for energy production which includes the State's dependents on imported oil and improves air quality. The new rule demonstrates the State's continued obligation and commitment to reduce energy consumption in State facilities and supports the goals and policies of the Energy Master Plan related to State building energy use.

Economic Impact

These proposed new rules will continue to have a positive economic impact by allowing funds designated for energy conservation projects to be committed to contract in a more expeditious manner than previously. To develop a conservation alternative which relies on application of energy efficient technology requires a shift of fiscal resources from energy bills to capital improvements. The capital improvements undertaken become part of the regional infrastructure and economic base. The dollars spent on engineering, equipment, materials and construction are largely retained within the local economy. Conversely, dollars spent on energy move out of the local economy, with little positive economic effect. The investment of dollars in energy conservation projects provides jobs and business opportunities within the State's economy. The investment in energy conservation projects improves New Jersey's competitiveness and reduces the cost of government while maintaining an equal or improved quality of service to the affected institutions.

Environmental Impact

Energy conservation directly impacts the environment by decreasing the need to generate power. Reductions in energy demand correspond to reductions of emissions from power plants. The proposed new rules will have a positive direct effect on the environment by more quickly

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implementing energy conservation renovations in State buildings. Under the Federal Clean Air Act Amendments of 1990, the value of conservation clearly outweighs the option of developing new sources of energy to meet increasing demand. In order to meet New Jersey's responsibilities for overall compliance with air quality regulations, the State must include conservation as a fundamental strategy to meet energy needs. The State spends approximately \$119.0 million on electricity, natural gas, propane, fuel oil and district heating to operate State owned and leased facilities (according to the 1990 Governor's Management Review Commission Operational Review of State Facility Energy Usage). As a major consumer of energy, the State, by implementing the Energy Conservation Bond Program, is pursuing an economically sound policy which is consistent with the goal of incorporating a pollution prevention ethic as part of environmental policy. Energy conservation has a positive effect on the environment by reducing the amount of fossil fuel combustion utilized to provide heat and light for State facilities, thereby lowering the amount of harmful emissions into the environment.

Regulatory Flexibility Statement

The proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose requirements on the Department of Environmental Protection and Energy, the Division of Building and Construction in the Department of Treasury and State agencies requesting energy conservation funds. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

CHAPTER 32

ENERGY CONSERVATION IN STATE BUILDINGS

SUBCHAPTER 1. ENERGY AUDITS AND ENERGY-CONSERVING RENOVATIONS OF STATE BUILDINGS

7:32-1.1 Scope and purpose

(a) This subchapter implements the Energy Conservation Bond Act of 1980, P.L.1980, c.68.

(b) The purpose of this subchapter is to provide for energy audits and energy-conserving renovations of State buildings in order to achieve a net reduction in the amount of energy consumed.

7:32-1.2 Definitions

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

"Act" means the Energy Conservation Bond Act of 1980, P.L.1980, c.68.

"Auditor" means an individual or company responsible for performing an energy audit, including, but not limited to, an architectural/engineering firm, independent professional engineer, or equipment vendor/manufacturer or facility management personnel.

"Autonomous agency" means any State department, division, or facility such as Rutgers The State University, the New Jersey Institute of Technology (NJIT), the New Jersey Department of Defense (NJDD), the University of Medicine and Dentistry of New Jersey (UMDNJ), the State colleges upon approval of the Department of Higher Education (DHE), or any other agency which uses its own procurement and contract administration procedures.

"Commissioner" means the Commissioner of the Department of Environmental Protection and Energy.

"Commission" means the New Jersey Commission on Capital Budgeting and Planning.

"DBC" means the Division of Building and Construction in the Department of Treasury.

"DEPE" means the New Jersey Department of Environmental Protection and Energy.

"ECBP" means the Energy Conservation Bond Program.

"Energy audit" means a study of a building or facility administered by the Department of Environmental Protection and Energy, Office of Energy to determine operating and maintenance procedures and renovations which will result in reduced energy consumption.

"Energy Conservation Bond Fund" means the fund established pursuant to section 14 of the Energy Conservation Bond Act of 1980, P.L.1980, c.68.

"Energy-conserving operating and maintenance procedure" or "operating and maintenance procedure" means no-or low-cost renovations which can be implemented for the purpose of accomplishing a net reduction in the amount of energy consumed.

"Energy-conserving renovation" or "renovation" means the planning, improvement, reconstruction and rehabilitation of State buildings for the purpose of accomplishing a net reduction in the amount of energy consumed.

"Envelope" means the exterior surfaces of a building including the roof and walls, and penetrations of these surfaces, such as doors and windows.

"Payback" means the number of years required for the dollar savings to equal the total cost of implementation of the renovation.

"Project" means one energy conservation renovation or several energy conservation renovations which will be implemented together.

"State buildings" means buildings, structures and facilities under the supervision and control of any executive department of the State of New Jersey.

"Supervision and control" means the holding of any fee simple estate, or any leasehold estate for a duration of more than 10 years.

"Using agency" means any executive department of the State of New Jersey participating in the Energy Conservation Bond Program.

7:32-1.3 Submission of plan to the treasurer and the commission

(a) Beginning with fiscal year 1983, the Commissioner shall submit to the State Treasurer and the Commission for their review and recommendation with the DEPE's annual budget request a plan for expenditures of funds from the energy conservation bond fund for the upcoming fiscal year. This plan shall include the following information:

1. A performance evaluation of the expenditures made from the fund to date;
2. A description of programs planned during the upcoming fiscal year;
3. A copy of the regulations in force governing the operation of programs that are financed, in part or in whole, by the Energy Conservation Bond Fund;
4. An estimate of the amount of money and energy saved by the program to date; and
5. An estimate of expenditures for the upcoming fiscal year.

7:32-1.4 Submission of plan to the Legislature

Beginning with the fiscal year 1983, immediately following the submission to the Legislature of the Governor's annual budget message, the Commissioner shall submit to the relevant standing committee of the Legislature, as designated by the President of the Senate and the Speaker of the General Assembly, and to the special joint legislative committee created pursuant to Assembly Concurrent Resolution No. 66 of the 1968 Legislature, as reconstituted and continued by the Legislature from time to time, a copy of the plan called for under section 24 of the Act, together with such changes therein as may have been required by the Governor's budget message.

7:32-1.5 Consultation with special joint legislative committee

Not less than 30 days prior to entering into any contract, lease, obligation, or agreement to effectuate the purpose of the Act, the Commissioner shall report to and consult with the special joint legislative committee created pursuant to Assembly Concurrent Resolution No. 66 of the 1968 Legislature as reconstituted and continued from time to time by the Legislature.

7:32-1.6 Energy conservation renovation funding procedure

(a) Each using agency which has supervision and control over State buildings shall comply with the following procedures when requesting energy conservation funds:

1. The using agency shall submit to the ECBP its long-range plan for the facility, including data on planned additions, renovations and removals of buildings or facilities.
2. The using agency shall have an energy audit completed for the facility, building or special project that will be considered for energy conservation funding and shall submit the audit to the ECBP. The using agency can request the ECBP to fund the energy audit. All

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energy audits shall comply with N.J.A.C. 7:32-1.7, which sets forth the energy audit implementation procedures.

3. Upon completion and approval of the energy audit by the ECBP, the using agency may submit a request to the ECBP to fund the energy conservation renovations identified in the audit. Each request will be reviewed and ranked by the ECBP according to payback. The Department must comply with N.J.A.C. 7:32-1.9, which sets forth project funding request procedures.

4. The using agency will be notified by the Commissioner of the approved energy conservation renovations and their funding levels. Upon notification of approval, the using agency must implement the renovations, according to N.J.A.C. 7:32-1.10.

5. Upon project completion and acceptance by all parties, the ECBP shall review the final cost figures. The using agency will be subject to an audit and shall make available all records pertaining to the completed project. The using agency shall return any unused funds to the ECBP. Failure to comply with this requirement will result in the using agency's returning all ACBP funds awarded for additional projects and jeopardize future ECBP funding.

7:32-1.7 Energy audit implementation procedure

(a) Requests for funding to perform energy audits shall include:

1. The name of the facility;
2. The name/number and address of the buildings to be audited;
3. The gross square footage of each building;
4. The scope of the audit; and
5. An estimate of the cost of the audit.

(b) Requests for funding of energy audits shall be approved at the discretion of the ECBP and are subject to the following criteria:

1. That the audits requested do not duplicate existing audits or engineering studies considered acceptable by the ECBP;

2. That the estimated cost of an audit or analysis is not disproportionately great when compared to the possible savings that may be identified;

3. That the continued use of the building(s) or facility is consistent with the using agency's long-range plan; and

4. That energy audits are efficiently scheduled (that is, audits will be grouped by institution, location and technical similarities in order to keep the number of consultants to a minimum, reduce cost and expedite energy audits).

(c) Upon the Commissioner's approval of funding, the using agency shall submit to DBC a list of the energy audits to be performed. However, autonomous agencies shall use their own procurement procedures when energy audits will be performed at their facilities.

(d) All audits shall be in compliance with N.J.A.C. 7:32-1.8, which sets forth the required energy audit contents.

(e) The DBC or the autonomous agency shall coordinate with the ECBP to define the scope of the audit prior to advertising for the selection of the auditing firm.

(f) The DBC or autonomous agency shall select and retain an auditor.

(g) The using agency shall consult ECBP in the selection process of the auditor.

(h) The auditor shall submit the audit to the DBC and/or the using agency, and the ECBP. When the using agency is autonomous, the auditor shall submit the audit to the using agency and the ECBP. The ECBP and the using agency shall have 15 working days after receipt of the audit to notify the DBC of acceptance or of any deficiencies in the audit with regard to conformance with general auditing procedure, completion of specific tasks in the work assignment, and compliance with the audit content requirements of N.J.A.C. 7:32-1.8. If there are any deficiencies, the DBC or, when applicable, the autonomous agency, shall return the work product to the auditor marked "unacceptable."

(i) Upon acceptance of the completed audit, the ECBP shall transmit written approval of the audit to the using agency and the DBC. Final payment shall not be made until ECBP approval is on record.

7:32-1.8 Energy audit contents

(a) The energy audit shall include the following:

1. A description of building characteristics and energy data, including:

i. The operating characteristics of energy using systems; and
ii. A chart of energy use and cost data for each type of fuel used in the prior 12-month period;

2. A description and analysis of all potential energy-conserving maintenance and operating procedures, including:

i. A description of each maintenance and operating procedure;
ii. An estimate of the annual energy savings and energy cost savings expected from the implementation of each maintenance and operating procedure. In calculating the potential energy savings and energy cost savings, the auditor shall clearly show how energy savings and energy cost savings have been estimated by providing calculations for manual procedures, or by providing input data, methodology, equations, and sample calculations capable of verification for computer-generated results; and
iii. A cost estimate for implementing each maintenance and operating procedure.

3. A description and analysis of all potential energy conservation renovations, setting forth the following:

i. A description of each renovation;
ii. A cost estimate for the design and installation of each renovation;

iii. An estimate of the useful life of each renovation;
iv. An estimate of increases or decreases in maintenance and operating costs as a result of implementing each renovation, if any;

v. An estimate of the salvage value or disposal cost of each renovation at the end of its useful life;

vi. An estimate of the annual energy savings and energy cost savings expected from the implementation of each energy conservation renovation. In calculating the potential energy savings and energy cost savings the auditor shall:

(1) Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized;

(2) Calculate the total energy savings and energy cost savings, by fuel type, expected to result from the implementation of all potential renovations, taking into account the interaction among the various renovations;

(3) Calculate the portion of the total energy savings and cost savings, as determined in (a)3ii above, attributable to each individual renovation; and

(4) Clearly show how energy savings and energy cost savings have been estimated by providing calculations for manual procedures, or by providing input data, methodology, equations, and sample calculations capable of verification for computer-generated results;

4. The payback of each potential energy-conserving renovation taking into account the interactions among the various renovations, and presented in the format established by the ECBP;

5. An analysis of the estimated energy consumption for each building or facility by fuel type in total British Thermal Units (BTU) and British Thermal Unit/Square Foot/Year (BTU/sq. ft./yr.) at optimum efficiency; and

6. A certification that the energy audit has been conducted in accordance with the requirements of this section, and that the auditors are free from conflicting financial interest in the products or equipment to be acquired and installed.

7:32-1.9 Energy conservation renovation funding request

(a) All requests to fund energy conservation renovations shall include the following:

1. An energy audit of the building/facility for which funding is requested;

2. Payback calculations for the implementation of the renovations, calculated by dividing the total implementation cost of the renovation(s) by the total dollar savings per year. Total dollar savings can include, but may not be limited to, direct energy savings, labor savings, equipment maintenance savings and avoided future capital costs;

3. Certification that the energy-conserving renovation is in conformance with the long-range plan for the facility and that the

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building or facility will not undergo major reconstruction, be vacated, condemned or demolished prior to the end of the payback period; and

4. A description and schedule of any non-energy construction or remodeling projects which must be coordinated with the energy-related projects for which funding is required.

(b) Requests for funding of energy-conserving renovations shall be evaluated for acceptability by ECBP according to the following criteria:

1. Compliance with (a) above a request may be returned to the submitting agency for revision if found to be incomplete or not in compliance;

2. Identification of proposed renovations which appear to require unusual or extensive maintenance. Supporting data may be required before acceptance; and

3. Proposed renovations which appear to require the State to use unproven or experimental systems shall not be accepted.

(c) Acceptable energy conservation renovations conforming to the requirements of (b) above shall be ranked according to payback.

(d) Based on the availability of funds, the ECBP shall establish the maximum acceptable payback for energy conservation renovations. However, the Commissioner, at his or her discretion, may include projects of higher payback, special need, merit or significance.

(e) Maximum payback established for any renovation shall not exceed 10 years.

(f) Upon selection and approval of energy conservation renovations for funding, the Commissioner shall notify the using agency, in writing, of such approval.

7:32-1.10 Energy conservation renovation implementation procedure

(a) The using agency must request, in writing, ECBP approval to start any project(s). This request shall include the following:

1. The name of the project; and
2. The estimated implementation cost.

(b) The using agency shall submit a scope of work for the project(s) to be implemented to the ECBP for approval. This shall include the intent of the proposed project as identified in the energy audit. Any revision of the scope of work shall be submitted to the ECBP for approval. Any revision done without written approval from the ECBP shall result in the using agency being held responsible for the funding of the project.

(c) Upon ECBP approval, funds will be transferred to the using agency according to the following conditions:

1. For projects with an estimated implementation cost of less than \$50,000, the ECBP shall provide funds for design (design and preparation of plans and specifications) and construction (acquisition, installation and construction).

2. For projects with an estimated implementation cost of \$50,000 or greater, the ECBP shall initially provide funds for the design only; this will be 10 percent of the estimated implementation cost. Funds for construction shall be provided based on the construction cost estimate submitted at the end of the design phase.

(d) The using agency shall issue contracts or submit progress reports showing equivalent progress in implementing the funded activities within three months of the date funds are transferred. Failure to do so shall result in the funds being returned to the energy conservation bond fund.

(e) The DBC shall select and retain an engineer or architectural/engineering firm for the design of energy-conserving renovations in accordance with the DBC's Architect/Engineer Selection Procedures. If the using agency is autonomous, it may use its own procurement procedures, provided that the architectural/engineering firm is pre-qualified by the DBC for projects of similar scope and that the ECBP gives formal approval. The ECBP must be consulted in the selection process of the architectural/engineering firm.

(f) The DBC or autonomous agency must notify the ECBP of the award of the project to the architect/engineering firm. This notification shall include the name of the firm, award date and amount of the design fee.

(g) The ECBP shall receive copies for review and approval of all submittals of design plans and specifications, including a final copy that is signed and sealed. As part of this review the ECBP shall confirm that the plans and specifications conform with the objectives of the original project scope of work, and verify that the costs to be incurred are, as far as practicable, solely for application to the purpose of the project. In the event that the submittals are deficient in these respects, the ECBP shall notify the using agency and the DBC or the autonomous agency in writing of same and that funds to complete implementation shall not be released for construction until the ECBP gives approval. In addition, the ECBP shall be notified of all design review meetings.

(h) The ECBP shall review and approve final cost figures for the project. Upon approval, the ECBP will transfer funds for the construction portion of the project to the using agency as provided in (c) above.

(i) Projects shall be advertised and put out for competitive bid by the DBC or, when applicable, by the autonomous agency, in accordance with the State bidding laws. All contractors bidding on the project shall be pre-qualified in accordance with applicable law and DBC regulation.

(j) In the event that the lowest responsible bid or sum of the bids exceeds the construction cost estimate by more than five percent, the bid(s) shall be subject to rejection by the DBC or autonomous agency. The DBC or the autonomous agency shall consider the effect of the bids on the estimated payback, and related factors.

1. The DBC and the using agency, or the autonomous agency, shall coordinate with the ECBP to determine if the project should be reduced in scope and re-bid to meet available funds and ECBP payback requirements or be canceled.

2. The DBC or the autonomous agency determines that the project shall be changed in scope, the ECBP shall determine whether the project still sufficiently conforms with the objectives of the original project to be funded.

(k) The DBC or autonomous agency must notify the ECBP of the award to the construction firm. This notification shall include the name of the firm, award date and the construction bid amount.

(l) The DBC or autonomous agency must notify the ECBP of all construction job meetings. Notification shall be given at least five working days in advance.

(m) The DBC or autonomous agency must notify the ECBP of the final inspection. Notification shall be given at least five working days in advance.

(n) Prior to project closeout, the using agency shall notify the ECBP in writing of its acceptance or rejection of the project. The ECBP shall notify the using agency of its final acceptance or rejection of the project. The project will not be considered complete until both parties have indicated final acceptance.

7:32-1.11 Project review and control

(a) The ECBP may require the installation of metering equipment as part of the project where such installation is economically and technically feasible in order that the ECBP may fulfill its statutory responsibility to annually report an estimate of the energy savings resulting from the implementation of the energy-conserving renovation.

(b) Each using agency will be required to submit a quarterly report to the ECBP during the duration and at the completion of the project. This report shall include financial and project status information for each ECBP funded project. Failure to provide reports will result in the cancellation of ECBP funded projects.

(c) Upon completion of the implementation of the energy-conserving renovations, the using agency shall annually provide the ECBP with actual energy savings realized from the implementation of the energy-conserving renovations.

(d) The using agency and/or the DBC shall be responsible for keeping the ECBP informed throughout all stages of the project. This shall include sending the ECBP copies of all relevant correspondence and financial information in a timely fashion.

(e) The DBC shall consider the ECBP as a co-using agency and as such shall place the ECBP on its distribution list for all documents

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that the ECBP needs to fulfill its statutory obligation of monitoring ECBP funded projects.

(f) The using agency shall be responsible for operating, maintaining, and servicing all equipment in accordance with the manufacturer's recommendations to obtain the maximum energy savings and as such shall be held financially liable.

(g) The using agency shall be responsible for pursuing all legal and administrative channels to ensure that the obligations of the architectural/engineering firms and contractors to the State are met. The using agency shall be held financially liable for failing to comply.

(h) The using agency shall be held financially liable if the anticipated savings from the energy conservation renovations are not fully realized as a result of negligence on the part of the using agency.

(i) The using agency shall be held responsible for any design fees paid to the architectural/engineering firm if the agency makes unauthorized changes which adversely affect the original architectural/engineering estimates and which may cause the project to be cancelled. This shall include escalations due to delays caused by the using agency.

(j) All change orders shall be subject to ECBP review and approval.

(k) The using agency shall return all unused funds to the energy conservation bond fund upon project closeout or at the request of the ECBP.

(l) The using agency must petition the ECBP in writing for any funds in addition to those originally authorized by the ECBP. Unauthorized expenditures shall result in all funds being returned to the energy conservation bond fund and will jeopardize future ECBP funding.

(m) The using agency shall be responsible for reporting its monthly energy consumption to the ECBP in the form prescribed by the ECBP. This shall include manual and computerized reporting procedures. The ECBP shall not consider funding requests from the using agency which do not comply with this requirement.

7:32-1.12 Eligible energy conservation renovations

(a) The following list outlines the types of energy conservation renovations which the ECBP has identified as resulting in a net reduction in the amount of energy consumed by a building or facility and which are eligible for energy conservation bond funds:

1. Energy conversion:
 - i. Boiler, furnace or water heater improvement or replacement;
 - ii. Chiller (refrigeration equipment) improvement or replacement; and
 - iii. Energy recovery installation.
2. Energy distribution:
 - i. Distribution system modification, improvement or replacement, including insulation of ducts and pipes;
 - ii. Heating, ventilation and air conditioning (HVAC) system modification, improvement or replacement;
 - iii. Metering installation; and
 - iv. Automatic control systems and automated energy management systems.
3. Electrical systems and lighting:
 - i. Light and/or fixture replacement;
 - ii. Motor improvement or replacement;
 - iii. Mechanical and electrical controls; and
 - iv. Automatic controls.
4. Envelope:
 - i. Double glazing or window replacement;
 - ii. Window treatment, including reflective or shading materials;
 - iii. Reduction of glass area;
 - iv. Roof insulation;
 - v. Wall insulation;
 - vi. Storm doors; and
 - vii. Storm windows.
5. Other: Specific renovations not listed which may be clearly shown to result in a net reduction of energy consumption or a reduction in the amount of dollars the State spends to purchase energy.

7:32-1.13 Designer qualifications

(a) In order to be qualified to design projects pursuant to this subchapter, the individual or firm must:

1. Be a New Jersey licensed professional engineer or architect, or a member of an architect-engineer team, the principal team members of which are licensed in New Jersey;
2. Be free from any financial interests which may conflict with the proper performance of his or her duties; and
3. Be pre-qualified by the DBC or autonomous agency.

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(a)

HOSPITAL REIMBURSEMENT

Hospital Reporting of Uniform Bill-Patient Summaries (Inpatient)

Procedural and Methodological Regulations

Proposed Amendments: N.J.A.C. 8:31B-2

Proposed New Rule: N.J.A.C 8:31B-3.70

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1993-224.

Submit comments by May 19, 1993 to:

Anne F. Weiss, Director
 Health Care Financing
 Room 601, CN 360
 Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

These proposed amendments and new rule are the first in a series of amendments to regulations which governed the recently repealed hospital reimbursement system. This system was repealed by P.L. 1992, c.160, known as the Health Care Reform Act of 1992 (HCRA) or Chapter 160. The HCRA, while repealing the reimbursement system, provides for a one year transition period for the purpose of establishing a limit on the revenue collected by acute care hospitals in 1993.

The current proposal amends the Uniform Bill-Patient Summary section of the rules at N.J.A.C. 8:31B-2 to conform with HCRA. Specifically, all references have been deleted that relate to Chapter 83 rates, rate setting and final reconciliation, since these concepts no longer apply. This includes the deletion of N.J.A.C. 8:31B-2.2, Implementation. New sections have been added which set a maximum fee per record that the intermediary is permitted to charge hospitals, and which establish a penalty for late submission of records and a methodology to calculate the amount of the penalty.

The amendments also replace the term "payor" with "payer," to conform to current terminology. N.J.A.C. 8:31B-2.5(f)3 has been deleted as redundant, since it effectively duplicates the requirements at N.J.A.C. 8:31B-2.4(b)1.

To accomplish the audit required by the Department of the HCRA, a new section at N.J.A.C. 8:31B-3.70 establishes rules to determine 1993 collected revenue, and provides for quarterly and full-year calculations to monitor whether hospitals have exceeded their HRSC-approved revenue caps. The rules for the quarterly monitoring establish data submission requirements and timeframes; similar provisions provide for the submission of 1993 audited financial data to determine whether the revenue caps have been exceeded and if penalties apply. Finally, there is a provision for financial penalties for hospitals that exceed their 1993 approved revenue caps. If a hospital's revenue exceeds the cap by more than one percent, the penalty is 100 percent of the excess.

Social Impact

Continued collection of clinical and cost data is critical to most of the Department's activities with regard to public health problems, including planning, licensing and consumer information. Also, the HCRA established a new commission called the New Jersey Essential Health Services Commission, which will have many responsibilities to review and evaluate data at the patient level of detail. The Uniform Bill penalty

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section provides an additional assurance of accurate and timely data submissions to the Department. Therefore, this penalty provision will assist the new Commission by lending credibility to its findings through its use of accurate and complete data sources. Finally, hospitals and payers will continue to have access to this data to help them function in a newly deregulated hospital market.

The new rule on revenue cap monitoring provides guidance on how the Department will determine 1993 collected revenue. Hospitals can use these guidelines to develop their own internal monitoring procedures to keep within the HRSC approved revenue caps. Early monitoring efforts by the hospitals can lead to stabilization of hospital charges throughout 1993, while enabling the hospitals to avoid incurring penalties for exceeding revenue limits.

The reporting requirements for revenue cap monitoring are not considered to be more burdensome to hospitals than the Chapter 83 reporting requirements had been in previous rate years under that system.

The Attorney General's Task Force on Health Care Fraud has supported enhanced use of uniform billing as an important tool to detect health care fraud.

Economic Impact

The requirements imposed on the 85 regulated hospitals by the new rule are not expected to change the costs of administration. The reports required by the new rule are generally equivalent to the reports previously required under the hospital reimbursement rules. The annual report required by the new rule contains the same reporting requirements as the final reconciliation, and the quarterly report is similar to periodic cash flow reports previously submitted. The Department has always required an auditor's report to accompany periodic cash flow reports which contains essentially the same information as an audited financial statement which the hospitals are required to submit along with annual cost reports.

The total 1993 approved revenue cap for all hospitals is \$8,027,892,982.

The Uniform Bill penalty provision would assess \$10.00 per record for hospitals that exceed the 30 day notice period. The penalty will be calculated based on the hospital's total discharges or admissions for the year, and will not be an insignificant fine for most hospitals. However, if the penalty were minimal, there would be a greater risk of delays in hospital data submission, as has been experienced in the past. Therefore, the adverse financial impact of a penalty assessment is outweighed by the benefits of timely data submission from a public policy standpoint.

The Uniform Bill amendments also include a provision to limit the amount per record that the data intermediary may charge hospitals to process their patient billing data. This limitation on processing fees assures Blue Cross a fair price for providing these services, while assuring hospitals that they will be paying reasonable fees for a mandated service.

The penalties associated with revenue collected in excess of a hospital's HRSC approved revenue cap could potentially be quite high. Since the revenue caps were approved prior to January 1, 1993, hospitals had adequate time to set their charges to meet the one percent tolerance level at which they would have no penalty.

Regulatory Flexibility Statement

The proposed amendments and new rule apply only to the hospitals that have revenue caps established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and therefore does not fall into the category of small business as defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act.

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

8:31B-2.1 Purpose

(a) The purpose of this [rule] **subchapter** is to provide the basis for a single patient data reporting system to satisfy the **health planning** requirements of [Chapter 83, P.L. 1978.] **the Health Care Reform Act of 1992 (P.L. 1992, c.160)**. The [revised rule is designed to incorporate] **subchapter incorporates** the National Uniform Bill (UB-82 HCFA-1450) as the common hospital billing format for all [payors] **payers**. The data elements and design of the form have been determined by the National Uniform Billing Committee (NUBC). The NUBC includes representatives of the Federal Government, major [payors] **payers**, and hospital associations.

(b) This [rule] **subchapter** will continue to allow hospitals to:

1. Satisfy Department of Health reporting requirements for [bills and abstracts] **patient level clinical and financial information**[.];

2. Allow for common and consistent reporting of revenues for services related to patient care [used in the calculation of Preliminary Cost Bases under Chapter 83, P.L. 1978,]; and
3. (No change.)

8:31B-2.2 [Implementation] (Reserved)

[(a) Beginning January 1, 1981 N.J.A.C. 8:31B-2.1, the rule on Hospital Reporting of Uniform Bill-Patient Summaries (Inpatient), has been used as a common billing and reporting mechanism for each inpatient discharged and ambulatory same day surgery outpatient treated in each hospital covered under Chapter 83, P.L. 1978.

(b) As of January 1, 1985, revisions to N.J.A.C. 8:31B-2 become operative.

(c) The revisions to N.J.A.C. 8:31B-2 provide for the submission of sufficient patient information for reconciliation of payments consistent with N.J.A.C. 8:31B-3.71 through 3.86.

1. "Sufficient patient information" shall consist of the following for all inpatients discharged and ambulatory same day surgery outpatients treated and shall be submitted in the format specified pursuant to N.J.A.C. 8:31B-2.5(g).

- i. Hospital Provider Number;
- ii. Patient Control Number;
- iii. Discharge Date;
- iv. Date of Birth;
- v. Admission Date;
- vi. Medical Record Number;
- vii. DRG Number and Outlier Indicator;
- viii. Principal and Other Diagnosis Codes;
- ix. Principal and Other Procedure Codes;
- x. Payor Codes;
- xi. All billing information (items 51-56, 64);
- xii. Birthweight (newborn inpatient) (effective for billing purposes upon implementation of the New York Grouper Version 6; effective for reporting purposes to the Department of Health on March 20, 1989); and
- xiii. Severity of illness (S.O.I.) indicators (inpatient) (effective upon implementation of methodology).

2. Outpatient Data shall consist of two data sets:

i. Patient-specific data, which will include, but not be limited to, the following: hospital provider number, patient control number, medical record number, date of treatment, patient's date of birth, patient's gender, Current Procedural Terminology (CPT) codes, current International Classification of Disease (ICD) codes and charge data. The Department will require submission of patient classification data as needed to obtain a representative sample of patients, including same day medical patients. The data collection period will not exceed eight weeks in 1992.

ii. Institution-level data, which will include cost, revenue, and service statistics, sufficient to permit assignment of costs of patient records and determine payment for outpatient services.

(d) The reasonable cost of compliance with the revisions to this Subchapter net of any cost savings shall be considered by the Commission in accordance with N.J.A.C. 8:31B-3.45.

(e) Upon admission to the hospital, each patient shall be given written DRG information to include at least the following:

1. Patient's right to appeal a DRG assignment and/or inequitable bill to the hospital Utilization Review Committee and the State Certified Utilization Review Organization.

2. Patient's right to a prompt-payment discount with the currently approved discount schedule, and

3. The primary contact person in the hospital for DRG related problems.]

8:31B-2.3 Billing form

(a) The UB-82 is a multi-part form set printed in green ink. Form sets will be composed of three [payor] **payer** copies and one or more hospital copies. If more than three [payors] **payers** are involved, a second bill will be required. Detailed specifications are included with the UB-82 completion guidelines.

(b) (No change.)

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8:31B-2.4 Guidelines for completion of the patient billing and abstract form

(a) Procedural guidelines for completing the patient billing and abstract form follow:

- 1. (No change.)
- 2. Specific instructions for Blue Cross, Medicaid, and other [payers] payers will be provided by those [payors] payers.
- 3. (No change.)

(b) Billing timelines requirements are as follows:

1. A UB-82 must be completed, [and] finalized and submitted to the Data Intermediary for each patient within 30 days of discharge of the patient.

2. Where claims administration and cash flow considerations would dictate a more current billing than the 30 day requirement, a preliminary version of the UB-82 containing only those items required [in (a) above] for the particular payer need be utilized at the time of billing [and such information is sufficient to adjudicate a claim for prompt payment discount]. In interim billing cases, it is [necessary] required that the completed patient billing and abstract information [noted in N.J.A.C. 8:31B-2.2(c) must] be submitted to the appropriate [Date] Data Intermediary in compliance with the Data Intermediary time limits and the Department of Health Data Requirements (see N.J.A.C. 8:31B-2.5(g). Data items [affecting DRG assignment, and] reported to the data intermediary for transmission to the Department of Health, shall not differ from data upon which payment was based.

8:31B-2.5 Health data submissions to the Department of Health

(a) A data intermediary shall be selected as follows:

1. A data intermediary is an approved data processor responsible for collecting, editing, generating selected reports, and submitting the [billing and abstract] UB-82 data to the Department of Health.

2. A single data intermediary shall be chosen by each hospital [from the NJDOH approved list of data processors,] and shall be responsible for all patients regardless of [payor] payer class. In the event that it becomes necessary to approve additional data processors, the Department will promulgate an approved list of data processors.

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

[(d) Audit requirements will be conducted as follows:]

[1.](d) To assess the accuracy and reliability of the data provided to the Department of Health, the Department of Health shall periodically audit selected records in the hospital with no attempt to tie together patient names and patient identification numbers at the Department of Health.

[2. The results of any audit shall be used to estimate the impact on the assignment of DRGs and the Commissioner shall make appropriate adjustments to the case-mix and reconciliation of the period or take appropriate corrective action subject to review and approval by the Hospital Rate Setting Commission.]

(e) Data shall be edited as follows:

1. The data received by the intermediary from the hospital must be edited prior to submission to the Department of Health.

i. The edits to be performed shall be agreed upon and confirmed by amendments to the current memorandum of understanding between the Department of Health and the Data Intermediaries and approved by September 1, [1984] 1993.

2.-3. (No change.)

(f) Reports shall be produced as follows:

1.-2. (No change.)

[3. A single intermediary may be selected from among the approved intermediaries to produce these reports. In such a case, all other intermediaries will transmit the data for their hospitals to the appropriate intermediary in a timely manner.]

[4.]3. (No change in text.)

[5.]4. The ultimate responsibility for the completeness and accuracy of UB-82 data submitted to the Department of Health [pursuant to N.J.A.C. 8:31B-3.45 and N.J.A.C. 8:31B-4,] rests with the hospital.

[6.]5. Upon request of a [payor] payer, the final [UB-PS] UB-82 information shall be provided to the [payor] payer, for its own cases, by the [UB-PS] UB-82 Intermediary(ies).

(g) Data shall be submitted to the Department of Health as follows:

1. (No change.)

2. Records not received by the Department of Health (including corrections of fatal errors), within the time frames specified, [shall not be included in the hospital's Final Reconciliation and the direct costs associated with them shall be foregone by the Hospital] shall be subject to a penalty of \$10.00 per record. For purposes of calculating the penalty, the total UB-82 records submitted will be compared to the total admissions and/or discharges reported on the Medicare cost report and/or Hospital Cost Forms submitted to the New Jersey Department of Health. A five percent variance will be allowed. The Department shall provide 30 days notice of its intent to close the data base, and no additional cases shall be added after that time[, except under the provisions cited in N.J.A.C. 8:31B-3.73].

3. (No change.)

(h) (No change.)

(i) The intermediary(ies) shall charge the hospitals a maximum amount of \$1.26 per discharge to process hospital UB-82 data.

8:31B-3.70 [(Reserved)] Revenue Cap

(a) The Hospital Rate Setting Commission will establish the maximum amount a hospital may collect in revenues in 1993 from all payers.

(b) Collected revenue will be calculated as follows:

Gross Patient Service Revenues	_____
Less Excluded Services	_____
Less Current Year Payer Allowances	_____
Less Medicare Allowances	_____
Less Uncompensated Care	_____
Less Personnel Health Allowance	_____
Less Medical Denials Allowances	_____
Less Nursing Home Placement Allowances	_____
Less Courtesy Adjustments	_____
Collected Revenue	_____

(c) For the purposes of (b) above:

1. Gross patient service revenues shall include charges for all patients receiving routine ancillary and ambulatory services during 1993, including those receiving charity care.

2. Excluded services as defined in N.J.A.C. 8:31B-4.61 to 4.67 were not included in the 1993 revenue cap and shall not be included in collected revenue. Separate detail shall be provided on the following services: skilled nursing facility, mobile intensive care unit, outpatient dialysis, excluded ambulatory services.

3. Current year payer allowances reflecting the difference between charges and paid amounts shall be displayed separately for each payer comprising more than five percent of gross revenue.

4. Uncompensated care is defined in N.J.A.C. 8:31B-4.38, and shall be reported without an offset for Medicaid disproportionate share payments. Bad debt shall be reported net of recoveries from bad debt and SOIL (Setoff of individual liability, pursuant to N.J.A.C. 8:31B-4.40 and N.J.A.C. 18:35-2).

5. Allowances for personnel health, medical denials and nursing home placement shall be calculated consistent with N.J.A.C. 8:31B-4.15.

6. Allowances exclude prior year over and undercollections. All third party retroactive payments or settlements shall also be excluded.

7. Funds related to the charity care, other uncompensated care, hospital relief fund and mental health subsidies shall not be included in these amounts. Subsidy funds shall not be reflected in the cap amounts.

(d) Hospitals shall submit the information for the year ended December 31, 1993 outlined in (b) above by May 31, 1994, in a format to be supplied by the Department, accompanied by an auditor's agreed upon procedures report. The auditor's report shall comment on classification of allowances and revenues based on the above definitions. The auditor shall trace and agree amounts to the general ledger. Hospitals shall also submit the information outlined in (b) above, in a format to be supplied by the Department, 60 days after the end of each of the first three quarters during 1993, for the purposes of monitoring. For the purposes of calculating com-

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pliance with the revenue cap, the Department will calculate a reasonable estimate of amounts needed to complete the calculation under (b) above if the required data are not submitted by this date or if data is submitted in other than the required format.

(e) The Department will conduct an audit of the items specified in subsection (b) for reasonableness, taking into account the hospital's experience in earlier years, billing information and other applicable data.

(f) If a hospital's collected revenue, as defined in (b) above, exceeds the 1993 revenue cap as approved by the Hospital Rate Setting Commission by more than one percent, the Department will calculate a penalty equal to the total excess. The percentage for each hospital is calculated by dividing the excess by the cap.

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Proposed Amendments: N.J.A.C. 9:11-1.1, 1.2, 1.4, 1.6, 1.10, 1.22 and 1.23

Authorized By: Board of Directors of the Educational Opportunity Fund, Delbert Payne, Chairperson.

Authority: N.J.S.A. 18A:71-33.

Proposal Number: PRN 1993-37.

Submit comments by May 19, 1993 to:
Valerie Van Baaren, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund Program is open to all students from educationally and economically disadvantaged backgrounds. Participants in the program are eligible to receive financial aid and other support services for attending institutions of higher education in New Jersey.

The proposed amendments to the general provisions for the overall administration of State grant and scholarship programs, N.J.A.C. 9:11-1, are primarily intended to provide clarification in the rules in such areas as student eligibility as it pertains to New Jersey residency, independent/dependent student status, award payment and refunds, verification of family financial data and students' total allowable financial aid package, institutional verification and standards for satisfactory academic performance and progress as well as part-time status. The proposed changes are identical to those technical changes recently adopted for the Tuition Aid Grant (TAG) program (see 24 N.J.R. 4373(a)). The proposed amendments do not change the intended substance of the rules but merely provide a better understanding for students and institutions of the necessary requirements in qualifying and maintaining state financial assistance. In keeping with the above, the following specific rules within N.J.A.C. 9:11-1 are being cited with a brief explanation for the proposed amendments as presented in this proposal notice.

N.J.A.C. 9:11-1.1 Student eligibility: Additional text has been added to clarify students' eligibility as it pertains to defining the term "institution" of enrollment.

N.J.A.C. 9:11-1.2(b), Student residency: Additional text has been added to clarify students' continued residency status and to protect the eligibility of those students who received State grants or scholarships before their parents' change of domicile outside of New Jersey.

N.J.A.C. 9:11-1.4, Dependent/independent student defined: If a U.S. citizen does not meet the general definition of an independent student, he or she must submit documentation to the financial aid administrator to support the independent status. By deleting subparagraph (b)7iii, foreign nationals will be treated in the same manner as U.S. citizens. This deletion does not deny the right of foreign nationals to be con-

sidered independent but merely equalizes their treatment for independent student status with that of U.S. citizens.

N.J.A.C. 9:11-1.6(c), Verification of financial eligibility: The deletion and replacement of the word "will" with the word "may" is to clarify for students and institution that not every student's file is verified through the comparison of information reported on income tax returns and other documentation. Rather, the verification process is made on a case-by-case basis.

N.J.A.C. 9:11-1.10(b)3, Academic progress: Because institutional academic progress policies do not change annually, this additional text permits institutions to provide copies of such standards only when changes occur and deletes the provision of submission every academic year. This amendment reduces the administrative burden on the participating institutions.

N.J.A.C. 9:11-1.22, Refunds and repayment of disbursements made to students: The amendment to subsection (d) provides clarification of the refund period when a student reduces his or her full-time course load and aligns the terminology with that used in college catalogs. Also, in accordance with institutional recommendations, subsection (f) is being deleted since it does not provide any further clarification to this subsection but rather only adds confusion to the refund issue being presented.

N.J.A.C. 9:11-1.23, Part-time students: The deletion and replacement of the word "will" with the word "shall" is to maintain the consistency of the language used.

Social Impact

These technical amendments to the EOF Financial Aid Guidelines do not change the substance of the rules of the program, which provides financial aid to students from educationally and economically disadvantaged backgrounds to attend institutions of higher education in New Jersey. As discussed in the Summary, the proposed changes parallel the technical amendments to the Tuition Aid Grant (TAG) rules that have been adopted by the Student Assistance Board. The changes are intended to clarify and standardize wording and to update rules in keeping with prior statutory changes and current administrative practice. It is anticipated that this clarification will facilitate program operation in general and specifically in the area of student residency status (N.J.A.C. 9:11-1.2(b)), the equalization of treatment of foreign nationals for independent student status with that of U.S. citizens (N.J.A.C. 9:11-1.4(b)7iii) and the clarification of the refund issue (N.J.A.C. 9:11-1.22(f)). None of the proposed changes affects eligibility for the EOF program.

Economic Impact

The proposed amendments clarify wording and do not affect eligibility or the amount of the financial aid grants. They do not have a direct impact on the total number of awards, or total costs, associated with the program because the maximum enrollment is limited by the level of appropriations for the number of students funded by the program.

Regulatory Flexibility Statement

A regulatory analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments apply only to public and independent colleges and universities in New Jersey.

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

9:11-1.1 Student eligibility

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

(c) To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1. (No change.)

2. Meets the financial criteria established in [sections 5 and 6 of this subchapter] **N.J.A.C. 9:11-1.5 and 1.6.**

3. (No change.)

4. As an undergraduate student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to an undergraduate degree or certificate [in an institution] **in an eligible institution as defined in N.J.S.A. 18A:71-47** of collegiate grade in New Jersey approved or licensed by the State Board of Higher Education and participating in the EOF Program. Degree or certificate programs must have a minimum requirement equal to the

HIGHER EDUCATION

PROPOSALS

equivalent of 24 semester hours and be at least one academic year in duration. An eligible student must exhibit evidence for potential success in college, but:

i.-iv. (No change.)

5. As a graduate or professional school student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to a graduate degree or certificate at an institution of collegiate grade in New Jersey approved or licensed by the State Board of Higher Education and participating in the EOF Program, provided that the student has not already received a graduate or professional degree at the same level of study that he or she is applying for. [graduate] **Graduate** EOF degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration.

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

9:11-1.2 Student residency

(a) (No change.)

(b) A dependent student as defined in N.J.A.C. 9:11-1.4 is presumed to be a legal resident of the state which his[] or her parent(s) or guardian(s) are residents. A dependent student whose parent(s) or guardian(s) are not legal residents of New Jersey is presumed to be in the state of the temporary purpose of obtaining an education. Any dependent student as defined in N.J.A.C. 9:11-1.4, who is domiciled in this state and who is enrolled as an EOF student in an institution of higher education in New Jersey, shall continue to be eligible for participation in the EOF Program 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.**

9:11-1.4 Dependent/independent student defined

(a) (No change.)

(b) Except as provided in (c) below, an individual meets the requirements of this subsection 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 the purpose of receiving financial assistance under the E.O.F. Program 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 is from a foreign country but has established permanent residency in the United States, is a refugee or has received political asylum, and complies with the provisions of subsection (b)6 above except for the income requirement set forth therein. For the purposes of eligibility under this subparagraph, the student's parents must reside outside of the United States;

iv.iii. (No change in text.)

v. The student was considered an independent student for the purposes of New Jersey state student assistance programs during the 1986-87 academic year, and complies with provisions of (b)6 above, except for the resource requirement set forth therein. This provision will be effective for the 1987-88 academic year only;

vi.iv. (No change in text.)

(c)-(e) (No change.)

9:11-1.6 Verification of financial eligibility

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

(c) Students who have been found eligible to receive student assistance 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 a financial aid form approved by the EOF Board and Student Assistance Board [will] **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.

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

9:11-1.10 Academic progress

(a) (No change.)

(b) Eligibility criteria for E.O.F. Article III Student Grants is as follows:

1.-2. (No change.)

3. Students and institutions shall have the right to appeal the denial of **State financial [aid] assistance** based upon these guidelines through the established appeal procedures in N.J.A.C. 9:11-1.21. The Executive Director of E.O.F. will consider individual cases and shall have the authority to make such exceptions as unusual circumstances may warrant.

(c) (No change.)

9:11-1.22 Refunds and repayments of disbursements made to students

(a) If a refund is due to a student under the institution's refund policy and the student received **State financial [aid] 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 Treasurer, State of New Jersey, through the Office of Student Assistance:

$$\frac{\text{amount of State financial assistance (minus work earnings) awarded for the payment period}}{\text{total amount of financial aid (minus work earnings) awarded for the payment period}}$$

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

(d) The above formula should be applied if a full-time student reduces his or her academic course load to less than full-time, or a part-time student reduces the number of credits for which he or she is enrolled prior to the [date of full tuition liability is required by the institution] **end of the institutional refund period**. However, if the student reduces his or her academic course [or] load to less than full-time, or reduces the number of credits for which the student is enrolled on less than a full-time basis, after the [date full tuition liability is required by the institution] **end of the institutional refund period**, a refund to the State is not [necessarily] required.

(e) 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 [aid] assistance** package.

[(f)] If the combination of State awards packaged for the payment period is less or equal to the tuition charged for that term, the student cannot receive State assistance greater than the tuition charged for the enrollment period. Conversely, if the combination of State awards packaged for the payment period is greater than the tuition charged for that term, the student can receive State assistance greater than the tuition charged for the enrollment period.]

[(g)] If a cash disbursement has been made by an institution for non-institutional costs from a **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] **Department of Higher Education** 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.

[(h)] (g) (No change in text.)

9:11-1.23 Part-time students

(a) Eligibility for EOF grants [will] **shall** be extended on an annual basis to part-time students upon the approval of the Board of Directors of EOF and the Board of Higher Education depending on the level of appropriated funds.

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

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules

Calculation of Parole Eligibility Terms

Proposed Amendments: N.J.A.C. 10A:71-3.2 and 3.21

Authorized By: New Jersey State Parole Board, Louis

Nickolopoulos, Chairman.

Authority: N.J.S.A. 30:4-123.48(d).

Proposal Number: PRN 1993-235.

Submit comments by May 19, 1993 to:

Robert M. Egles
Executive Director
New Jersey State Parole Board
CN 862
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:71-3.2 modifies the method by which a future parole eligibility date is computed in the case of an inmate who is past eligibility for parole consideration at the time of the initial parole release hearing and who is denied parole. Instead of adding the future parole eligibility term established upon the denial of parole to the book parole eligibility date, the future parole eligibility term would be added to the actual parole eligibility date. It is anticipated that modification in the method of computing the future parole eligibility date will assist an inmate to understand more clearly how the future parole eligibility date is determined. The modification in the method of computing the future parole eligibility date will, however, not result in a date which differs from the future parole eligibility date computed under the present rule.

The proposed amendment to N.J.A.C. 10A:71-3.21 eliminates the authorization for a two-member Board panel to establish, in the case of an inmate past eligible for parole consideration at the time of the initial parole release hearing, a future parole eligibility date which is outside of the prescribed ranges as established in N.J.A.C. 10A:71-3.21(a) or (b) and (c). By the elimination of said authorization, a two-member Board panel would be required to comply with the provisions of N.J.A.C. 10A:71-3.21(d). This section requires that a future parole eligibility date outside of the prescribed ranges as established by N.J.A.C. 10A:71-3.21(a) or (b) and (c) must be established by the unanimous vote of a three-member Board panel or, if the vote is not unanimous, by the majority vote of the full Board.

Social Impact

The proposed amendments will impact on those inmates who are past eligible for parole consideration at the time of the initial parole release hearing and who are denied parole release. The method of computing the future parole eligibility date will be modified. Further, if it is the intent of a two-member Board panel to consider the establishment of a future parole eligibility date which is outside of the prescribed ranges, the inmate will appear before a three-member Board panel. The establishment of a future parole eligibility date which is outside of the prescribed ranges must be established by the unanimous vote of the three-member Board panel. If the vote is not unanimous, the future parole eligibility date in the inmate's case will be established by the majority vote of the full Board.

The proposed amendments will impact on the Board's parole counselor staff. The parole counselor staff will be required to implement and utilize a new method of computing a future parole eligibility date in the cases of inmates who are past eligible for parole consideration at the time of the initial parole release hearing and who are denied parole release.

The proposed amendment to N.J.A.C. 10A:71-3.21 will impact on the Board members. In order to establish a future parole eligibility date which is outside of the prescribed ranges in the case of an inmate who is past eligible at the time of the initial parole release hearing, a three-member Board panel hearing must be convened at the institution where the inmate is confined. If the three Board members cannot unanimously agree on the establishment of the future parole eligibility date, the

inmate's case must be referred to the full Board for the establishment of the future parole eligibility date. Such a case would be reviewed by the full Board at the Board's monthly meeting.

Economic Impact

The proposed amendments will have no economic impact on the inmate population or the Department of Corrections. There may be a minimal economic impact on the Board as a result of the mileage expenses that may be incurred due to the convening of three-member Board panel hearings in certain inmate cases.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments affect the calculation of parole eligibility terms and the scheduling of future parole eligibility dates for adult inmates. Therefore, a regulatory flexibility analysis is, therefore, not required.

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

10A:71-3.2 Calculation of parole eligibility terms

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

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1.-7. (No change.)

8. Where the inmate's actual eligibility date has passed at the time of the initial parole release hearing and the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book date shall be established by adding the additional term to the actual eligibility date and by including, in the case of an adult inmate, commutation credit based on the additional term only.

[8.]9. (No change in text.)

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

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

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

[(e) Upon determining to deny parole to an inmate who has been in continuous confinement and who was past eligible at the time of the initial parole release hearing, a two-member Board panel may establish a future parole eligibility date which differs from the required by the provisions of (a) or (b) and (c) above. In such a case, the provisions of (d) above shall not apply except as follows:
1. If in the opinion of the two-member Board panel denying parole the future parole eligibility date which would be established based on (a) or (b) and (c) above and the time period from the current book eligibility date to the date of the initial parole release hearing is clearly inappropriate.]

Recodify existing (f)-(j) as (e)-(i) (No change in text.)

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF ACCOUNTANCY

Biennial Renewal Fee for Inactive or Retired Licensees

Proposed Amendment: N.J.A.C. 13:29-1.13

Authorized By: Board of Accountancy, John J. Meade, Executive Director.

Authority: N.J.S.A. 45:2B-6(g) and 45:2B-17.

Proposal Number: PRN 1993-236.

Submit written comments by May 19, 1993 to:

John J. Meade, Executive Director
Board of Accountancy
Post Office Box 45000
Newark, New Jersey 07101

LAW AND PUBLIC SAFETY

PROPOSALS

The agency proposal follows:

Summary

The Board of Accountancy proposes to reduce the biennial license renewal fee for retired or inactive licensees to half the regular fee: \$40.00 instead of \$80.00. The Board believes that many older or disabled persons wish to retain their hard-earned professional status, but may find the full fee financially burdensome. Also, the cost to the Board of maintaining this type of licensure is less than other categories entail, since there is no checking of credentials or similar tasks that require staff time.

Social Impact

Reduction of the cost will benefit retired or inactive accountants by enabling them to retain licensure at lesser expense than presently. There will be no impact upon the public, or upon the Board, since such licensees require a minimum of administrative effort. For example, the task of assuring that a certain level of professional preparation has been attained and properly documented is no longer necessary, nor are these licensees likely to engender disciplinary actions.

Economic Impact

The economic impact of this proposed amendment will be positive for retired or inactive accountants, in that it will save them half the present cost of license renewal. This reduced expense may be a significant factor for many individuals, especially retirees, who wish to retain their formal relationship with the profession. The proposed amendment is not expected to have any appreciable effect upon Board income, because the slight loss of revenue may well be offset by increased renewal of licensure by retired or inactive accountants, some of whom may have been discouraged by the higher fee. The fee reduction is further justified by the fact that minimal staff time is needed to handle this category of licensure.

Regulatory Flexibility Statement

Since the proposed amendment concerns only those individuals who are retired from or inactive in the practice of accounting, it does not affect presently operating small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is, therefore, not required.

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

13:29-1.13 Fees

(a) Fees for original applications, examinations, reexaminations and renewals, for certified public accountants, public accountants, corporations, partnerships, professional corporations, and for certified public accountants' license by endorsement are as follows:

1.-10. (No change.)

11. Late renewal fee: \$50.00[.];

12. **Biennial renewal, retired or inactive licensees: \$40.00.**

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PHARMACY

Fees

Proposed Amendment: N.J.A.C. 13:39-1.3

Authorized By: Board of Pharmacy, H. Lee Gladstein, Executive Director.

Authority: N.J.S.A. 45:14-26.2 and 45:1-3.2.

Proposal Number: PRN 1993-221.

Submit written comments by May 19, 1993 to:

H. Lee Gladstein, Executive Director
State Board of Pharmacy
Post Office Box 45013
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Pharmacy is proposing a general increase in its fee schedule, N.J.A.C. 13:39-1.3, in order to cover increased investigative, administrative and program costs incurred by the Board. Amendments

to the fee schedule include the establishment of new fees as outlined in detail below and an increase in the biennial registration fee for pharmacists from \$85.00 to \$140.00 and in the annual permit fee for pharmacies from \$85.00 to \$175.00.

All professional and occupational licensing boards within the scope of Subtitle 1 of Title 45 are required to be self-funding; that is, operating costs must be met through licensing and other fees. N.J.S.A. 45:1-3.2 also requires the boards to assess fees which are estimated not to exceed the amounts required to fund board operations. The proposed amendments to the Board's fee schedule implement these statutory requirements.

Amendments are also proposed to reflect a determination of the Division of Consumer Affairs to amend the fee schedules of the professional boards which it regulates in order to accurately and specifically identify the actual elements for which a board incurs expenses and in order to create within the Division a uniform method of assessing and collecting fees from the professional boards. In that regard, certain fees have been renamed for clarification purposes. In addition, in connection with pharmacist registration, the proposal establishes a separate fee for the law examination and new fees for application, late renewal, replacement wall certificates, continuing education review, continuing education program provider review, and yearly distribution of the Board's minutes and agenda. An initial registration fee has also been established and pro-rated on an annual basis for the benefit of individuals applying during the second year of a biennial renewal period. For pharmacies, new fees have been established for replacement wall permits and late renewal of permits.

Social Impact

The proposed fee schedule will affect all applicants, current licensees and permit holders. The proposed increases are necessary to enable the Board to continue to discharge its statutory obligations, which include evaluating applicants for licensure and permits, investigating complaints and initiating appropriate disciplinary actions. The new fee schedule will provide the Board with the minimum financial resources necessary to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed fee increases should yield revenues sufficient to cover the Board's rising expenses. As stated, the Board is required pursuant to N.J.S.A. 45:1-3.2 to raise funds to cover its administrative expenses. In accordance with the statute, the sums to be raised are estimated not to exceed the amount required to cover all proper expenses incurred by the Board. In the unlikely event excess funds are raised, they may be carried to the next biennial period for the benefit of the Board.

The proposed amendments will have a direct economic impact on applicants, current licensees and holders of pharmacy permits in that they will have to pay higher licensing and permit fees. The Board points out, however, that the fees proposed to be amended hereunder have not been raised in over 10 years and are in line with the general increase in the cost of living.

The proposed amendments may have an indirect economic impact upon the consumer to the extent the proposed fee increases may be passed along to the consumer as a cost of doing business. However, the Board does not view this as likely, since, as a business expense, these fees are reasonable.

Regulatory Flexibility Analysis

The Board of Pharmacy anticipates that during its next biennial renewal period it will license approximately 9,900 pharmacists and issue approximately 1,960 pharmacy permits. It is estimated that many pharmacy permit holders would be categorized as "small businesses" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requirements consist of paying increased examination, licensing and permit fees in a timely manner. There are no reporting or recordkeeping requirements, and no professional services are needed. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact upon small businesses has been implemented.

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

PROPOSALS

Interested Persons see Inside Front Cover

LAW AND PUBLIC SAFETY

13:39-1.3 Fee schedule

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

1. For pharmacists as follows:

i. Application for registration \$125.00.

[i.]ii. Examination: \$50.00 plus the cost of the National Association of Boards of Pharmacy Licensing Examination (NABPLEX).

[(1) Repeat of law examination only: \$25.00.]

(1) **Law examination 60.00.**

[ii.]iii. Reciprocal [registration] fee 125.00.

[iii.]iv. Reinstatement of licensure: [\$42.50 per year up to 5 years.] **225.00**

plus application fee.

v. Initial registration fee:

(1) **If paid during the first year of a biennial renewal period: 140.00.**

(2) **If paid during the second year of a biennial renewal period: 70.00.**

vi. Biennial registration [85.00] **140.00**

vii. [Duplicate renewal: 5.00.]

Replacement registration certificate 25.00.

viii. Transfer of grades: [50.00] **125.00.**

ix. Late renewal fee: **100.00.**

x. Replacement wall certificate: **40.00.**

xi. Continuing education review fee: **10.00.**

xii. Continuing education program: provider review fee: **50.00.**

xiii. Yearly fee for distribution of minutes and agenda: **60.00.**

2. For pharmacies as follows:

i. Pharmacy permits:

(1) [New: 200.00]

Application for permit 275.00.

(2) Annual renewal: [85.00] **175.00.**

(3) Change of ownership: [200.00] **275.00.**

(4) Change of location [200.00] **275.00.**

ii. [Duplicate permit: 50.00]

Replacement permit certificate 25.00.

iii. **Replacement wall permit: 25.00.**

iv. **Late renewal fee: 100.00.**

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF PHARMACY**

Information on Prescription Labels

Proposed Amendment: N.J.A.C. 13:39-5.2

Authorized By: Board of Pharmacy, H. Lee Gladstein, Executive Director.

Authority: N.J.S.A. 45:14-3 and 45:14-17.

Proposal Number: PRN 1993-237.

Submit written comments by May 19, 1993 to:

H. Lee Gladstein, Executive Director

Board of Pharmacy

Post Office Box 45013

Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Pharmacy proposes to amend N.J.A.C. 13:39-5.2 by adding a new subsection (a) that sets forth and clarifies the information to be included on a prescription label. In addition to listing items required pursuant to N.J.S.A. 45:15-14, such as the name and address of the pharmacy, the date of dispensing, the prescriber's name, etc., the proposed subsection requires inclusion of the strength of the prescription, when appropriate, and the quantity. It also specifies that if a generic substitute is being dispensed, the manufacturer's or distributor's name

must appear. The label may include reference to a brand name as well as the generic name, provided there is wording which clearly states that the generic drug is a substitute for the brand name drug. The latter statement is considered necessary by the Board because it has become aware of instances where a licensee will write on a prescription label the brand name followed by "(g)" to indicate that it is a generic substitute. This practice is not sufficiently informative; it may mislead the consumer into assuming that the bottle contains the branded product rather than the generic. The Board believes that consumers, particularly the elderly, have a need to exactly identify the drugs they are using, and that this proposal addresses a consumer safety issue by eliminating the possibility of confusion.

Social Impact

The proposed amendment is expected to have a positive social impact since any misunderstanding on the part of the consumer as to the exact contents and identity of a prescription should be eliminated. Also, licensees will now have a precise checklist with which to work in providing an accurate and informative label for the container.

Economic Impact

No appreciable economic impact will be caused by the proposed amendment; inclusion of almost all of these items on a prescription label is already standard practice in New Jersey pharmacies. Addition of the manufacturer's or distributor's name where a generic drug is being dispensed cannot take more than seconds to accomplish, and equally insignificant is the time needed to add the few required words where both brand name and generic name are mentioned.

Regulatory Flexibility Analysis

The Board of Pharmacy presently licenses 10,811 individuals, all of whom are subject to this rule, and 2,018 pharmacies, most of them small businesses, as the term is defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed amendment does not impose reporting or recordkeeping requirements, and the services of other professionals are not needed in order to comply. There are no capital costs or annual costs. The amendment merely requires exact identification of the contents and source of a prescribed pharmaceutical product. Since the purpose of the amendment is to protect the public health by reducing confusion and providing specific label information regarding a drug that will be either ingested or applied by consumers, no exemption is possible for any small business.

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

13:39-5.2 [Lack of directions on original prescriptions] **Prescription labels**

(a) A licensee shall include on the prescription label:

1. **The name, telephone number, and complete address of the dispensing pharmacy;**

2. **Either the brand name or the generic name of the medication, unless specified to the contrary by the provider; if the generic name is used, the manufacturer's or distributor's name shall also appear. Alternatively, the label may carry both the generic name and the brand name, provided that the brand name is preceded by the words "generic substitute for. . . ." or similar terminology;**

3. **The strength of the prescribed medication when appropriate;**

4. **The quantity;**

5. **The date of dispensing;**

6. **The identifying number under which the prescription is recorded in the pharmacy's files;**

7. **The prescriber's name; and**

8. **Directions for use, if included on the original prescription; otherwise, as directed in (b) below.**

Recodify existing (a) and (b) as (b) and (c) (No change in text.)

(a)

**DIVISION OF CONSUMER AFFAIRS
AUDIOLOGY AND SPEECH-LANGUAGE
PATHOLOGY ADVISORY COMMITTEE**

**Audiology and Speech-Language Pathology Advisory
Committee Rules**

**Proposed Readoption with Amendments: N.J.A.C.
13:44C**

Authorized By: Emma N. Byrne, Director, Division of Consumer Affairs.

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

Proposal Number: PRN 1993-238.

Submit written comments by May 19, 1993 to:

Marianne Kehoe, Executive Director
Audiology and Speech-Language Pathology Advisory
Committee
Post Office Box 45002
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules of the Audiology and Speech-Language Pathology Advisory Committee ("Committee"), found at N.J.A.C. 13:44C, will expire on July 18, 1993. This chapter was initially promulgated on July 18, 1988, in order to implement the provisions of the Audiology and Speech-Language Pathology Licensing Act, N.J.S.A. 45:3B-1 et seq. (the "Act").

The Act requires the Director of the Division of Consumer Affairs ("Director") to regulate the practice of audiology and speech-language pathology for the protection of the health, safety and welfare of the citizens of this State. The rules proposed for re-adoption establish standards of professional conduct as well as educational and continuing educational requirements for licensure, temporary licensure and license renewal. In compliance with the Executive Order, the Committee and the Director have reviewed these rules and have determined, for the reasons set forth more specifically below, that some amendments are necessary. As amended, the rules continue to be necessary, reasonable and proper for the purposes for which they were originally intended.

Following is a brief summary of each of the 10 subchapters of N.J.A.C. 13:44C. The summary includes a description of the amendments to each subchapter and the rationale therefor.

Subchapter 1 consists of one section requiring each licensee to notify the Director in writing within 60 days of any change in office address or office telephone number.

Subchapter 2 includes a section concerning election of officers and a section setting forth the Committee's fee schedule.

Licensure requirements are set forth in subchapter 3. As required by N.J.S.A. 45:3B-8(b), N.J.A.C. 13:44C-3.2 has been amended to reflect professional standards adopted by the American Speech-Language-Hearing Association's Council on Professional Standards effective January 1, 1993. The amendment requires an applicant who earns a master's degree subsequent to January 1, 1993 to acquire 75 semester hours of academic credit. An applicant who earned a master's degree prior to January 1, 1993 must have acquired 60 credits consistent with the existing standard. Clinical internship standards in this section have been recodified and updated in a new N.J.A.C. 13:44C-3.3 entitled "Requirements for clinical internship." Subsections (a) through (e) contain information previously found in N.J.A.C. 13:44C-3.2. Subsection (f) states that the supervisor is responsible for the professional practices of the temporary licensee, and subsection (g) requires a minimum of one hour of on-site supervision, not less than once a month, for each 20 hours of services rendered by the supervisee. These new provisions reflect current national standards, as required by N.J.S.A. 45:3B-8.

Subchapter 4 is reserved. Amendments to subchapter 5, which sets forth application requirements, correct the cross-reference citation to clinical supervision standards, and, consistent with N.J.S.A. 45:3B-14(b), clarify that an applicant for temporary licensure may submit proof of the equivalent of a master's degree.

Continuing education requirements are outlined in subchapter 6. N.J.A.C. 13:44C-6.3, which presently prohibits credit carryover, has been amended to permit a five-credit carryover if the credits were earned

within the six months immediately prior to license renewal. The amendment reflects current Division policy to encourage continued acquisition of credits by permitting a carryover of credits earned within a reasonable time prior to the expiration of the biennial renewal period.

Subchapter 7 prohibits an unlicensed individual who has a business interest in a corporation or other organization which provides audiology or speech-language pathology services from providing direct clinical services. N.J.A.C. 13:44C-7.2 which lists persons exempt from the Act, has been amended to delete the word "language" from the title "speech-language correctionist." The correct title is "speech correctionist."

Subchapter 8, Unprofessional Conduct, consists of three sections. N.J.A.C. 13:44C-8.1 addresses business practices such as patient records, recordkeeping, record release, preparation of written reports, preparation of insurance forms, posting of licenses, advertising and excessive fees. The word "treatment" in paragraphs (a)6 through 8 has been replaced by the more inclusive word "services" since the requirements set forth in these paragraphs apply to evaluations as well as treatments. Amendments have been made to paragraph (a)11 consistent with proposed new subsection (b), which would permit both lay and expert testimonials as long as they are rendered within the stated parameters. Any objective statement of fact appearing in a testimonial must be substantiated upon request by the Board. The Committee and the Director believe that permitting testimonial advertising will remove unnecessary advertising restrictions and allow licensees to make additional valuable information concerning their services available to the public. The proposed standards for the offering of testimonial advertising will prevent deceptive and misleading practices. To enable the consumer to more readily identify licensees, proposed new subsection (b) also requires all advertisements to contain the license number of the licensee or the licensee in charge. The additional requirement that the licensee retain copies of all advertisements for three years will facilitate Committee enforcement efforts.

N.J.A.C. 13:44C-8.2, Professional practices, details acts or professional practices which the Committee and the Director will deem to be unprofessional conduct. N.J.A.C. 13:44C-8.3, Scope of practice, is proposed to be codified as N.J.A.C. 13:44C-8.2(b). N.J.A.C. 13:44C-8.3 does not concern scope of practice but rather prohibits the representation of a speech-language pathologist or audiologist as a physician. It therefore should appear in N.J.A.C. 13:44C-8.2 with other Committee rules regarding unprofessional conduct.

Subchapter 9 sets forth the acts or practices which the Director will deem to be the unlicensed practice of audiology or speech-language pathology.

N.J.A.C. 13:44C-10.1 details the circumstances under which the Director may suspend or revoke a license, assess a civil penalty or issue a reprimand, and N.J.A.C. 13:44C-10.2 sets forth reinstatement requirements.

Social Impact

The rules proposed for re-adoption establish standards of professional conduct as well as educational and continuing educational requirements for licensure, temporary licensure and license renewal. These professional standards have enabled the Director and the Committee to ensure that members of the public who are recipients of the services regulated by the Act are protected from unsafe, fraudulent and deceptive practices. It is therefore anticipated that re-adoption of the existing rules will have an advantageous social impact upon consumers, licensees, permit holders and the Board's own regulatory process in that these high standards will be maintained.

Proposed amendments to the licensure requirements set forth in subchapters 3 and 5 will assure the consumer that, as required by N.J.S.A. 45:3B-8, all licensees meet current nationally recognized educational and clinical internship standards.

Proposed amendments to subchapter 6 providing for continuing education credit carryover will provide flexibility for the licensee who wishes to take more than the required number of credits in one biennial period. At the same time, limiting the carryover to five credits will ensure the consumer that the licensee's professional education is current.

Proposed amendments to subchapter 8 regarding testimonial advertising will permit licensees to communicate information to consumers in a new format and, at the same time, will protect the consumer against deceptive and misleading statements. The additional information which may be provided to the consumer will allow for improved decision making in the selection of audiologists and speech-language pathologists. The proposed requirement that all advertisements contain the license number of the licensee or licensee in charge will enable the consumer

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to more readily identify licensees, and the requirement that the licensee retain copies of all advertisements for three years will facilitate Committee enforcement efforts.

Economic Impact

The proposed readoption of the Committee's fee schedule will obviously have an economic impact upon the professional. However, since the fee schedule is proposed for readoption without change, the readoption does not increase the economic burden upon the licensee. The Director also points out that pursuant to N.J.S.A. 45:1-3.2, all professional licensing and occupational boards are required to be self-funding; that is, operating costs must be met through licensing and other fees. The repropoed fee schedule is necessary to enable the Committee to meet its operating expenses.

Compliance with proposed amendments to subchapter 3—which require an applicant for licensure after January 1, 1993 to have obtained 75, rather than 60, hours of academic credits—includes the cost of an additional 15 hours of academic credit. As stated, however, pursuant to N.J.S.A. 45:3B-8, the Director is required to establish educational requirements which are consistent with current nationally recognized professional standards. Additional amendments proposed to subchapter 3 clarify current clinical supervision standards. The amendments do not represent any major departures from current practice and thus are not expected to result in increased costs either to the licensee or the public. Again, these amendments are required by statute.

Amendments to subchapters 5 and 7 are for clarification only. Amendments to subchapter 6 permitting carryover of a limited portion of continuing education credits will have no economic impact on either the licensee or the public.

Finally, to the extent that testimonials provide additional information to consumers to allow for better informed decision making, the proposed amendments to subchapter 8 will enhance competition within the marketplace, to the economic benefit of consumers and licensees. The requirement that all advertisements contain the license number of the licensee is not expected to significantly increase the licensee's advertising costs.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines a small business as "any business which is resident to this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees." To the extent that individual practicing speech-language pathologists and audiologists are considered to be small businesses under the Act, the following analysis applies.

The rules proposed for readoption will apply to all licensees and temporary licensees. The Committee currently licenses 2,287 speech-language pathologists and 376 audiologists and has issued temporary licenses to 52 speech-language pathologists and 11 audiologists.

Compliance requirements for holders of an 18-month temporary license include completion of a supervised clinical internship in the professional area for which the license is sought and adherence to clinical supervision standards set forth in the rules. Compliance requirements for licensees include payment of licensing fees, adherence to minimum practice requirements, and completion of 20 hours of continuing professional education prior to biennial license renewal. Licensees must notify the Director in writing within 60 days of any change in office address or office telephone number and must maintain written, contemporaneous treatment records for seven years from the date of last entry (or, for minors, two years beyond the patient's attainment of the age of majority). The licensee's current license number must appear on all bills and advertising, and the licensee must post a copy of the biennial renewal certificate in a conspicuous place. Written reports, records and written fee schedules must be made available upon request. Equipment must be properly calibrated to nationally recognized standards. Advertising licensees must retain copies of all advertisements for three years.

Professional services needed in order to comply include the services of continuing education instructors.

Compliance costs are described in the Economic Impact statement. As stated therein, many of the requirements in the rules proposed for readoption are statutory and are already a part of a professional's regular practice. The Director considers these requirements to be the minimum necessary to comply with the statute and to protect the health, safety and welfare of the consumer. Accordingly, no exemption from the rules based upon business size is feasible.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:44C.

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

13:44C-3.2 Requirements for licensure

(a) An applicant for licensure shall submit the following to the Advisory Committee:

1. (No change.)

2. [Transcripts] **If the master's degree was earned prior to January 1, 1993, transcripts from one or more accredited educational institutions evidencing the completion of a total of 60 semester hours of academic credit that demonstrate that the applicant has obtained a well-integrated program of course study dealing with the normal aspects of human communication, development and disorders thereof and clinical techniques for evaluation and management of such disorders, as follows:**

i.-v. (No change.)

3. **If the master's degree was earned subsequent to January 1, 1993, transcripts from one or more accredited educational institutions evidencing the completion of a total of 75 semester hours of academic credit that demonstrate that the applicant has obtained a well-integrated program of course study dealing with the normal aspects of human communication development and disorders thereof and clinical techniques for evaluation and management of such disorders, as follows:**

i. **At least 27 of the 75 semester credit hours shall be in basic science coursework as follows:**

(1) **Biological/physical science: three hours;**

(2) **College-level mathematics: three hours;**

(3) **Behavioral and/or social sciences: six hours; and**

(4) **Basic human communication processes, to include course work in each of the following three areas of speech, language and hearing: the anatomic and physiological bases; the physical and psychosocial bases; and the linguistic and psycholinguistic aspects: 15 hours;**

ii. **At least 36 of the 75 semester credit hours shall be in courses that concern the nature, prevention, evaluation and treatment of speech, language and hearing disorders. The courses shall include courses in disorders primarily affecting children as well as disorders primarily affecting adults.**

(1) **At least 30 of the 36 hours shall be in courses for which graduate credit was received, and at least 21 of the 30 graduate credit hours shall be in the professional area for which licensure is sought.**

(2) **For a license in speech-language pathology, at least 30 of the 36 semester credit hours of professional coursework shall be in speech-language pathology. At least six of the 30 credits shall be in speech disorders and at least six shall be in language disorders. At least six of the 36 semester credit hours of professional coursework shall be in audiology, with three of the six in hearing disorders and hearing evaluation and three in habilitative/rehabilitative procedures with individuals who have a hearing impairment.**

(3) **For a license in audiology, at least 30 of the 36 semester credit hours of professional coursework shall be in audiology. At least six of the 30 shall be in hearing disorders and hearing evaluation, and at least six shall be in habilitative/rehabilitative procedures with individuals who have a hearing impairment. At least six of the 36 semester credit hours of professional coursework shall be in speech-language pathology, with three in speech disorders and three in language disorders;**

iii. **A minimum of 25 clock hours of supervised observation of the evaluation and treatment of children and adults with disorders of speech, language or hearing; and**

iv. **A minimum of 350 clock hours of supervised clinical experience with individuals who present a variety of communication disorders. The experience shall have been obtained within the training institution or in one of its cooperating programs. No more than 25 of the clock hours may be obtained from participation in staffings**

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in which evaluation, treatment and/or recommendations are discussed or formulated, with or without the client present.

[3.]4. Satisfactory proof of completion of a clinical internship, in accordance with the provisions of N.J.A.C. 13:44C-3.3, in the professional area for which the license is sought. [Clinical internship shall be under the direct supervision of a person licensed to practice audiology or speech-language pathology, as appropriate, by this State or another state which has standards substantially equivalent to those of this State; or if practicing in an exempt setting or in a State without licensure or comparable requirements, or a person who holds a Certificate of Clinical Competence (C.C.C.) by the American Speech-Language-Hearing Association (ASHA) or its equivalent. The clinical internship shall comprise no less than nine months of full-time professional employment.

i. "Professional employment" means direct clinical work with patients, consultations, recordkeeping, and any other duties relevant to a bona fide program of clinical work.

ii. At least half of the clinical experience shall be in direct clinical contact with persons who have communication disorders. Time spent in supervision of students, academic teaching and research, as well as administrative activity that does not deal directly with management programs of specific patients or clients will not be counted as professional employment in this context.

iii. Full-time employment is defined as a minimum of 30 clock hours of work per week. This requirement also may be fulfilled by part-time employment as follows:

- (1) Work of 15-19 hours per week over 18 months
- (2) Work of 20-24 hours per week over 15 months
- (3) Work of 25-29 hours per week over 12 months

iv. In the event that part-time employment is used to fulfill a part of the clinical internship, 100 percent of the minimum hours of the weekly part-time work requirement must be spent in direct professional employment as defined in (a)3i above.

v. The clinical internship must be completed within a maximum period of 18 consecutive months. Professional employment of less than 15 hours per week will not fulfill any part of this requirement.]

[4.]5. (No change in text.)

13:44C-3.3 Requirements for clinical internship

(a) For purposes of this section, "professional employment" means direct clinical work with patients, consultations, recordkeeping, and any other duties relevant to a bona fide program of clinical work.

(b) For purposes of this section, "full-time employment" means a minimum of 30 clock hours of work per week or part time equivalent employment as follows:

1. Work of 15 to 19 hours per week over 18 months;
2. Work of 20 to 24 hours per week over 15 months;
3. Work of 25 to 29 hours per week over 12 months.

(c) The clinical internship shall comprise no less than nine months of full-time professional employment.

(d) In the event that part-time employment is used to fulfill a part of the clinical internship, 100 percent of the minimum hours of the weekly part-time work must be spent in direct professional employment, and the internship must be completed within a maximum period of 18 consecutive months.

(e) Clinical internship shall be under the direct supervision of a person licensed to practice audiology or speech-language pathology, as appropriate, by this State or another state which has standards substantially equivalent to those of this State. If the clinical internship takes place in an exempt setting or in a state without licensure or comparable requirements, the supervisor shall be a person who holds a Certificate of Clinical Competence (C.C.C.) by the American Speech-Language-Hearing Association (ASHA), or its equivalent.

(f) The supervisor shall be responsible for the professional practices of the temporary licensee.

(g) The supervisor shall provide a minimum of one hour of on-site direct supervision for each 20 hours of direct, face-to-face evaluation or therapeutic services rendered by the supervisee. Supervision shall take place not less than once a month.

13:44C-[3.3]3.4 Waiver
(No change in text.)

13:44C-5.2 Requirements for temporary licensure

(a) (No change.)

(b) An applicant for temporary licensure during a clinical internship shall submit the following to the Advisory Committee:

1.-2. (No change.)

3. A clinical internship plan signed by the applicant and supervisor in compliance with N.J.A.C. 13:44C-[3.2(a)3]3.3;

4. Proof of a master's degree or its equivalent in audiology or speech-language pathology from an accredited college or university acceptable to the Department of Higher Education; and

5. (No change.)

13:44C-6.3 Excess hours [not] credited to subsequent renewal period

In the event that a candidate for license renewal shall complete in two years a number of hours in excess of the number required in N.J.A.C. 13:44C-[4.1, the documented hours] 6.1, a maximum of five hours in excess of those required shall [not] be credited toward license renewal requirements for subsequent years; provided, however, that the five hours were earned within the six months immediately prior to license renewal.

13:44C-7.2 Exemptions

(a) The following are exempt from the provisions of this chapter, pursuant to N.J.S.A. 45:3B-17:

1.-3. (No change.)

4. Any person certified as a speech[-language] correctionist or its successor title, speech-language specialist, by the State Department of Education. However, such person is not exempt under this section for that portion of his or her time spent as a private practitioner or providing services for which a fee may be paid by a recipient of the service.

5.-7. (No change.)

13:44C-8.1 Business practices

(a) The following acts or business practices shall be deemed to be unprofessional conduct:

1.-5. (No change.)

6. Charges for interest on unpaid accounts: Requiring a patient or a third party payor to pay interest on an unpaid account unless the patient has been notified of this policy in writing prior to the initiation of audiology or speech-language pathology [treatment] services.

7. Charges for unkept appointments: Requiring a patient or a third party payor to pay a full or partial fee for unkept appointments unless the patient has been notified of this policy prior to the initiation of audiology or speech-language pathology [treatment] services.

8. Charges for unrecorded [treatment] services: Requiring a patient or a third party payor to pay for any evaluation, testing, treatment or other services not documented in a patient chart.

9.-10. (No change.)

11. Advertising: Use or participation in the use of any form of public communication regarding professional services, via print, electronic media or in-person solicitation, which does not comply with the provisions of (b) below or which contains a false, fraudulent, misleading or deceptive statement or claim. A false, fraudulent, misleading or deceptive statement includes but is not limited to any statement or claim which:

i.-ii. (No change.)

iii. [Contains any personal testimonial or laudatory statement, attesting to the technical quality or technical competence of any service or treatment offered by a licensee] In the case of a testimonial containing an objective, verifiable statement of fact, cannot be verified by the advertiser;

ix.-x. (No change.)

12.-15. (No change.)

(b) The following shall apply in connection with advertising:

1. All advertisements shall contain the license number of the licensee or the licensee in charge.

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2. An advertisement may contain either a lay or an 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.

3. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon.

4. 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.

5. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and failure to do so, if required by the Advisory Committee, may be deemed professional misconduct.

6. Copies of all printed advertisements and video or audio tapes of every advertisement communicated by electronic media shall be retained by the licensee and made available for review by the Advisory Committee 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.

13:44C-8.2 Professional practices
(a) (No change.)

[13:44C-8.3 Scope of practice]
(b) The representation of a speech-language pathologist or audiologist as a physician rendering medical opinion or medical services shall be deemed to be outside the scope of speech-language pathology and audiology and, upon proof that a licensee is engaging in such conduct, he or she may be subject to disciplinary action.

(a)

**NEW JERSEY RACING COMMISSION
Thoroughbred Rules
Daily Triple**

Proposed Amendment: N.J.A.C. 13:70-29.50

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1993-135.

Submit written comments by May 19, 1993 to:
Michael Vukceovich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to the "Daily Triple Rule," N.J.A.C. 13:70-29.50, seeks to remedy what many racing industry followers consider an inequity in the payoff procedures for such races. In a "Daily Triple" race, horses in the dead heat for win are considered as winning horses for the purpose of calculating the pool. The rule, in its present form, calls for an equal distribution of funds in the event of a dead heat for win in any "Daily Triple" race. The proposed amendment calls for the distribution of funds, in the event of a dead heat, to be based on the amount of actual dollars bet on each individual winning horse. The proposed amendment, in calculating such payoff in the same manner as a place pool, will mirror the New Jersey Racing Commission's "Daily Double Rule." See N.J.A.C. 13:70-29.48(q).

Social Impact

The proposed amendment will have a positive social impact to the extent that patrons will now share the pool proceeds in proportion to the amount of winning dollars wagered as to each winning horse.

Economic Impact

The proposed amendment has little economic effect. The amount of money returned to the public will remain constant but the distribution of these funds will become more equitable.

Regulatory Flexibility Statement

The proposed amendment poses no reporting, recordkeeping or other compliance requirements on small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment changes the calculating method for determining winning payoffs in the event of a dead heat in a Daily Triple race. The track associations which would be required to comply with this new calculation method are not small businesses, as each employ more than 100 people. Therefore, a regulatory flexibility analysis is not required.

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

13:70-29.50 Daily Triple

(a)-(l) (No change.)

(m) [In the event of a dead heat for win between two or more horses in any Daily Triple race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.] **If any of the daily triple races result in a dead heat, the payoff will be figured the same as a place pool, that is: first the regulation commission is deducted, then the total amount wagered on the winning combination is deducted, leaving the profit which is divided equally between the holders of the winning combinations.**

(n) (No change.)

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(b)

DIVISION OF PENSIONS AND BENEFITS

**State Health Benefits Commission
Coverage Changes**

Proposed Amendment: N.J.A.C. 17:9-2.4

Authorized By: State Health Benefits Commission,
Patricia Chiacchio, Acting Secretary.

Authority: N.J.S.A. 52:14-17.27.

Proposal Number: PRN 1993-219.

Submit written comments by May 19, 1993 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Personnel Advisory Board requested a proposed rule change that will permit an employee who returns from an approved leave of absence to have his or her State Health Benefits Program reinstated to the coverage level in place prior to his or her approved leave of absence, for his or her dependents, even though such employee opted for lesser coverage during the approved leave of absence. The State Health Benefits Commission felt that such a proposed change was worthwhile. There have been some problems with the current interpretation of the applicable laws or rules that result in the continuation of the dependent coverage maintained during the period of the leave of absence, rather than coverage in effect prior to the leave of absence. This amendment is intended to clarify the process.

Social Impact

The proposed amendment may affect current and future participants within the State Health Benefits Program with dependent health benefits coverage who are on an approved leave of absence and have reduced the coverage within the State Health Benefits Program during the approved leave of absence. The health coverage of eligible dependents may be improved if the employee elects to return them to his or her group coverage.

Economic Impact

Although there appear to be additional costs associated with this proposed amendment through the permitting of "increased" coverage

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for dependents upon the termination of the leave of absence, it is felt that the additional cost would not be significant. The amendment makes clear that the employee returning to employment from a leave of absence is entitled to the dependent coverage in place prior to the leave.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or public employees, this amendment will not have any effect upon small business.

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

17:9-2.4 Coverage changes; exception

(a) An employee may change his or her enrollment and the enrollment of his or her dependents to any type of coverage at any time if such changes result from a change in family, dependency or employment status of the employee or his or her dependents. Such changes will be permitted under the following conditions:

1-7. (No change.)

8. **Upon return to employment from an approved leave of absence. The employee may elect to change coverage to add any eligible dependent(s) who had been removed from this group coverage while the employee was on such leave.**

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

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(a)

CASINO CONTROL COMMISSION

**General Provisions
Professional Practice
The Practice of Law**

Proposed Amendment: N.J.A.C. 19:40-5.2

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

Authority: N.J.S.A. 5:12-63c, 69a and 70k.
Proposal Number: PRN 1993-225.

Submit written comments by May 19, 1993 to:
Mary S. LaMantia, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Act directs the Casino Control Commission ("Commission") to adopt rules prescribing qualifications for professional practice before the Commission. N.J.S.A. 5:12-70k. Pursuant to N.J.A.C. 19:40-5.2, the practice of law before the Commission is limited to attorneys authorized to practice law in New Jersey, or a non-attorney authorized by the Commission to appear pursuant to New Jersey Court Rule R.1:21-1(e) and N.J.A.C. 1:1-5. N.J.A.C. 19:40-5.2(a).

The rule also provides that the Commission may, in its discretion, permit an attorney who is in good standing in another jurisdiction to practice before it in connection with a particular matter, subject to the procedural requirements for such pro hac vice admission in N.J.A.C. 1:1-5.2. The proposed amendment to N.J.A.C. 19:40-5.2(b) accords such discretion to the Chair. This procedural modification should allow for expeditious resolution of pro hac vice applications.

Social Impact

The proposed amendment is procedural only, and is therefore not expected to have any significant social impact other than, as noted above, expediting resolution of pro hac vice applications.

Economic Impact

The proposed amendment is procedural only, and is therefore not expected to have any significant economic impact.

Regulatory Flexibility Statement

The proposed amendment merely effects a change in agency procedure. It will thus not impose any reporting, recordkeeping or compliance requirements on any small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:40-5.2 The practice of law

(a) (No change.)

(b) Notwithstanding (a) above, an attorney admitted in this State who is in good standing but who does not maintain in this State a bona fide office for the practice of law, or an attorney of any other jurisdiction who is in good standing there, may in the discretion of the [Commission] Chair be admitted to practice in connection with a particular matter by complying with the requirements of N.J.A.C. 1:1-5.2 and provided that an attorney authorized to practice law in this State who is in good standing shall also appear of record in and thereby be responsible for the conduct of the admitted attorney in the particular matter and that both such attorneys shall sign all papers submitted or filed in accordance with the regulations of the Commission.

(b)

CASINO CONTROL COMMISSION

**Casino Licensees
Financial Stability of Casino Licensees and
Applicants**

Proposed Amendment: N.J.A.C. 19:43-4.1

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

Authority: N.J.S.A. 5:12-69, 70b, h and l, and 84.
Proposal Number: PRN 1993-226.

Submit written comments by May 19, 1993 to:
Mary S. LaMantia, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission recently adopted a new subchapter, N.J.A.C. 19:43-4, Financial stability of casino licensees and applicants (see 24 N.J.R. 4563(a)). Comments received in response to the proposal objected to the proposed definition of "casino bankroll" in N.J.A.C. 19:43-4.1. It was argued that the exclusions set forth in the proposed definition were too broad and difficult to apply.

It was suggested that casino bankroll should instead be defined as the aggregate closing balances reported in the casino cage and the master coin bank closeouts or summaries, less any non-cash items reported therein. The Commission agreed to so modify the definition upon adoption, simply as a means of "clarifying and simplifying" the intent of the casino bankroll provision. See 24 N.J.R. 4565. Upon review of the adopted definition, the Commission has determined that the modified definition may have in fact effected an unintended change in the application of the casino bankroll criteria set forth in N.J.A.C. 19:43-4.2(b)1. The Commission has thus determined that the definition of casino bankroll originally proposed (see 24 N.J.R. 3225(a)) should appropriately be utilized in the new rules.

Social Impact

The rules set forth in N.J.A.C. 19:43-4 benefit both the casino industry and the regulatory agencies by clarifying and structuring the considerations involved in determining financial stability in accordance with

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N.J.S.A. 5:12-84a. Such beneficial impact should be furthered by modifying the definition to accurately reflect the intended application of the rule.

Economic Impact

The proposed amendment clarifies the standard to be used by the Commission in implementing the casino bankroll criteria set forth at N.J.A.C. 19:43-4.2(b)1. The modified definition will necessarily affect the amounts considered by the Commission in determining compliance with this standard, but nonetheless accurately reflect the intended application of the rule.

Regulatory Flexibility Statement

The proposed amendment affects only the operations of casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:43-4.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

...
 "Casino bankroll" means [the aggregate closing balances reported in the casino cage and master coin bank closeouts or summaries, less any non-cash items reported thereon] **cash maintained in the casino, excluding any funds necessary for the normal operation of the casino, such as change banks, slot hopper fills, slot booths, cashier imprest funds and redemption area funds.**
 ...

(a)

CASINO CONTROL COMMISSION

**Accounting and Internal Controls
 Personnel Assigned to the Operation and Conduct
 of Gaming and Slot Machines
 Cashier's Cage, Satellite Cages; Master Coin Bank,
 Coin Vaults
 Accounting Controls for the Cashier's Cage, Master
 Coin Bank and Coin Vault**

**Proposed Amendments: N.J.A.C. 19:45-1.12, 1.14,
 1.15 and 1.46**

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

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g) and 99(a).

Proposal Number: PRN 1993-234.

Submit written comments by May 19, 1993 to:

Seth H. Brilliant, Assistant Counsel
 Casino Control Commission
 Arcade Building
 Tennessee Avenue and the Boardwalk
 Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The changemaking function in a casino is presently handled by slot cashiers in the slot booths, roving changepersons on the casino floor, freestanding change machines, and mechanical bill changers connected to slot machines. Although the bill changers do have the capability to accept large denomination bills, some patrons apparently prefer to use smaller denominations of currency, so that they are not restricted to using the same machine, and have the flexibility to play several different machines. However, in order to exchange their currency, patrons must now go to the casino cage.

By permitting slot attendants to exchange currency and coupons, using an imprest fund issued to them from the cashier's cage or the master coin bank, these proposed amendments would provide an additional way for casino licensees to exchange currency and redeem coupons for patrons on the casino floor.

Social Impact

It is anticipated that these amendments will result in more convenience for casino patrons, because it will provide another way for them to exchange currency and redeem coupons.

Economic Impact

It is hoped that these amendments may further streamline and expedite the changemaking process, thus providing a favorable economic benefit to casino licensees.

Regulatory Flexibility Statement

These amendments would affect only casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

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

(g) The following personnel shall be used to operate the slot department in an establishment:

1. (No change.)

2. Slot attendants shall be the persons assigned the responsibility for the operation of slot machines and bill changers, including, but not limited to, participating in manual jackpot payouts and filling [of] payout reserve containers. **At the discretion of the casino licensee, slot attendants may also accept currency and coupons from patrons in exchange for currency obtained from an imprest fund issued by the cashiers' cage or the master coin bank in accordance with internal control procedures approved by the Commission.**

3.-5. (No change.)

(h)-(i) (No change.)

19:45-1.14 Cashiers' cage; satellite cages; master coin bank; coin vaults

(a) Each establishment shall have on or immediately adjacent to the gaming floor a physical structure known as a cashiers' cage ("cage") to house the cashiers and to serve as the central location in the casino for the following:

1.-2. (No change.)

3. The receipt, distribution, and redemption of gaming chips and plaques in conformity with this chapter; [and]

4. The issuance, receipt and reconciliation of imprest funds used by slot attendants in the acceptance of currency and coupons from patrons in exchange for currency in conformity with this chapter; and

Recodify existing 4. as 5. (No change in text.)

(b) Each establishment shall have within the cage or in such other area as approved by the Commission a physical structure known as a master coin bank to house master coin bank cashiers. The master coin bank shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein and serve as the central location in the casino for the following:

1. The custody of currency, coin slot tokens, forms, documents and records normally generated or utilized by master coin bank cashiers, slot cashiers, [or] changepeople[.], **and slot attendants;**

2. The exchange of currency, coin, coupons and slot tokens for supporting documentation[.];

3. The responsibility for the overall reconciliation of all documentation generated by master coin bank cashiers, slot cashiers, [and] changepeople[.], **and slot attendants;**

4.-5. (No change.)

(c)-(h) (No change.)

19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, coin bank and coin vault

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

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1.-3. (No change.)

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4. Reserve cash ("main bank") cashiers' functions shall be, but are not limited to, the following:

i.-v. (No change.)

vi. Issue, receive and reconcile imprest funds used by slot attendants;

vii. Exchange currency for coupons and currency from slot attendants;

Recodify existing vi.-viii. as **viii.-x.** (No change in text.)

5. Master coin bank cashiers' functions shall be, but are not limited to, the following:

i. Receive currency, coin, slot tokens, gaming chips, and coupons from slot cashiers in exchange for proper documentation;

ii.-iii. (No change.)

iv. Issue, receive and reconcile imprest funds used by slot attendants;

v. Exchange currency for coupons and currency from slot attendants;

Recodify iv.-v. as **vi.-vii.** (No change in text.)

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

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(i) (No change.)

(j) Coupons shall be redeemed in the following manner:

1. Coupons redeemable for cash or slot tokens shall only be redeemed by changepersons or at the slot change booths or the cashiers' cage located on the casino floor. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. **Coupons redeemable for cash may also be redeemed by slot attendants, who shall accept the coupons in exchange for the stated amount of currency and shall cancel the coupon upon acceptance.** Cancellation of coupons by changepersons and slot attendants shall be in a manner that will permit subsequent identification of the individual who accepted and canceled the coupon.

2. Redeemed coupons shall be maintained by the slot or general cashier and shall be exchanged with the Main or Master Coin Bank for a like amount of cash at the conclusion of gaming activity each day, at a minimum. [Changepersons shall exchange redeemed coupons with slot booths for a like amount of cash at the conclusion of each shift, at a minimum.]

3. Notwithstanding the above, an automated coupon redemption machine may be utilized to accept coupons, provided that[,] the acceptance of coupons by an automated coupon redemption machine complies with the procedures and requirements established by this section and N.J.A.C. 19:45-1.46A.

4. Coupons redeemable for simulcast wagers shall only be accepted by casino pari-mutuel cashiers at the simulcast counter in exchange for the simulcast wagers stated on the coupons. Cancellation of coupons by casino pari-mutuel cashiers shall be in a manner that permits subsequent identification of the individual who accepted and cancelled the coupon. Redeemed coupons shall be maintained by the casino pari-mutuel cashier, or in the simulcast vault, and shall be exchanged with the Main Bank for a like amount of cash not less frequently than at the conclusion of each day.

(k)-(o) (No change.)

(a)

CASINO CONTROL COMMISSION

Internal Controls

Acceptance of Tips or Gratuities

Proposed Amendment: N.J.A.C. 19:45-1.19

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

Authority: N.J.S.A. 5:12-63c, 69a and 100o.

Proposal Number: PRN 1993-227.

Submit written comments by May 19, 1993 to:

Mary S. LaMantia, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

In accordance with N.J.S.A. 5:12-100(o)(2), Casino Control Commission ("Commission") rules establish procedures to be followed by casino dealers and pari-mutuel cashiers in accepting tips or gratuities from patrons of the casino or casino simulcasting facility. Among other things, such tips and gratuities, also known as "tokens," must be pooled for distribution pro rata among the dealers or pari-mutuel cashiers based upon the number of hours worked. N.J.A.C. 19:45-1.19(b), (c). In addition, the requirement that tips be distributed on a weekly basis has been eliminated from subsection (b) to reflect a statutory amendment which became effective in 1991 (P.L. 1991, c.182, §38).

The proposed amendment codifies a Commission ruling that permits a casino licensee to establish standards which include hours of vacation time, personal days or other authorized leave time as "hours worked" for purposes of tip pool distribution. (Casino Control Commission Resolution 89-87). Any such standards must apply uniformly to all employees, except that the casino licensee may establish different standards for full-time or part-time employees.

Consistent with other recent amendments to N.J.A.C. 19:45-1.19 (see 24 N.J.R. 4279(b) and 25 N.J.R. 348(b)), subsection (b) is amended to expressly include dealers in both the casino and the casino simulcasting facility.

Social Impact

The proposed amendment is not anticipated to have any significant social impact, since it merely codifies a previous Commission ruling interpreting N.J.A.C. 19:45-1.19(b).

Economic Impact

The proposed amendment is not anticipated to have any significant economic impact, since it merely codifies a previous Commission ruling interpreting N.J.A.C. 19:45-1.19(b). The amendment permits a casino licensee to establish standards which include hours of vacation time, personal days or other authorized leave as "hours worked" for purposes of tip pool distribution.

Regulatory Flexibility Statement

The proposed amendment affects only casino licensees and their employees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:45-1.19 Acceptance of tips or gratuities from patrons

(a) (No change.)

(b) All tips and gratuities allowed dealers **in the casino and casino simulcasting facility** shall be:

1.-2. (No change.)

3. Placed in a **common** pool for distribution pro rata among [the] **all dealers** [on a weekly basis] with the distribution based upon the number of hours each dealer has worked.

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

(e) **In determining the number of hours which an employee has worked for purposes of tip pool distribution, a casino licensee may, in its discretion, establish standards for distribution which include hours of vacation time, personal leave time or any other authorized leave of absence in the number of hours worked by each employee. Any such standards shall apply uniformly to all employees, except that the casino licensee may establish different standards for full-time or part-time employees.**

(a)

CASINO CONTROL COMMISSION

Equal Employment and Business Opportunity

Proposed Repeal and New Rules: N.J.A.C. 19:53

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

Authority: N.J.S.A. 5:12-63, 69, 75 134 and 135.

Proposal Number: PRN 1993-228.

A public hearing concerning the proposed repeal and new rule will be held on Friday, May 7, 1993, at 10:00 A.M. at the following location:

Casino Control Commission
Joseph P. Lordi Public Meeting Room
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

Persons who wish to participate in this hearing are requested to notify the Commission by calling Deborah Boykin-Greenberg, Affirmative Action Coordinator, at 609-441-3564 by no later than April 30, 1993. The amount of time allocated to each speaker may be limited depending on the number of participants.

Submit written comments by May 19, 1993 to:

Gustave Thomas, Chief
Affirmative Action and Equal Employment
Opportunity Unit
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The rules contained in N.J.A.C. 19:53 are designed to implement the equal opportunity and affirmative action obligations which are imposed on persons regulated by the Casino Control Commission pursuant to the provisions of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq. The Commission has been conducting a comprehensive review of the current version of chapter 53 in an effort to streamline and simplify existing regulatory requirements, to eliminate unnecessary provisions, to codify standard license conditions which should be included in the rules, and to create opportunities for casino licensees and applicants to use innovative strategies and techniques to achieve compliance with their statutory obligations.

This review process has included the participation of various groups who have an interest in achieving reasonable, efficient and meaningful regulation in the area of equal employment and business opportunity. For example, a task force was created by the Chairman of the Commission in 1991 to explore possible revisions of the chapter. This task force included representatives of the casino industry, minority and women enterprises, the Atlantic City community and State, county and local government. Many of the recommendations of this task force have been included in the proposed new rules, such as: the provisional certification of minority and women's business enterprises pending their certification by the Department of Commerce and Economic Development (see N.J.A.C. 19:53-5.4); standardization of the method by which casino licensee net disbursements are to be derived from gross disbursements (see N.J.A.C. 19:53-5.5); the inclusion of bus business in the general category of goods and services (see N.J.A.C. 19:53-5.5); the elimination of complimentaries issued pursuant to bus programs as a means of measuring bus business (see N.J.A.C. 19:53-5.6); and focusing the evaluation of a casino licensee's compliance with its regulatory obligations on the assessment of an Equal Employment and Business Opportunity Plan (EEBOP) developed by the casino licensee and approved by the Commission (see N.J.A.C. 19:53-6).

Although certain provisions of the current version of chapter 53 are retained in the proposed new chapter, the number of amendments and recodifications involved are so substantial that the Commission has decided to repeal the current chapter in its entirety and propose a completely new chapter. Before reviewing the provisions of these new rules in detail, it would be useful to summarize the general regulatory structure which is reflected in the proposed new rules.

As a general proposition, the first five subchapters of the proposed new rules identify, in groups based on the subject matter and regulated

persons affected, the equal employment opportunity, equal business opportunity and affirmative action obligations imposed by the Act and the rules on casino licensees and applicants, casino service industry enterprise licensees and applicants and construction contractors and subcontractors. Subchapter 6 of the proposed rules then establishes a vehicle by which the Commission will assess the performance of casino licensees and applicants in meeting their statutory and regulatory obligations. This regulatory tool is referred to as an Equal Employment and Business Opportunity Plan or EEBOP.

Proposed subchapter 1 establishes various general requirements which are applicable to the implementation of the remaining subchapters including, for example, the State's general policy governing equal employment and business opportunity (see N.J.A.C. 19:53-1.1) and definitions which will assist in the interpretation and application of the substantive and procedural requirements contained in the remainder of the chapter (see N.J.A.C. 19:53-1.2). Two definitions contained in this section are of particular significance. The definitions of "equal employment opportunity" and "equal business opportunity" identify the nature and scope of the fundamental equal opportunity obligations which are imposed on regulated persons throughout the remainder of the chapter.

Proposed N.J.A.C. 19:53-1.3 establishes the classifications which are to be used by licensees and applicants whenever they are required to classify or report employees by job category. These classifications are based on those used by the U.S. Equal Employment Opportunity Commission but have been modified by the Commission to meet the requirements of the New Jersey casino industry. N.J.A.C. 19:53-1.4, which establishes the obligation of a casino licensee or applicant to appoint an equal opportunity officer, is essentially identical to the provisions of the current rule, N.J.A.C. 19:53-1.13. The only significant modification to this rule imposes an obligation on the equal opportunity officer to report in writing to the chief executive officer of the casino licensee or applicant the recommended suspension of any personnel, purchasing or construction activity which is inconsistent with the licensee's or applicant's approved EEBOP or with any applicable Federal or State law concerning equal opportunity. Proposed N.J.A.C. 19:53-1.5 through 1.8 contain general regulatory provisions which are reflective of current regulatory or statutory requirements and include the option of the Commission establishing an advisory board, powers of the Commission, effect on rules, role of the Division in enforcement and compliance and severability.

Proposed subchapter 2 sets forth regulatory obligations applicable to casino licensees and applicants and construction contractors and subcontractors engaged in construction projects involving the casino hotel, casino, casino simulcasting facility or any related facility. N.J.A.C. 19:53-2.1 specifically enumerates the general obligations of casino licensees and applicants in this area; it does not make any significant alterations to existing requirements. N.J.A.C. 19:53-2.2 consolidates and identifies the specific obligations of casino licensees and applicants in monitoring the equal opportunity activities of contractors and subcontractors working on casino construction projects.

N.J.A.C. 19:53-2.3 sets forth the women and minority employment goals for the construction contractor and subcontractor work force of a casino licensee or applicant. Subsection (b) of that section, which is not included in the current version of chapter 53, states that specific women and minority employment goals will be established for each construction trade if comparable occupational data for Atlantic County is available. N.J.A.C. 19:53-2.4 identifies the reports which must be filed by casino licensees and applicants so that the Commission and Division can track the progress of the licensee or applicant in addressing its construction work force composition. It should be noted that the primary work force report required by N.J.A.C. 19:53-2.4(a)1 has been reduced from a weekly to a monthly report in the proposed new rules.

N.J.A.C. 19:53-2.5 and 2.6 establish special compliance and reporting obligations applicable to casino license applicants which are planning to build or substantially renovate a casino hotel facility prior to licensure. These regulatory obligations are designed to assure that the equal employment and business opportunity requirements imposed by the Act are addressed by the applicant at the earliest possible stage of construction.

The mandatory construction contract and subcontract language contained in N.J.A.C. 19:53-2.7 is a streamlined version of the requirements contained in the current version of N.J.A.C. 19:53-1.4. An attempt has been made to simplify the presentation and content of this mandatory contract language and various detailed recruitment requirements contained in the current rule have been eliminated.

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Proposed N.J.A.C. 19:53-2.8 establishes reporting obligations for construction contractors and subcontractors. These reports describe the construction work force of the contractor or subcontractor and are filed with the casino licensee or applicant so that the licensee or applicant can prepare the Monthly Labor Report Summary required by N.J.A.C. 19:53-2.4. This section also requires contractors and subcontractors to maintain documentation of all requests to labor unions for qualified women and minority workers.

A new provision at N.J.A.C. 19:53-2.9 is designed to give the Commission an effective means of enforcing the employment obligations imposed by the Act and rules against construction contractors and subcontractors. Under this section, any contractor or subcontractor which has failed to meet the women and minority employment goals established by N.J.A.C. 19:53-2.3 in any calendar quarter shall be given two additional quarters in which to comply with the goals or document its good faith efforts to do so. If the contractor or subcontractor fails to meet either of these requirements during this six month review period, the matter shall be referred to the Division of Gaming Enforcement for investigation and appropriate action. If the contractor or subcontractor is ultimately found to have violated the Act or rules, the Commission may impose any penalty authorized by N.J.S.A. 5:12-129 or N.J.A.C. 19:53-3.5.

The annual construction contractor and subcontractor work force report established by N.J.A.C. 19:53-2.10 is prepared by the Commission based on the monthly work force summaries received from casino licensees or applicants. This report shall be used as the basis to determine whether a casino licensee or applicant is required, pursuant to the provisions of N.J.A.C. 19:53-6, to document its efforts to implement and comply with the construction section of its EEBOP.

Subchapter 3 of the proposed new rules addresses the equal opportunity obligations of casino service industry enterprise licensees and applicants. Although N.J.A.C. 19:53-3.1 retains the current requirement (see N.J.A.C. 19:53-1.13) for the appointment of an equal opportunity officer, this requirement is simplified and no longer specifies particular responsibilities for the equal opportunity officer. N.J.A.C. 19:53-3.2 sets forth the basic equal opportunity obligations which apply to all casino service industry enterprise licensees and applicants.

The affirmative action obligations of casino service industry enterprises which have 50 or more employees in New Jersey established in N.J.A.C. 19:53-3.3 are significantly reduced as compared to the obligations contained in the current rules. Under current rule N.J.A.C. 19:53-1.5, any casino service industry enterprise which has 50 or more employees in New Jersey is required to meet all of the affirmative action obligations which apply to casino licensees. Under the proposed new rule, casino service industry enterprises which meet these criteria are only required to undertake affirmative recruitment efforts; they are no longer required to comply with the employment goals which are applicable to casino licensees and applicants. Casino service industry enterprises with less than 50 employees no longer have any affirmative action obligations whatsoever, although they must continue to afford equal employment opportunity to all persons.

N.J.A.C. 19:53-3.4 establishes the obligation of enterprise licensees and applicants to file a work force composition report with the Commission as part of the initial or renewal license application. N.J.A.C. 19:53-3.5 sets forth various sanctions which may be imposed on casino service industry enterprises which violate the Act or the rules of the Commission.

Subchapter 4 of the proposed rules addresses the equal employment opportunity and affirmative action obligations of casino licensees and applicants with regard to those persons employed in the operation of the casino hotel, casino, casino simulcasting facility and any related facilities. N.J.A.C. 19:53-4.1 sets forth the basic equal employment opportunity obligations which apply to all casino licensees and applicants. This section is a consolidated and simplified version of various requirements which are presently found in N.J.A.C. 19:53-1.5 of the current rules.

N.J.A.C. 19:53-4.2 directs each casino licensee or applicant to include in the operations work force section of its EEBOP provisions which address the efforts of the licensee or applicant to employ and advance persons with disabilities. Each casino licensee or applicant which is required to file an EEBOP evaluation with the Commission pursuant to N.J.A.C. 19:53-6 is required to include an assessment of these efforts. N.J.A.C. 19:53-4.2(b) states that reasonable accommodation in employment to persons with disabilities shall be provided in accordance with the requirements of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the Americans with Disabilities Act, 42 USC 12101 et seq.

N.J.A.C. 19:53-4.3 sets forth the affirmative action obligations of casino licensees and applicants concerning the employment of women and minorities in the operations work force. These obligations are currently contained in N.J.A.C. 19:53-1.5 or in standard license conditions which have been applied to all casino licensees. N.J.A.C. 19:53-4.4 then sets forth the women and minority employment goals for the operations work force of casino licensees and applicants. Similar to the construction work force goals discussed above, N.J.A.C. 19:53-4.4(b) provides that specific women and minority employment goals will be established for each EEOC job category, other than craftspersons (who are subject to the goals in N.J.A.C. 19:53-2.3), if comparable occupational data for Atlantic County is available.

N.J.A.C. 19:53-4.5 and 4.6 establish quarterly and annual reporting requirements for casino licensees and applicants concerning the operations work force. The quarterly report required by proposed N.J.A.C. 19:53-4.5 is less extensive than the reports required by the current rules and existing practice. The annual work force composition report which will be required pursuant to N.J.A.C. 19:53-4.6 is a necessary component of the annual EEBOP assessment process established pursuant to N.J.A.C. 19:53-6.

The proposed new rules contained in subchapter 5 address the equal business opportunity obligations of casino licensees and applicants and establish participation goals for casino licensee purchases of goods and services from minority and women enterprises. N.J.A.C. 19:53-5.1 describes the statutory and historical basis for the implementation of participation goals for casino licensee purchases from minority and women enterprises. N.J.A.C. 19:53-5.2 sets forth the fundamental equal business opportunity obligation which applies to all casino licensees and applicants. N.J.A.C. 19:53-5.3 establishes the actual participation goals for casino licensee purchases from minority and women enterprises and directs that each casino licensee make a good faith effort to distribute its purchases equitably between minority and women business enterprises.

The provisional certification process which is contained in N.J.A.C. 19:53-5.4 essentially codifies procedures which are currently followed by the Commission pursuant to an agreement between the Commission and the Department of Commerce and Economic Development (DCED). Under these procedures, a minority or women business may be provisionally certified as such by the Commission if the enterprise files an affidavit with the Commission declaring that it meets the standards for certification. Should it subsequently be determined that a provisionally certified enterprise made a material misrepresentation in its affidavit or application for certification, N.J.A.C. 19:53-5.4(i) permits the Commission to impose substantial penalties on the enterprise and certain persons associated therewith. The rules also provide that any enterprise which is provisionally certified by the Commission must file a completed application for certification with DCED within 60 days of the date of its provisional certification. The rule also states that the Commission shall assist enterprises in the completion of applications for final certification. Any provisionally certified enterprise that fails to file a DCED certification application within the 60 day period shall lose its provisional certification.

Proposed N.J.A.C. 19:53-5.5 describes in detail the process by which casino licensees are required to determine the amount of their net disbursements for goods and services and the percentages thereof which are spent with certified and provisionally certified minority and women enterprises. As noted above, a significant modification of the current rules is included in this section. Specifically, bus business is now included in the calculation of expenditures for all other goods and services rather than as a separate category. This section also includes a provision which allows a casino licensee to obtain credit toward its participation goals for goods and services purchased from women and minority businesses by a contractor of the casino licensee when such purchases are made pursuant to an agreement between the casino licensee and the contractor which required the contractor to spend a portion of the contract on purchases from minority and women businesses.

The section on the valuation of bus business, N.J.A.C. 19:53-5.6, includes a significant change to the current rule (see N.J.A.C. 19:53-2.6) in that a casino licensee is no longer required to include the value of complimentary tickets given to bus program passengers in the calculation of the value of its bus business. This change was made in conjunction with the change which now includes bus business in the general category of goods and services since the value of these complimentary tickets is not comparable to the value of dollars actually spent by casino licensees with other enterprises.

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N.J.A.C. 19:53-5.7 sets forth the contents of the quarterly disbursement report which must be filed by each casino licensee. This report is similar to the annual MBE/WBE disbursement report which must be filed by each casino licensee pursuant to N.J.A.C. 19:53-5.8. The annual MBE/WBE disbursement report is a necessary component of the annual EEBOP assessment process established pursuant to N.J.A.C. 19:53-6. N.J.A.C. 19:53-5.9 requires a casino licensee to identify and report separately any business done with a certified or provisionally certified MBE or WBE which is removed from the Commission MBE/WBE directory prior to the submission of a quarterly or annual disbursement report.

As indicated above, proposed subchapter 6 creates a regulatory vehicle, an Equal Employment and Business Opportunity Plan or EEBOP, which will be used to assess the compliance of casino licensees and applicants with the equal opportunity and affirmative action requirements imposed by the Act and the new rules. Each casino licensee and applicant shall be required, pursuant to N.J.A.C. 19:53-6.1, to develop and submit an EEBOP for approval which describes in detail the manner in which that casino licensee or applicant proposes to satisfy its equal employment opportunity, equal business opportunity and affirmative action obligations. Although the EEBOP of each casino licensee or applicant will have to address certain required elements, casino licensees and applicants will be encouraged to be innovative in proposing new techniques or strategies for achieving the goals and objectives of the Act and rules.

Proposed N.J.A.C. 19:53-6.2 identifies topics appropriate for inclusion in the general regulatory section of an EEBOP. Such items include a general statement of policy by the chief executive officer of the casino licensee or applicant concerning the equal opportunity policies of the organization, an acknowledgment of the obligations imposed by the Act and chapter 53 and a delineation of the role and responsibilities of the equal opportunity officer.

N.J.A.C. 19:53-6.3 identifies topics which are appropriate for inclusion in the construction section of the EEBOP of a licensee or applicant. The topics included in subsection (a) are general regulatory requirements which should be addressed by all casino licensees or applicants. The types of programmatic topics listed as examples in subsection (b) need only be addressed by those casino licensees or applicants who have failed to achieve the construction work force employment goals set forth in N.J.A.C. 19:53-2.3 or by those licensees or applicants which choose to undertake such programmatic efforts in their EEBOP as a means of complying with the equal employment opportunity requirements of the Act and rules.

The structure of N.J.A.C. 19:53-6.4, Operations work force section of an EEBOP, and 6.5, Business section of an EEBOP, is similar to that of N.J.A.C. 19:53-6.3. N.J.A.C. 19:53-6.4(a) and 6.5(a) identify general regulatory requirements which are applicable to all casino licensees and applicants and thus should be addressed in all EEBOPs. The programmatic topics listed in N.J.A.C. 19:53-6.4(b) and 6.5(b) are examples of the types of programs which might be undertaken by casino licensees or applicants who have failed to achieve the goals set forth in N.J.A.C. 19:53-4.4 and 5.3, respectively, or by those licensees or applicants which choose to undertake such programmatic efforts in their EEBOP as a means of complying with their obligations under the Act and rules.

Proposed N.J.A.C. 19:53-6.6 recognizes that the revitalization of Atlantic City was one of the primary purposes for the legalization of casino gaming in this State by encouraging each casino licensee and applicant to include a section in its EEBOP on the development of Atlantic City small businesses. The section includes a definition of an Atlantic City small business and establishes a certification process so that a qualifying enterprise may be certified as such by the Commission.

N.J.A.C. 19:53-6.7 sets forth the basic requirements which govern the filing and modification of an EEBOP by a casino licensee or applicant. Generally, once an EEBOP has been approved by the Commission, a casino licensee or applicant will not be required to resubmit all or any part of the EEBOP for review unless: the licensee or applicant chooses to make a material modification in the EEBOP; the Commission directs that the EEBOP be revised as part of an annual EEBOP assessment; or the Commission directs that the EEBOP be revised after a special review of the EEBOP required by the Commission.

The annual EEBOP assessment process is contained in N.J.A.C. 19:53-6.8. This section establishes the fundamental proposition that each casino licensee or applicant shall be required to demonstrate its compliance with the requirements of the Act and chapter 53 through an annual assessment of its performance under its approved EEBOP. Generally, if a casino licensee or applicant demonstrates through the

annual statistical reports required by chapter 53 that it has satisfied all of the applicable performance goals set forth in the rules, the licensee or applicant shall not be required to participate in any further annual EEBOP assessment proceedings. However, if a licensee or applicant has failed to reach some or all of these goals, or if the Commission indicates that it wishes to review the results of programmatic initiatives which were included in an EEBOP, the licensee or applicant will be required to document its implementation and compliance with those portions of its EEBOP at an annual assessment hearing. The section also sets forth the results which may occur when the Commission finds that a casino licensee or applicant has or has not complied with the terms of its EEBOP and recognizes that noncompliance may be excused if it is due to reasons which were beyond the control of the licensee or applicant.

Since significant problems with an EEBOP may come to the attention of the Commission at times other than during an annual review, N.J.A.C. 19:53-6.9 gives the Commission the authority to require a licensee or applicant to present an analysis of the EEBOP to the Commission at any time. The sole purpose of such a review shall be to determine whether the casino licensee or applicant should be required to make immediate modifications to its EEBOP consistent with the purposes of the Act and chapter 53.

N.J.A.C. 19:53-6.10, On-site monitoring and inspections, and 6.11, Sanctions, simply recodify provisions which are contained in the current version of chapter 53 and are self-explanatory.

N.J.A.C. 19:53-6.12 authorizes the waiver of certain monthly or quarterly reporting requirements otherwise applicable to casino licensees or applicants whenever the licensee or applicant has met the performance goals associated with the reports for four consecutive quarters.

Social Impact

The existing equal opportunity and affirmative action rules of the Commission have been very successful in assuring that equal employment and business opportunity is afforded to persons seeking employment or business opportunities with the casino industry in Atlantic City. For example, as of September 30, 1992, of the 42,376 workers employed by casino licensees, 19,078 were female (45 percent) and 17,815 were members of minority groups (42 percent). For the calendar year 1992, of the 761.4 million dollars in net disbursements made by casino licensees for goods and services, 79.6 million dollars (10.5 percent) were spent with women and minority businesses; of the 127.4 million dollars spent on bus operations by casino licensees, 14.8 million dollars (11.6 percent) were spent with women and minority bus operators.

Although the casino industry has achieved meaningful results under the existing rules, the Commission has recognized for some time that these rules are confusing and do not provide casino licensees and applicants with any room for creativity in meeting their obligations. The proposed new rules are intended to remedy these deficiencies by reorganizing and simplifying the equal opportunity and affirmative action obligations imposed by the Act and rules. In addition, the rules are designed, through the use of individualized EEBOPs proposed by the licensees and applicants, to encourage the casino industry to develop innovative techniques and strategies to achieve the equal opportunity and economic revitalization goals of the Act. Accordingly, the proposed new rules contemplate that casino licensees and applicants will attempt to address their equal business opportunity obligations by initiating programs designed to provide technical and business assistance to women and minority firms and Atlantic City small business enterprises.

The Commission is confident that the proposed new rules, which have been developed with the input of the local community, the casino industry and women and minority enterprises, will continue to build on the successes which have been achieved to date and will effectively implement and enforce the public policies of this State pursuant to which equal employment and business opportunities are guaranteed to all persons.

Economic Impact

Casino licensees and applicants will incur costs in complying with the requirements of the new rules. These costs include expenses associated with recordkeeping and reporting requirements and the maintenance of staff resources necessary to the fulfillment of the various regulatory obligations imposed by the rules. It should be noted, however, that these costs may be reduced as a result of: the elimination of a number of quarterly operations work force requirements; a reduction in the frequency of construction work force reports from weekly to monthly; the ability of casino licensees to receive waivers of reporting requirements pursuant

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to N.J.A.C. 19:53-6.12; and the elimination of minimum staffing requirements for the office of the equal opportunity officer.

The regulatory agencies also expend considerable time and money in monitoring and enforcing the provisions of the current rules, and these expenses will continue under the new proposal although they are not expected to increase. These costs are unavoidable, however, if the Commission is to enforce its statutory mandate to promote equal employment and business opportunity in the casino industry.

As indicated by the statistics cited above, the existing rules in chapter 53 have resulted in considerable economic benefits for women and minorities in terms of increased job and business opportunities. It would be impossible to project at this time the exact impact of the proposed new rules on future opportunities for women and minorities and the economic development of Atlantic City. The Commission firmly believes, however, that the creativity and flexibility afforded casino licensees and applicants through the use of individualized Equal Employment and Business Opportunity Plans may lead to even greater participation in the economic benefits of casino gaming by all persons and, especially, the Atlantic City community.

Regulatory Flexibility Analysis

The proposed new rules primarily affect casino licensees and applicants, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Various reporting, recordkeeping and compliance requirements will be imposed, however, on construction contractors and subcontractors and casino service industry enterprises, some of which may qualify as small businesses within the scope of that act.

N.J.A.C. 19:53-2.7 mandates that certain language concerning equal employment and business opportunity and affirmative action be included in all construction contracts and subcontracts. N.J.A.C. 19:53-2.8 requires each construction contractor or subcontractor to file weekly Project Labor Reports specifying the composition of its work force and requires the documentation of all requests made by the contractor or subcontractor to a labor union for qualified women or minority candidates for employment. If a construction contractor or subcontractor fails to meet the employment goals specified in N.J.A.C. 19:53-2.3, the contractor or subcontractor may be required to document its good faith efforts to achieve the goals.

Casino service industry enterprises are required to designate an equal opportunity officer by N.J.A.C. 19:53-3.1. Such enterprises are also required pursuant to the provisions of N.J.A.C. 19:53-3.2 of the proposed rules to identify their status as an equal opportunity employer when soliciting new employees. N.J.A.C. 19:53-3.3 imposes certain affirmative action recruitment obligations on casino service industry enterprises which employ 50 or more persons in the State of New Jersey. Proposed N.J.A.C. 19:53-3.4 requires a casino service industry enterprise to file a work force composition report as part of an application for the issuance or renewal of a license.

None of the reporting and compliance requirements listed above require, as a matter of necessity, the utilization of professional services. These contractors and enterprises will, of course, incur some costs in complying with these regulatory obligations. The Commission has already reviewed these requirements, however, as indicated in the Summary above, and has eliminated any provisions which were not considered essential to the fulfillment of the statutory goals of equal employment and business opportunity. Thus, for example, casino service industry enterprises which employ less than 50 employees are no longer required to engage in affirmative recruitment efforts. And enterprises which do employ 50 or more employees in New Jersey are no longer subject to employment goals. The Commission does not believe it would be appropriate or consistent with its statutory obligations to make any additional modifications to the rules for small businesses until the changes included in these proposed new rules are evaluated in actual practice.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:53.

Full text of the proposed new rules follows:

CHAPTER 53 EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY

SUBCHAPTER 1. GENERAL PROVISIONS

19:53-1.1 Scope, policy and purpose

(a) It has long been the public policy of the State of New Jersey to promote equal employment and business opportunity by prohibiting discrimination and by encouraging businesses to achieve a balanced representation of employees at all levels of the work force and to contract with and purchase goods and services from all persons. Consistent with this public policy, the Act and the rules of the Commission empower the Commission to monitor and evaluate the good faith efforts of all licensees and applicants to achieve these goals.

(b) These rules are adopted in order to establish equal employment opportunity and equal business opportunity requirements for casino licensees and applicants, casino service industry enterprise licensees and applicants and construction contractors and subcontractors engaged in construction projects for casino licensees and applicants. These rules also establish affirmative action requirements for casino licensees and applicants, certain casino service industry enterprise licensees and applicants and construction contractors and subcontractors with regard to the employment of women and minorities. Finally, these rules establish affirmative action requirements for casino licensees with regard to the purchase of goods and services from certified and provisionally certified minority and women business enterprises.

19:53-1.2 Definitions

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

"Adjusted gross disbursements" means gross disbursements minus allowable administrative costs and allowable direct labor costs as defined in N.J.A.C. 19:53-5.5.

"Affectional or sexual orientation" is defined in N.J.S.A. 10:5-5.

"Apprentice" means a worker who is classified by a union or other party acceptable to the Commission as having experience and skills used in a particular construction craft or occupation, but lacking the skills to be qualified as a journeyworker.

"Atypical hereditary cellular or blood trait" is defined in N.J.S.A. 10:5-5.

"Bus" means any "autobus" as defined in N.J.S.A. 48:4-1; provided, however, that for purposes of this chapter such term shall include any autobus engaged in intrastate or interstate commerce.

"Certified MBE" or "certified WBE" means any business enterprise which has been certified by the Department of Commerce and Economic Development pursuant to N.J.A.C. 12A:11 as a minority business enterprise or a women business enterprise, respectively.

"Change in ownership or management" means any change in the ownership or management of a licensee or applicant which could enable an involuntary change in the existing policy of the licensee or applicant to occur, and shall include, without limitation, the sale of a controlling interest in the licensee or applicant or a holding company thereof, or the replacement of the chief executive officer of the licensee or applicant.

"Chief executive officer" means:

1. As to casino licensees or applicants, the natural person located at a casino hotel facility who is ultimately responsible for the daily conduct of the hotel and gaming business of the casino licensee or applicant, regardless of the form of business association of the casino licensee or applicant or the particular title which the person holds.

2. As to casino service industry enterprise licensees or applicants, the natural person who bears ultimate responsibility for the organization and business activities of the enterprise.

"Construction" or "renovation" or "reconstruction" means any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever of any structure or facility to be used as an approved hotel, casino, casino simulcasting facility or

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related facility. These terms also include the maintenance, supervision, inspection, and other on-site functions incidental to the actual construction.

“Contract” means any written or unwritten agreement between two or more persons.

“Contractor” means any party performing or offering to perform pursuant to a contract.

“DCED” means the New Jersey Department of Commerce and Economic Development.

“Disability” means a physical or mental impairment which is included in the definition of “handicapped” contained in the Law Against Discrimination, N.J.S.A. 10:5-5, or in the definition of “disability” contained in the Americans with Disabilities Act of 1990, 92 USC 12101, and attendant regulations.

“EEOC job categories” is defined in N.J.A.C. 19:53-1.3.

“Equal business opportunity” means the opportunity of any person to buy from, sell to, lease from or to, license, contract with, trade with, provide goods, services or information to, or do business with any other person without regard to the race, creed, color, national origin, ancestry, affectional or sexual orientation, gender, age, marital status, nationality, atypical hereditary cellular or blood trait, liability for service in the armed forces of the United States, disability (where reasonable accommodation may be made to allow for such disability without causing an undue hardship on the person doing business) or rehabilitated offender status of such person or such person’s partners, members, stockholders, directors, officers, managers or employees.

“Equal Employment and Business Opportunity Plan (EEOBOP)” is defined in N.J.A.C. 19:53-6.

“Equal employment opportunity” means the opportunity of any person to apply for, obtain and retain employment, transfer, promotion, pay raises, benefits and training without regard to the race, creed, color, national origin, ancestry, affectional or sexual orientation, gender, age, marital status, nationality, atypical hereditary cellular or blood trait, liability for service in the armed forces of the United States, disability (where reasonable accommodation may be made to allow for such disability without causing an undue hardship on the employer) or rehabilitated offender status of such person.

“Equal opportunity officer” means a person appointed by a licensee or applicant, pursuant to the provisions of N.J.S.A. 5:12-135f and N.J.A.C. 19:53-1.4 or 3.1, to assure its compliance with this chapter and any Federal or State laws regarding equal employment and business opportunity.

“Gross disbursements” means the total amount of money spent for any purpose whatsoever by a casino licensee.

“Journeyworker” means a worker who has been certified by a union or other party acceptable to the Commission as having mastered a craft or trade.

“Liability” for service in the armed forces of the United States is defined in N.J.S.A. 10:5-5.

“MBE” means a minority business enterprise.

“Minority” means a person who is:

1. African American, who is a person having origins in any of the black racial groups in Africa;
2. Hispanic, who is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Island, regardless of race; or
3. Asian American, who is a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii, or the Pacific Islands.

“Minority business” is defined in N.J.A.C. 19:53-5.4.

“Net disbursement” is defined in N.J.A.C. 19:53-5.5.

“Operations work force” means all employees of a casino licensee or applicant who work in or in support of the casino hotel, casino, casino simulcasting facility or a related facility.

“Project” means the objective of a construction contract or subcontract. The same project may involve more than one contract or subcontract.

“Project Labor Report” is defined in N.J.A.C. 19:53-2.8.

“Project Labor Report Summary” is defined in N.J.A.C. 19:53-2.4.

“Project Status Report” is defined in N.J.A.C. 19:53-2.4.

“Provisionally certified MBE” or “provisionally certified WBE” means an enterprise which has attested to its status as an MBE or WBE, respectively, pursuant to the provisions of N.J.A.C. 19:53-5.4.

“Rehabilitated offender” means any person who has been convicted of or has committed a disqualifying offense pursuant to N.J.S.A. 5:12-86 and who has been found rehabilitated from such offense pursuant to the provisions of N.J.S.A. 5:12-90h or 91d.

“Subcontract” means a binding legal relationship involving performance by a subcontractor of all or part of a contract or subcontract.

“Subcontractor” means any party engaged by a contractor or subcontractor to perform, under a subcontract, all or part of the work included in a contract or subcontract.

“WBE” means women business enterprise.

“Women business enterprise” is defined in N.J.A.C. 19:53-5.4.

19:53-1.3 Classification of employees; use of EEOC job categories

(a) Whenever the rules in this chapter require a licensee or applicant to classify employees or job titles by job category, the licensee or applicant shall use the nine broad occupational classifications developed by the U.S. Equal Employment Opportunity Commission (EEOC), as adapted or modified by the rules of the Commission in (b) below. When required, the licensee or applicant shall also provide data concerning the four subclasses of Officials and Managers as described in (b) below.

(b) The EEOC job category classifications and subclassifications to be used by licensees and applicants are, in order, as follows:

1. “Officials and Managers” are occupations in which employees set broad policies, exercise overall responsibility for implementation of these policies, direct individual departments or special phases of the organization’s operations, provide specialized consultations on a regional, district or area basis, or supervise or assist in the supervision of specific work units. This category shall include, without limitation, occupations such as chief executive officer, president, vice president, director, assistant director, equal opportunity officer, manager, assistant manager, pit boss, shift supervisor, floorperson and boxperson. Unless otherwise specified in an approved EEOBOP, this category shall consist of four subclassifications defined by compensation range as follows:
 - i. “Subclass I” are positions whose actual salaries are \$95,000 and above.
 - ii. “Subclass II” are positions whose actual salaries are from \$75,000 to \$94,999.
 - iii. “Subclass III” are positions whose actual salaries are from \$55,000 to \$74,999.
 - iv. “Subclass IV” are positions whose actual salaries are from \$35,000 to \$54,999.
2. “Professionals” are occupations which require specialized knowledge which is usually acquired through college training, work experience or other training which provides comparable knowledge. Examples include human resources or labor relations personnel and dealers.
3. “Technicians” are occupations which require a combination of basic scientific or technical knowledge and manual skills which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Examples include computer programmers and operators, stage and sound technicians and slot mechanics.
4. “Salesworkers” are occupations engaging wholly or primarily in selling goods or services, such as sales clerks and cashiers.
5. “Office and Clerical” are occupations in which workers are responsible for internal and external communications and the recording and retrieval of data or information and other paperwork required in an office. Examples include secretaries, bookkeepers and telephone operators.
6. “Craftpersons” are occupations in which workers perform jobs generic to the building and construction trades and which are covered by collective bargaining agreements. Such jobs require special manual skills and a detailed and comprehensive knowledge of the processes involved in the work, which is acquired through on-the-

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job training and experience or through apprenticeship or other formal training programs. Examples include journeyworkers in the building trades.

7. "Operatives" are occupations in which there is an intermediate skill level which can be mastered in a few weeks and requires only limited training, such as auto services and parking attendants, seamstress, butchers and carvers, chauffeurs, laundry and drycleaning workers and boiler room operators.

8. "Laborers" are occupations which require the performance of elementary duties which may be learned in a few days and require the application of little or no independent judgment, such as car washers, groundskeepers, and laborers performing lifting, digging, mixing, and loading.

9. "Serviceworkers" are occupations in which workers perform duties which result in or contribute to the comfort and convenience of the general public such as cleaners, cooks, porters, and food and cocktail servers.

19:53-1.4 Designation of equal opportunity officer by casino licensee or applicant; responsibility of chief executive officer and equal opportunity officer

(a) Each casino licensee or applicant shall designate a principal member of its organization to serve as an equal opportunity officer. A casino license applicant shall designate its equal opportunity officer prior to the start of actual construction by the applicant or by any affiliated entity of any structure or facility to be used as an approved casino hotel, or prior to the recruitment and employment of personnel necessary to undertake the business of the hotel or casino, whichever first occurs. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees, that equal business opportunity is afforded to all persons, that affirmative efforts are made to recruit and employ women and minorities for positions in which the licensee or applicant is below the applicable employment goals, that the casino licensee makes affirmative efforts to achieve the applicable participation goals for business with certified and provisionally certified MBEs and WBEs, and that the licensee or applicant achieves full implementation of its approved EEBOP. The equal opportunity officer shall be directly responsible for the organization and effective and continuing implementation of its approved EEBOP. The position of equal opportunity officer shall require a casino key employee license endorsed as such.

(b) The responsibilities of the equal opportunity officer shall include, without limitation, the responsibility to:

1. Monitor and review all aspects of the personnel procedures and decisions of the casino licensee or applicant;

2. Recommend in writing to the chief executive officer the suspension of any personnel procedure, decision or transaction which is not consonant with the approved EEBOP of the casino license or applicant or with any Federal or state law regarding equal employment opportunity or affirmative action; and

3. Act as a liaison and to provide assistance to the Commission and the Division in the enforcement of section 134 of the Act and this chapter, which responsibility shall include, without limitation, the obligation to prepare and submit such reports, documentation and statistical information as the Commission shall require concerning the licensee's or applicant's:

- i. Work force composition;
- ii. Efforts to assure that equal employment opportunity is being afforded to persons with disabilities and rehabilitated offenders;
- iii. Good faith efforts to meet any applicable employment goals;
- iv. Employment, promotion, demotion or transfer decisions;
- v. Recruitment, recruitment advertising and union referral efforts;
- vi. Rates of pay or other forms of compensation;
- vii. Training programs and selection procedures;
- viii. Layoff, recall or termination decisions; and
- ix. Grievance procedures for, and disposition of, complaints related to equal employment opportunity.

(c) In addition to the responsibilities specified in (b) above, the equal opportunity officer shall have the responsibility to:

1. Monitor and review all aspects of the contracting and purchasing procedures and decisions of the licensee or applicant;

2. Recommend in writing to the chief executive officer the suspension of any contracting or purchasing procedure, decision, or transaction which is not consonant with its approved EEBOP or with any Federal or State law regarding equal business opportunity;

3. Act as a liaison and to provide assistance to the Commission and the Division in the enforcement of the Act and this chapter, which responsibility shall include, without limitation, the obligation to prepare and submit such reports, documentation and statistical information as the Commission shall require concerning the activities of the licensee or applicant with certified and provisionally certified MBEs and WBEs in contracting and purchasing; and

4. Act as a liaison and provide assistance to the Department of Commerce and Economic Development with respect to its responsibilities to certify MBEs and WBEs.

(d) In addition to the responsibilities specified in (b) and (c) above, the equal opportunity officer shall have the responsibility to:

1. Monitor and review the employment, recruitment and union referral practices of all contractors and subcontractors used in connection with the actual construction, renovation or reconstruction of any structure or facility to be used as an approved hotel, casino, casino simulcasting facility or any related facility;

2. Recommend in writing to the chief executive officer the suspension of any contract or subcontract or payment thereof where the contractor or subcontractor is engaging in any employment, recruitment, referral or bidding practice which is not consonant with the Act or the rules of the Commission or with any Federal or State law regarding equal employment and business opportunity or affirmative action;

3. Accompany the Commission and the Division, if requested, during on-site inspections authorized pursuant to N.J.A.C. 19:53-2.7; and

4. Prepare and submit to the Commission and Division such reports, documentation and statistical information as the Commission shall require concerning any contractor or subcontractor used by the licensee or applicant in connection with the construction, renovation or reconstruction of any structure or facility to be used as an approved hotel, casino, casino simulcasting facility or any related facility including, without limitation, information concerning:

- i. Work force composition;
- ii. Good faith efforts to meet any applicable employment goals;
- iii. Employment, promotion, demotion or transfer of skilled construction worker;
- iv. Recruitment, recruitment advertising and union referral efforts;
- v. Layoff, recall or termination of construction workers;
- vi. Rates of pay or other forms of compensation;
- vii. Selection for training programs; and
- viii. Grievance procedures for, and disposition of, complaints related to equal employment opportunity.

(e) In addition to any other requirements imposed by this section, a casino licensee or applicant shall comply with the following requirements concerning its equal opportunity officer:

1. The equal opportunity officer designated by the casino licensee or applicant shall have a minimum of three years experience in equal employment and business opportunity plan implementation or affirmative action enforcement, which experience may not be waived, and either:

- i. Two years of related experience drawn from any of the following areas: employment, recruitment, training, labor relations, employee relations, employee development, compensation and benefits administration, law, or statistics; or
- ii. A bachelor's degree from an accredited institution.

2. The principal areas of responsibility of the equal opportunity officer shall be the implementation, monitoring and enforcement of the equal employment and business opportunity and affirmative action requirements established by the Act and this chapter. These responsibilities may include, without limitation, the following functions: recruitment; equal employment opportunity awareness training; legal and statistical analysis of work force composition and utilization; grievance counselling and fact-finding; career advancement counselling; assessment and adaptation of all personnel and

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compensation policies and procedures for conformity with the equal employment and business opportunity plan approved by the Commission and with any Federal or State equal employment and business opportunity laws; monitoring and coordinating contracting, purchasing and construction activities; and developing and maintaining the involvement of the licensee or applicant in the community in support of equal employment and business opportunity and affirmative action goals.

3. The title, rank and level of compensation of the equal opportunity officer shall be comparable to that of a director of a major department within the organization of the casino licensee or applicant.

4. The equal opportunity officer shall be provided with a staff sufficient to achieve full and timely implementation and enforcement of the EEBOP approved by the Commission and compliance with the Act and this chapter.

5. The equal opportunity officer shall report directly to the chief executive officer of the licensee or applicant or, in his or her absence, to the chief legal officer of the licensee or applicant.

(f) Whenever the equal opportunity officer of a casino licensee or applicant makes a suspension recommendation to the chief executive officer pursuant to (b)2, (c)2, or (d)2 above, a copy of the recommendation shall be maintained on file by the casino licensee or applicant for inspection by the Commission or Division upon request.

19:53-1.5 Advisory board

The Commission may establish an advisory board consisting of local or State officials, representatives of area businesses and communities, women and minority organizations, union officials, disabled persons, casino industry representatives or other interested parties. Such advisory board may make recommendations to the Commission, upon its request, concerning policies or techniques to assure equal employment opportunity for all persons and the participation of certified and provisionally certified MBEs and WBEs in purchasing and contracting in the casino industry and the casino-related construction industry.

19:53-1.6 Powers of the Commission; effect of rules

(a) Nothing in this chapter shall be construed as limiting the powers of the Commission or the Division as granted by the Act.

(b) Nothing contained in this chapter shall be interpreted to supplant, diminish, limit or in any way affect the scope and application of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. sec. 2000(e), or any other law regarding equal employment opportunity, equal business opportunity or affirmative action.

19:53-1.7 Enforcement and compliance; role of the Division

Pursuant to section 76 of the Act, the Division shall assist the Commission in the enforcement of any applicable provisions of the Act and this chapter by prosecuting before the Commission proceedings for violation of the Act and this chapter and by providing the Commission with information necessary for proceedings involving enforcement of any of the applicable provisions of the Act and this chapter.

19:53-1.8 Severability

If any clause, sentence, subparagraph, paragraph, subsection, section, subchapter or other portion of these rules or the application thereof to any person or circumstance shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of these rules or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, subchapter, or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

SUBCHAPTER 2. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS, SUBCONTRACTORS AND CASINO LICENSEES AND APPLICANTS CONCERNING CONSTRUCTION

19:53-2.1 Equal employment and business opportunity obligations of casino licensees and applicants concerning construction

(a) Each casino licensee and applicant shall provide equal employment opportunity to all prospective and actual employees at all levels of the work force and equal business opportunity to all contractors or subcontractors employed in the construction, renovation or reconstruction of the casino hotel, casino, casino simulcasting facility or any related facility.

(b) No architectural plans or site plans of proposed construction, renovation or reconstruction of any structure or facility to be used as a casino hotel, casino, casino simulcasting facility or related facility shall be approved by the Commission, nor shall any contract or subcontract for such work be commenced, unless the casino licensee or applicant requires that, at a minimum, all contracts or subcontracts to be awarded in connection therewith shall contain appropriate provisions by which contractors or subcontractors or their assignees agree to afford:

1. Equal employment opportunity to all prospective employees and actual employees to be employed by the contractor or subcontractor; and

2. Equal business opportunity to all persons who wish to participate in the performance of the contract or subcontract.

(c) Prior to the commencement of any work by a contractor or subcontractor in connection with any construction, renovation or reconstruction of any structure to be used as a casino hotel, casino, casino simulcasting facility or related facility, each casino licensee or applicant shall require the construction contractor or subcontractor to include the mandatory contract language set forth in N.J.A.C. 19:53-2.7 in each contract or subcontract.

(d) No casino license shall issue to or be held by any person unless such person shall demonstrate to the Commission that, as of the effective date of these regulations, equal employment opportunity has been afforded, prior to the submission of architectural plans or site plans to the Commission, to all prospective employees and to all actual employees employed by a contractor or subcontractor in connection with the actual construction, renovation or reconstruction of any structure to be used as a casino hotel.

(e) A casino license applicant shall be required to designate an Equal Opportunity Officer in accordance with the provisions of N.J.A.C. 19:53-1.4 prior to the start of actual construction by the applicant or any affiliated entity of any structure or facility to be used as a casino hotel. The casino license applicant shall also be required to submit an EEBOP in accordance with the provisions of N.J.A.C. 19:53-6 prior to the earlier of the start of actual construction of a casino hotel facility, the recruitment and employment of personnel necessary to undertake the business of the casino or hotel, or the filing of an application for casino licensure.

19:53-2.2 Obligation of casino licensee or applicant to monitor all construction activity

(a) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall be required to develop and implement a monitoring system which allows the casino licensee or applicant to oversee all construction activity performed for the licensee or applicant at the casino hotel, casino, casino simulcasting facility or any related facility.

(b) The monitoring system shall provide for systematic coordination between the equal opportunity officer, the relevant departments within the organization of the casino licensee or applicant which contract for construction work and the purchasing department. The monitoring system shall include, without limitation, procedures which:

1. Ensure that all contractors and subcontractors are notified of their obligation to submit a Project Labor Report pursuant to

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N.J.A.C. 19:53-2.8 and to confirm that such reports are in fact submitted by comparison of the contractors and subcontractors identified on these reports with those listed on the Project Status Report required pursuant to N.J.A.C. 19:53-2.4;

2. Require the evaluation of the information contained in the Project Labor Reports to ensure their complete, accurate and timely submission, and compliance by all contractors and subcontractors with their obligations under this subchapter;

3. Outline the steps to be used by the casino licensee or applicant to obtain compliance from contractors and subcontractors who fail to fulfill their obligations under this subchapter;

4. Ensure that the mandatory construction contract and subcontract language required by N.J.A.C. 19:53-2.7 is actually included in all construction contracts and subcontracts;

5. Provide notification to all contractors and subcontractors of the obligations of the casino licensee or applicant under the Act and this subchapter;

6. Encourage contractors and subcontractors to employ women and minorities at all levels of the work force;

7. Ensure the documentation of the activities and efforts of contractors and subcontractors to obtain minority and female participation in the construction work force as required by N.J.A.C. 19:53-2.8 and 2.9 when the construction work force of the contractor or subcontractor does not satisfy the women and minority employment goals established by N.J.A.C. 19:53-2.3;

8. Ensure that certified and provisionally certified MBEs and WBEs are afforded equal opportunity to compete in the bidding for construction contracts and subcontracts; and

9. Track the participation of certified and provisionally certified MBEs and WBEs in construction projects.

19:53-2.3 Women and minority employment goals for the construction work force of casino licensees and applicants

(a) Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the construction work force of a casino licensee or applicant and its individual contractors and subcontractors shall be seven percent for women journeyworkers and apprentices and 22 percent for minority journeyworkers and apprentices.

(b) Subject to the availability of comparable occupational data for Atlantic County concerning levels of employment of women and minorities in the skilled building or construction trades, the Commission may promulgate employment goals for women and minorities in individual skilled building or construction trades. If individual skill or trade goals are promulgated, each specific skill or trade goal shall be used by a casino licensee or applicant, contractor or subcontractor instead of the goals specified in (a) above.

19:53-2.4 Reporting obligations of casino licensees and applicants concerning the construction work force

(a) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall be required to file each of the following monthly reports or submissions regarding its construction work force with the Commission:

1. A Project Labor Report Summary, which shall include all required information contained on each Project Labor Report received by the casino licensee or applicant from contractors or subcontractors pursuant to N.J.A.C. 19:53-2.8 during the preceding month. The Summary shall be submitted in a format prescribed by the Commission and shall be filed by the 15th day of the month.

2. A Project Status Report, which shall describe all construction projects involving contractors or subcontractors which have started or are scheduled to start prior to the filing of the next Project Status Report and shall include: the name and project number for each project; a listing of all contractors and subcontractors working or scheduled to work on each project; the name of any certified or provisionally certified MBE or WBE working or scheduled to work on each project, and the scheduled or actual start date and anticipated finish date of construction. The Project Status Report shall be submitted in a format prescribed by the Commission and shall

be filed in accordance with a schedule proposed by the casino licensee or applicant and approved by the Commission; and

3. Copies of all documentation prepared by contractors or subcontractors of activities and efforts to improve minority and female representation, required pursuant to N.J.A.C. 19:53-2.8 or 2.9, and submitted to the casino licensee or applicant during the preceding month. The documentation shall be submitted to the Commission by the casino licensee or applicant by the fifteenth day of the month.

(b) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall file an Annual Summary of Construction Activity with the Commission and Division at least four months prior to the scheduled date of the EEBOP assessment hearing, initial casino license hearing or casino license renewal hearing. The Annual Summary of Construction Activity shall include a summary of all construction projects started by the casino licensee or applicant during the four calendar quarters immediately preceding the filing deadline for the Annual Summary of Construction Activity. The summary shall, without limitation, describe:

1. The start and actual or anticipated finish date for each construction project;

2. The project number or numbers assigned to each construction project;

3. All contractors and subcontractors providing services on each construction project; and

4. The total dollar amount of construction expenditures made with certified or provisionally certified MBE or WBE construction firms.

19:53-2.5 Special compliance obligations applicable to a casino license applicant building a casino hotel facility

(a) In addition to complying with all of the regulatory requirements of N.J.A.C. 19:53-2.2 which are applicable to a casino license applicant, any casino license applicant which is planning to build or substantially renovate a casino hotel facility prior to licensure shall comply with the requirements of this section and N.J.A.C. 19:53-2.6 in accordance with a schedule to be set by the Commission based on the projected opening date of the casino hotel facility and the hearing schedule of the Commission.

(b) The casino license applicant shall submit a draft affirmative action survey form and draft employment application to the New Jersey Division on Civil Rights (DCR) in accordance with N.J.A.C. 13:7 for review as to their consonance with the rules on pre-employment inquiries and procedures, revise both documents as guided by the review and comments of DCR, and file a copy of the final version of each document and the notice of DCR approval with the Commission.

(c) Notwithstanding the provisions of N.J.A.C. 19:53-4.1, the casino license applicant shall submit for approval by the Commission a description of all hiring criteria and procedures used to determine whether to hire an applicant for employment or to transfer, upgrade or promote an existing employee. Each casino license applicant shall submit the following in satisfaction of this requirement:

1. A narrative description of the process of screening, interviewing and hiring applicants, which shall include a delineation of the responsibilities of the equal opportunity officer, director of personnel and other principals in that process;

2. A description of any tests, interview procedures or other procedures which will be administered to applicants or employees;

3. A jobs compendium for any positions directly or indirectly related to the construction phase of the casino hotel facility including, without limitation, the equal opportunity officer, the personnel department and the purchasing department;

4. An in-house job posting procedure which shall be a clearly-defined and comprehensively-applied process through which employees may bid for intradepartmental or interdepartmental promotion or transfer;

5. A training summary which shall include information as to the race, gender and job title of those employees who underwent skill enrichment training prior to opening;

6. A summary of the strategies and actual techniques used to hire women and minorities at all levels of the work force;

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7. A completed recruitment questionnaire concerning the recruitment process as provided by the Commission;

8. Documentation of contacts with any recruitment sources such as colleges, executive search firms or organizations, and advertisements in minority-oriented and female-oriented media;

9. An in-house complaint procedure for equal employment opportunity complaints to be addressed by the equal opportunity officer; and

10. An employee manual or handbook or other procedure designed to advise all employees of: the policy of the casino license applicant on equal employment opportunity; prohibitions against discrimination and sexual harassment; the name, office location and phone number of the equal opportunity officer; and instructions to contact the equal opportunity officer in the event of an allegation of discrimination or harassment.

19:53-2.6 Special reporting obligations applicable to a casino license applicant building a casino hotel facility

(a) In addition to complying with all of the reporting requirements of N.J.A.C. 19:53-2.4 which are applicable to a casino license applicant, any casino license applicant which is planning to build or substantially renovate a casino hotel facility prior to licensure shall comply with the reporting requirements imposed by this section. These reports shall be filed with the Commission in accordance with a format to be prescribed by the Commission.

(b) An Applicant Flow Report shall identify by gender and race the number of persons who have applied for each job title of the casino license applicant. The report shall include all persons who have applied for a position from the first day the casino license applicant began accepting applications through the date on which the report is prepared. The report shall be submitted in the following two formats:

1. The data shall be sorted by each of the 12 EEOC job categories and subclasses in descending order as defined in N.J.A.C. 19:53-1.3 and, within each job category or subclass, by job title in alphabetical order. Subtotals by EEOC job category or subclass and a total for all 12 EEOC job categories and subclasses shall also be provided.

2. The data shall be sorted by department in alphabetical order and, within each department, by job title in alphabetical order, with the EEOC job category or subclass of each job title indicated adjacent to it. Totals for each department shall also be provided.

(c) A Hired and Pending Report shall identify by gender and race the number of employees who have been hired and the number of applicants to whom an offer to hire was made conditioned upon the opening of the casino hotel. The report shall be submitted in the two formats described in (b)1 and 2 above.

(d) An Employee Information Report shall identify by gender and race the number of employees who are hired and on the payroll of the casino license applicant. After the filing of the initial Employee Information Report, the report shall be submitted by the 15th day of the month following the reporting period.

19:53-2.7 Construction contracts and subcontracts; mandatory contract language

(a) Every contract or subcontract which concerns the construction of a casino hotel, casino, casino simulcasting facility or any related facility shall contain the following language concerning equal employment opportunity and equal business opportunity:

"During the performance of this contract (or subcontract), the contractor (or subcontractor) agrees that it will be bound by the equal employment and business opportunity requirements of the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., and the rules of the New Jersey Casino Control Commission, N.J.A.C. 19:53.

The contractor (or subcontractor) agrees that it will provide equal employment opportunity, as defined in N.J.A.C. 19:53-1.2, to all prospective and actual employees of the contractor (or subcontractor). The contractor (or subcontractor) agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth in detail the provisions of this equal employment opportunity clause.

The contractor (or subcontractor) agrees that it will include in all advertisements or solicitations for employees placed by or on behalf of the contractor (or subcontractor) a statement that it is an equal employment opportunity employer subject to regulation by the New Jersey Casino Control Commission.

The contractor (or subcontractor) agrees that it will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or representative of the contractor's (or subcontractor's) commitments under the Casino Control Act and the rules of the Casino Control Commission and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor (or subcontractor) agrees that it will provide equal business opportunity, as defined in N.J.A.C. 19:53-1.2, to all persons who wish to participate in the performance of the contract (or subcontract). The contractor (or subcontractor) agrees to post in conspicuous places at its place of business and on the project site notices setting forth in detail the provisions of this equal business opportunity clause.

The contractor (or subcontractor) agrees that a representative of the Casino Control Commission and the Division of Gaming Enforcement shall be entitled to attend all construction project meetings and, at reasonable times and in a reasonable manner, to enter the contractor's (or subcontractor's) business facility or facilities or construction project site for determining whether the contractor or subcontractor is complying with the Casino Control Act and the rules of the Commission. The contractor (or subcontractor) agrees that the Commission or the Division, in making such determinations, shall be entitled to inspect or copy any relevant books and records of the contractor (or subcontractor)."

(b) In lieu of the mandatory language required by (a) above, a contractor or subcontractor may include the following language in the contract or subcontract:

"The parties to this contract (or subcontract) agree to incorporate into this contract (or subcontract) the mandatory equal employment and business opportunity contract language contained in the rules of the New Jersey Casino Control Commission at N.J.A.C. 19:53-2.7, as amended or supplemented from time to time, and to comply fully with the terms, provisions and obligations of N.J.A.C. 19:53."

(c) In addition to the contract or subcontract language required by (a) or (b) above, every construction contractor or subcontractor shall also include the following language in every contract or subcontract which concerns the construction of a casino hotel, casino, casino simulcasting facility or any related facility:

"The contractor (or subcontractor) agrees to attempt in good faith to employ women and minority workers in each construction skill or trade consistent with the applicable employment goals established pursuant to N.J.A.C. 19:53-2.3 and to file in a complete, accurate and timely manner all reports and documentation required by the rules of the New Jersey Casino Control Commission."

19:53-2.8 Reporting obligations of construction contractors and subcontractors

Unless otherwise specified in the construction section of an approved EEBOP of a casino licensee or applicant pursuant to N.J.A.C. 19:53-6, each contractor or subcontractor involved in the construction of a casino hotel, casino, casino simulcasting facility or any related facility for that casino licensee or applicant shall be required to file or maintain the following reports or records:

1. A Project Labor Report (PLR) shall be prepared on a weekly basis and shall describe the unionized work force used by the contractor or subcontractor on all construction projects of the casino licensee or applicant during the week. The PLR shall indicate the number of apprentices and journeyworkers employed by the contractor or subcontractor in each skilled building and construction trade and the number of hours each worker, listed by race and gender, was employed during the week. The PLR shall be completed on a form prescribed by the Commission and supplied to the contractor or subcontractor by the casino licensee or applicant. The PLR shall be submitted by the contractor or subcontractor to the equal opportunity officer of the casino licensee or applicant on a schedule

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established by the casino licensee or applicant which allows inclusion of all PLRs on its Project Labor Report Summary.

i. If a contractor or subcontractor is performing on a construction project where the total cost of the project to the casino licensee or applicant is estimated to be at least two million dollars, the contractor or subcontractor shall be required to submit a PLR which relates solely to that project; all other construction employment by the contractor or subcontractor on projects for that casino licensee or applicant may be reported on a single PLR.

ii. Each casino licensee or applicant shall be required to notify a contractor or subcontractor when a separate PLR is required pursuant to (a)1i above.

2. Documentation shall be maintained of all requests by the contractor or subcontractor to labor unions or other worker representatives to supply qualified women and minorities for employment at casino licensee or applicant construction sites. Copies of this documentation shall be applied to the equal opportunity officer of the casino licensee or applicant.

19:53-2.9 Quarterly assessment of good faith efforts of contractors and subcontractors to meet employment goals for women and minorities; referral to Division

(a) The Commission shall, on a quarterly basis, review and assess the monthly Project Labor Report Summaries submitted by casino licensees or applicants pursuant to N.J.A.C. 19:53-2.4 and any other available documentation concerning the efforts of contractors and subcontractors to meet the applicable employment goals for women and minorities established by N.J.A.C. 19:53-2.3.

(b) Any contractor or subcontractor which fails to meet the applicable employment goals for women and minorities during a calendar quarter shall be notified by the Commission that the contractor or subcontractor shall have two additional calendar quarters in which to comply with the goals or document its good faith efforts to do so.

(c) If a contractor or subcontractor which has been notified pursuant to (b) above fails, by the end of the six month compliance review period, to meet the employment goals for women and minorities or to submit documentation of its good faith efforts to meet the goals, the issue of compliance shall be referred to the Division for investigation as to whether a violation of the Act or these rules has occurred. If, upon the filing of a complaint by the Division against a contractor or subcontractor, the Commission finds that a violation has occurred, the contractor or subcontractor may be subject to any of the sanctions enumerated in N.J.S.A. 5:12-129 and N.J.A.C. 19:53-3.5.

19:53-2.10 Annual report on construction contractor and subcontractor work force of casino licensee or applicant; relation to annual EEBOP assessment

(a) The Commission shall, based on the information derived from the reports required by N.J.A.C. 19:53-2.4(a)1, supply each casino licensee or applicant and the Division with an annual construction contractor and subcontractor work force report for the casino licensee or applicant four months prior to the scheduled date of the EEBOP assessment hearing, initial casino license hearing or casino license renewal hearing of the casino licensee or applicant. The annual construction contractor and subcontractor work force report shall indicate the total number of apprentices and journeyworkers, listed by race and by gender, employed by the contractors and subcontractors of the casino licensee or applicant in each building skill or construction trade as of the end of the calendar quarter immediately preceding the release date of the annual work force report. Each casino licensee or applicant shall have 30 days from the release date of the report to challenge the information contained therein.

(b) Each casino licensee or applicant whose annual construction contractor and subcontractor work force report does not demonstrate that the casino licensee or applicant achieved the applicable employment goals established by N.J.A.C. 19:53-2.3 for the year shall be required to document its efforts to implement and comply with the construction section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

SUBCHAPTER 3. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO SERVICE INDUSTRY ENTERPRISES

19:53-3.1 Designation of equal opportunity officer by casino service industry enterprise licensee; responsibility of chief executive officer and equal employment officer

Each casino service industry enterprise licensee shall designate a principal member of its organization to serve as an equal opportunity officer. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees of the licensee, that equal business opportunity is afforded to all persons who do or would like to do business with the licensee, and that the licensee complies with or makes good faith efforts to comply with any affirmative action obligations imposed on the licensee by the Act and this chapter. The equal opportunity officer shall be directly responsible for the effective and continuing implementation of the equal opportunity and affirmative action obligations of the licensee.

19:53-3.2 Equal employment and business opportunity obligations of all casino service industry enterprise licensees and applicants

(a) Each casino service industry enterprise licensee and applicant shall provide equal employment opportunity to all prospective and actual employees at all levels of its work force.

(b) Each casino service industry enterprise licensee and applicant shall provide equal business opportunity to all persons who do or wish to do business with the licensee or applicant.

(c) The chief executive officer of each casino service industry enterprise licensee or applicant shall submit to the Commission an acknowledgement of the obligations imposed by this section and, if applicable, N.J.A.C. 19:53-3.3, with the application for initial casino service industry licensure, with each application for license renewal, and upon any change in the ownership or management of the casino service industry enterprise.

(d) Each casino service industry enterprise licensee or applicant shall be required to:

1. Post notices available to employees and applicants for employment of the equal employment opportunity obligations of the casino service industry enterprise licensee or applicant; and

2. Include a statement in all postings, advertisements or other solicitations for employment that it is an equal opportunity employer.

19:53-3.3 Affirmative action obligations of casino service industry enterprise licensees and applicants which have 50 or more employees in New Jersey

(a) Each casino service industry enterprise licensee and applicant which employs 50 or more employees in the State of New Jersey shall be required to undertake affirmative measures to ensure that women and minorities are recruited and employed at all levels of its work force and treated during employment without regard to their female or minority status. Such affirmative efforts shall, without limitation, address all employment practices including:

1. Employment, promotion, demotion or transfer;
2. Recruitment, recruitment advertising or posting;
3. Layoff or termination;
4. Rates of pay and other forms of compensation or benefits; and
5. Selection for training programs.

(b) Each casino service industry enterprise licensee and applicant governed by this section shall be required to:

1. Post all employment openings for response by qualified in-house employees or, when appropriate, advertise such openings in newspapers of general circulation and other media which reach a cross-section of the population in the area from which the work force will be drawn;

2. Send notices of employment openings to organizations which serve the interest of promoting equal employment opportunity for women and minorities;

3. Send to each labor union or representative of workers with which it has a collective bargaining agreement a notice of the

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obligations of the licensee or applicant under the Act and rules of the Commission;

4. Send to each labor union or representative of workers with which it has a collective bargaining agreement a request for referral of qualified women and minority candidates for employment; and

5. Evaluate any criteria, tests, interview procedures and other requirements for employment, promotion and transfer of employees to assure that they are not discriminatory in their impact or that no less discriminatory methods of evaluation or prediction of job performance are feasible.

19:53-3.4 Report by casino service industry enterprise licensees and applicants on the composition of their New Jersey work force

(a) Each casino service industry enterprise license applicant shall submit a statistical report on the composition of its work force in New Jersey at the time of filing of its application for initial licensure.

(b) Each casino service industry enterprise licensee shall submit a statistical report on the composition of its work force in New Jersey with its application for license renewal.

(c) The reports required by (a) and (b) above shall be submitted on forms provided by the Commission and shall indicate the number of employees by race and by gender working in each EEOC job category and subclass.

19:53-3.5 Sanctions

(a) If the Commission determines that a casino service industry enterprise licensee or applicant is in violation of the Act or this subchapter, in addition to any action taken by the Commission to suspend or revoke the casino service enterprise license, the Commission may:

1. Order any or all casino licensees and applicants to terminate or suspend any business relationships or contracts with the casino service industry enterprise licensee or applicant;

2. Prohibit the casino service industry enterprise licensee or applicant from entering into any future contracts with any casino licensee or applicant for a period of time to be determined by the Commission; and

3. Take any other action authorized by the Act or the rules of the Commission.

SUBCHAPTER 4. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO LICENSEES AND APPLICANTS CONCERNING THE OPERATIONS WORK FORCE

19:53-4.1 Equal employment opportunity obligations of casino licensees and applicants concerning the operations work force

(a) Each casino licensee and applicant shall provide equal employment opportunity to all prospective and actual employees at all levels of the operations work force.

(b) Each casino licensee and applicant shall be required to:

1. Post notices available to employees and applicants for employment of the equal employment opportunity obligations of the casino licensee or applicant;

2. Include a statement in all postings, advertisements or other solicitations for employment that it is an equal opportunity employer;

3. Post all employment openings for response by qualified in-house employees and, when appropriate, advertise such openings in newspapers of general circulation and other media which reach a cross-section of the population in the area from which the work force will be drawn;

4. Send to each labor union or representative of workers with which it has a collective bargaining agreement, a notice of the obligations of the casino licensee or applicant under the Act and this chapter;

5. Evaluate any criteria, tests, interview procedures and other requirements for employment, promotion or transfer of employees to assure that they are not discriminatory in their impact or that no less discriminatory methods of evaluation or prediction of job performance are feasible;

6. Provide to the Commission, upon request, a description of all criteria, tests, interview procedures or other procedures used to determine whether to employ an applicant for employment or to transfer, upgrade or promote an existing employee; and

7. If necessary, comply with the provisions of (c) below.

(c) In the event that any criteria, test, interview procedure or other employment procedure used by a casino licensee or applicant is shown to have a discriminatory impact, the casino licensee or applicant shall be required to demonstrate to the satisfaction of the Commission that no less discriminatory method of evaluation or prediction of job performance is feasible. In such case, the casino licensee or applicant shall justify the requirements imposed and shall demonstrate to the satisfaction of the Commission that any criteria, tests, interview procedures or other procedures used are truly predictive of job performance. The casino licensee or applicant shall discontinue the use of any criteria, tests, interview procedures or other employment procedures which have a discriminatory impact and which cannot be validated as truly predictive of job performance to the satisfaction of the Commission. In attempting to establish the validity of the criterion, test, interview procedure or other employment procedure, the casino licensee or applicant shall be guided by the rules of the New Jersey Division on Civil Rights and the U.S. Equal Employment Opportunity Commission.

19:53-4.2 Obligations of casino licensees and applicants concerning persons with disabilities; reasonable accommodation

(a) Each casino licensee and applicant shall include in the operations work force section of its EEBOP provisions which address the efforts of the casino licensee or applicant to employ and advance persons with disabilities. Each casino licensee or applicant required to file an EEBOP evaluation with the Commission pursuant to N.J.A.C. 19:53-6 shall include an assessment of the efforts of the casino licensee or applicant concerning persons with disabilities.

(b) Reasonable accommodation in employment to persons with disabilities required of casino licensees or applicants shall be afforded in accordance with the requirements of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and attendant regulations, and Title I of the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and attendant regulations.

19:53-4.3 Affirmative action obligations of casino licensees and applicants concerning the operations work force

(a) Each casino licensee and applicant shall be required to undertake affirmative measures to ensure that women and minorities are recruited and employed at all levels of the operations work force and treated during employment without regard to their female or minority status. Such affirmative efforts shall, without limitation, address all employment practices including:

1. Employment, promotion, demotion or transfer;
2. Recruitment, recruitment advertising or posting;
3. Layoff or termination;
4. Rates of pay and other forms of compensation or benefits; and
5. Selection for training programs.

(b) Each casino licensee and applicant shall:

1. Post or advertise all personnel transactions which result in a promotion, title change/reclassification or a new hire prior to the selection of a candidate;

2. Undertake efforts to improve the representation of women and minorities in job titles within EEOC job categories in which the casino licensee is below the applicable employment goals established by N.J.A.C. 19:53-4.4;

3. Undertake special recruitment and advancement efforts beyond posting and advertising positions in newspapers of general circulation to improve the representation of women and minorities in positions with salaries equal to or greater than \$35,000, such as the use of search firms, advertisements in women-oriented and minority-oriented media, and notices to organizations which serve the interests of women and minorities;

4. Maintain and submit statistics on the applicant flow and disposition of women and minority candidates for employment who are interviewed or referred, and provide documentation of postings, classified advertisements, and other media used to seek candidates;

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5. Develop and implement upward mobility training programs, approved by the Commission, which are designed to increase women and minority representation in EEOC job categories, including subclasses of Officials and Managers, in which the casino licensee or applicant is below the applicable employment goal for the category;

6. Improve the representation of women and minorities in positions covered by collective bargaining agreements in which the casino licensee or applicant is below the applicable employment goal for the category by complying with the provisions of (c) below.

(c) If a casino licensee or applicant is below the applicable employment goal for women or minorities established by N.J.A.C. 19:53-4.4 for a position covered by a collective bargaining agreement, the casino licensee or applicant shall, without limitation:

1. Request in writing that the union or workers representative refer qualified female or minority candidates, as appropriate, for the position in question; and

2. If the union or workers representative is unable to refer an appropriate woman or minority candidate, the casino licensee or applicant shall advertise the position on the open market and document its efforts to hire a qualified female or minority candidate for the position. This documentation shall include, without limitation, statistics on applicant flow, details on referrals received, disposition of candidates interviewed, letters of request to the union or workers representative, and copies of postings and advertisements.

19:53-4.4 Women and minority employment goals for the operations work force of casino licensees and applicants

(a) Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the operations work force of a casino licensee or applicant shall be 46 percent for women and 22 percent for minorities for each EEOC job category except craftpersons, which shall be subject to the applicable women or minority employment goal established pursuant to N.J.A.C. 19:53-2.3.

(b) Subject to the availability of comparable occupational data for Atlantic County concerning levels of employment of women and minorities in the eight EEOC job categories other than craftpersons, the Commission may promulgate employment goals for women and minorities for each of these eight EEOC job categories. If job category goals are promulgated, each specific job category goal shall be used by a casino licensee or applicant instead of the goals specified in (a) above.

19:53-4.5 Quarterly report on the affirmative action efforts of casino licensees concerning the operations work force

(a) Beginning with the first calendar quarter after the opening of its casino, each casino licensee shall be required to file a quarterly report with the Commission and the Division on its affirmative action efforts concerning its operations work force. The quarterly report shall be presented in a format approved by the Commission and shall be filed by the fifteenth day of the month following the end of the quarter.

(b) The quarterly report shall provide data concerning the composition of the operations work force of the casino licensee and shall list by race and by gender the number of workers employed by the casino licensee in each EEOC job category and subclass.

(c) The quarterly report shall include the following information concerning new hires and promotions by the casino licensee in positions with a salary of \$35,000 or more:

1. The number of new hires and promotions by job title, race and gender; and

2. If the casino licensee is below the applicable women or minority employment goal established by N.J.A.C. 19:53-4.4 for a job category in which a position with a salary of \$35,000 or more is filled by someone other than a woman or minority, the casino licensee shall document its efforts to hire or promote a woman or minority to the position. Such documentation shall include a completed and signed Affirmative Action Impact Statement and copies of any posting, advertisement, and letters to search firms, unions, and other organizations which were prepared during the hiring or promotion process.

(d) The quarterly report shall also include:

1. A summary of new hires, promotions, involuntary and voluntary terminations and layoffs by EEOC job category;

2. A copy of all grievance reports related to equal employment opportunity filed with the casino licensee's equal opportunity officer; and

3. A report on the implementation of all upward mobility training programs and the status of participants.

19:53-4.6 Annual report by casino licensee or applicant on the composition of its operations work force; relation to annual EEBOP assessment

(a) Each casino license applicant shall submit a statistical report on the composition of its operations work force at the time of filing its application for initial casino licensure. Thereafter, the applicant shall file the report four months prior to the scheduled date of its EEBOP assessment hearing or its initial casino license hearing.

(b) Each casino licensee which, pursuant to the provisions of N.J.A.C. 19:53-6.12, was not required to file a quarterly report for the last calendar quarter which ended at least four months prior to the scheduled date of its EEBOP assessment hearing or casino license renewal hearing, shall submit a statistical report on the composition of its operations work force at least four months prior to the scheduled date of such hearing.

(c) The reports required by (a) and (b) above shall be submitted in a form prescribed by the Commission and shall indicate the number of employees by race and by gender working in each EEOC job category as of, except for the initial report submitted by a casino license applicant, the end of the calendar quarter immediately preceding the filing deadline for submission of the report.

(d) Each casino licensee or applicant whose annual operations work force composition report does not demonstrate that the casino licensee or applicant achieved the applicable employment goals established by N.J.A.C. 19:53-4.4 for the year shall be required to document its efforts to implement and comply with the operations work force section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

SUBCHAPTER 5. EQUAL BUSINESS OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO LICENSEES AND APPLICANTS

19:53-5.1 Background and general purposes

(a) As described more fully in subsection 1b of the Act, N.J.S.A. 5:12-1b, the central underlying purpose of the Act is to channel the economic and social impact from the legalization of casino operations in Atlantic City into the rebuilding and growth of the economy of the local area. More specifically, the Act is designed to: generate resources that permit the redevelopment of blighted areas of Atlantic City, including stabilizing residential neighborhoods; create job opportunities for city residents and others in both casino hotels and casino-related service companies; and encourage the development of visitor, convention and tourism facilities in Atlantic City that will provide employment and business opportunities for local residents.

(b) The Act is further designed to permit and encourage as many businesses as possible to service the casino industry, both for the purpose of expanding investment and job opportunities in the area and in order to encourage competition and a plentiful supply of available goods and services to the industry, so as to insulate it from risks of economic instability and undue economic concentrations.

(c) At the time of enactment of the Act a significant portion of the population of Atlantic City was comprised of minorities, as defined in this chapter. In recognition of this fact, the Act provides specific guidelines and policies designed to assure that the aforementioned public policies would be administered so as to direct the attention and resources of the Commission to addressing the needs of the minority community. N.J.S.A. 5:12-134 and 135. The clear purpose of the Act is to guarantee the opportunity for all, without disadvantage by reason of race, gender or ethnicity, to participate fully in the economic and social benefits that are generated by the development of the casino industry. According to the most recent

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census data, a large majority of the residents of Atlantic City are minorities. Therefore, the premise of the statute remains a compelling reality, and any program designed to provide or improve opportunities for the residents of Atlantic City must of necessity address the need to prevent or eliminate any disadvantage incurred by reason of race or ethnicity.

(d) The Act makes clear that casino licensure is a revocable, and in many ways unique, privilege, and that such a license is held conditioned upon compliance with all regulations that are designed to further the purposes of the Act. Indeed, in recognition of this obligation, and in keeping with the manifest design of the Act, the casino licensees collectively entered into a voluntary agreement in 1981, under the terms of which they undertook to guarantee that 15 percent of their spending for goods and services would enure to the benefit of minority business enterprises. Notwithstanding the generalized good faith attempts by the casino industry over the years, this goal has not yet been realized, due largely, according to evidence presented to the Commission, to the many problems associated with new and developing minority enterprises, including, without limitation, racial discrimination; difficulties in attracting equity or other capital funds; inability to secure bonding or meet other job requirements as a result of insufficient ability to document prior satisfactory job completions; relative lack of experienced minority managerial personnel, and the existence of extensive commercial relationships of long standing which many casino licensees are reluctant to endanger.

(e) The comparative success of the casino industry in meeting employment goals for minorities and women suggests that a targeted program that establishes specific goals for business opportunities for minority and woman business enterprises, but affords significant flexibility to the casino licensees in determining new and innovative methods for assisting such enterprises to compete effectively, is an appropriate means to assure the realization of the purposes of the Act and the goals of the voluntary agreement of 1981, and the achievement of both the fact and the appearance of equal opportunity for all people.

19:53-5.2 Equal business opportunity obligation of all casino licensees and applicants

Each casino licensee and applicant shall afford equal business opportunity to all persons who do or wish to do business with the licensee or applicant in connection with its casino hotel, casino, casino simulcasting facility or any related facility.

19:53-5.3 Participation goals for casino licensee purchases of goods and services from minority and women businesses

(a) Beginning on the date of receipt of its casino license, every casino licensee shall make a good faith effort to spend each year at least five percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified and provisionally certified MBEs and WBEs.

(b) Effective January 1, 1991, or three years after the receipt of its casino license, whichever is later, every casino licensee shall make a good faith effort to spend each year at least 10 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified and provisionally certified MBEs and WBEs.

(c) Effective January 1, 1994, or six years after the receipt of its casino license, whichever is later, every casino licensee shall make a good faith effort to spend each year at least 15 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-5.5, with certified and provisionally certified MBEs and WBEs.

(d) Every casino licensee shall make a good faith effort, considering the availability of both groups, to distribute the dollar value of its contracts for goods and services equitably between:

1. Certified and provisionally certified MBEs; and
2. Certified and provisionally certified WBEs.

19:53-5.4 Provisional certification of minority and women businesses

(a) An enterprise may qualify for provisional certification as an MBE, a WBE, or both.

(b) In order to qualify for provisional certification as an MBE or WBE, an enterprise must be independently owned, operated and controlled. An enterprise shall be deemed to be independently owned, operated or controlled if its management is responsible for both its daily and long term operation and owns at least 51 percent of the enterprise.

(c) In order to qualify for provisional certification as an MBE, an enterprise must be:

1. A sole proprietorship owned and controlled by a minority; or
2. A partnership or joint venture owned and controlled by minorities in which at least 51 percent of the ownership interest is held by minorities and the management and daily business operations are controlled by one or more of the minorities who own it; or
3. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51 percent owned by one or more minorities or, if stock is issued, at least 51 percent of the stock is owned by one or more minorities.

(d) In order to qualify for provisional certification as a WBE, an enterprise must be:

1. A sole proprietorship owned and controlled by a woman; or
2. A partnership or joint venture owned and controlled by women in which at least 51 percent of the ownership interest is held by women and the management and daily business operations are controlled by one or more of the women who own it; or
3. A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more women who own it, and which is at least 51 percent owned by one or more women or, if stock is issued, at least 51 percent of the stock is owned by one or more women.

(e) Any enterprise which meets the requirements in (b) and either (c) or (d) above shall be provisionally certified by the Commission if the enterprise files an affidavit with the Commission, in a form provided by the Commission, attesting that it is a bona fide MBE or WBE. The affidavit shall be accompanied by a written acknowledgement of the penalties which may be imposed on the enterprise and the persons associated therewith pursuant to (i) below if the enterprise makes any material misrepresentation of fact in its application for certification or provisional certification.

(f) Upon filing of the documents required in (e) above, the enterprise shall be notified that it has been provisionally certified and shall be listed in the Commission's directory of certified and provisionally certified MBEs and WBEs (Commission MBE/WBE Directory).

(g) A provisionally certified MBE or WBE shall be required to complete and submit to the Commission or the DCED an application for DCED certification in accordance with the provisions of N.J.A.C. 12A:11 within 60 days from the date of notice of its provisional certification. The Commission shall provide assistance to MBEs and WBEs in applying for certification by the DCED. In the event that a completed application for DCED certification is not filed within 60 days, the MBE or WBE shall lose its provisional certification and shall be removed from the Commission MBE/WBE Directory.

(h) Any provisional certification of an enterprise granted by the Commission pursuant to this section shall automatically terminate upon a final decision by the DCED on the certification application of the enterprise pursuant to N.J.A.C. 12A:11. The revised status of the enterprise shall be reflected in the Commission MBE/WBE Directory.

(i) If it is determined by the Commission or the DCED, upon the denial of certification by the DCED, or at any time before or after such decision, that an enterprise has intentionally misrepresented material facts on the affidavit required pursuant to (e) above or in its application for DCED certification, the Commission, after an appropriate hearing pursuant to N.J.A.C. 19:42, shall remove the enterprise from the Commission MBE/WBE directory. In addition, the Commission may prohibit any such enterprise from transacting further business with any casino licensee or applicant for a

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period of five years. Such prohibition may be applied to all owners, principals, officers and employees of the enterprise.

(j) Certification or provisional certification of an enterprise as an MBE or WBE does not in any way relieve that enterprise or any casino licensee of its obligation to comply with any requirement of the Act or the Commission's rules concerning registration or licensure of enterprises doing business with casino licensees.

19:53-5.5 Determination of casino licensee net disbursements for goods and services and disbursements to MBEs and WBEs

(a) In determining the net disbursements for goods and services made by a casino licensee during any period and the percentage thereof made with certified and provisionally certified MBEs and WBEs, a casino licensee shall first record the amount of its gross disbursements during the period, including bus business, and then determine its adjusted gross disbursements by deducting its allowable administrative costs and allowable direct labor costs for the period.

(b) Allowable administrative costs are defined as follows:

1. Fees paid to governmental and quasi-government organizations such as fees paid to the Commission, the Athletic Control Board, the Securities and Exchange Commission, the Department of Motor Vehicles, and the Alcoholic Beverage Control Board; payments made to the United States Post Office for the cost of postage; court costs; and Department of Community Affairs permit and license fees;

2. Refunds paid to customers; cash awards and settlements; room deposit refunds; and casino licensee donations to charities recognized by the Internal Revenue Service;

3. Dues and fees for professional associations, trade publications and journals; and

4. Reimbursements for employee travel, food and lodging. This deduction shall not include the cost of conferences, expositions and seminars.

(c) Allowable direct labor costs are defined as follows:

1. Net payroll, which is the cost of salaries, wages, overtime, cash bonuses, director's fees and incentive pay; and

2. Payments related to: workman's compensation claims; payments for employee benefits packages such as 401k contributions and other withholdings such as credit union deductions and employee charitable deductions; payments made to employee wage garnishment agencies pursuant to a court order; and union fees and dues including membership dues, health and welfare, pension, severance, education, legal and annuity fund payments.

(d) The total cost of the following disbursements shall then be deducted from adjusted gross disbursements to determine net disbursements for the period:

1. Utilities and taxes;

2. Financing costs, such as mortgages, loans or any other type of debt;

3. Medical insurance paid directly by the casino licensee on behalf of its employees which, for the purposes of determining net disbursements, shall not include any other insurance such as general or property liability insurance aviation, auto or crime insurance;

4. Dues and fees to the Casino Association of New Jersey and Central Credit of New Jersey, Inc.;

5. Fees and payments to a parent or affiliated company of the casino licensee other than those that represent fees and payments for goods and services supplied by non-affiliated persons through an affiliated company for the use or benefit of the casino licensee; and

6. Rents paid for real property and any payments constituting the price of an interest in real property as a result of a real estate transaction which, for the purposes of determining net disbursements, shall not include fees paid incidental to the real estate transaction, such as fees for brokers who represent the casino licensee, finder's fees, title insurance or other insurance.

(e) A casino licensee may fulfill up to 70 percent of the MBE and WBE participation goals established by N.J.A.C. 19:53-5.3, or any part thereof, by requiring contractors to award portions of their contracts to certified and provisionally certified MBEs and WBEs, to the extent that dollars are actually spent with certified and

provisionally certified MBEs and WBEs. In determining the good faith efforts of a casino licensee to meet its MBE and WBE participation goals, no consideration shall be given to dollars spent by casino contractors with certified and provisionally certified MBEs and WBEs in excess of this 70 percent limitation. Any casino licensee seeking credit for subcontracts awarded to certified or provisionally certified MBEs or WBEs by a casino contractor shall provide proof of the amount of the disbursements to the Commission. Such proof shall include:

1. Executed copies of the contract and subcontract;

2. Copies of any payment orders and checks made payable to the certified or provisionally certified MBE or WBE subcontractor or copies of computer generated records which indicate that such payments were made; and

3. Any other information the Commission may require concerning the circumstances of a particular contract or subcontract.

(f) The percentage of disbursements awarded to certified and provisionally certified MBEs and WBEs by a casino licensee during any period shall be determined by dividing the total amount of such disbursements made during the period by the casino licensee and by any contractor pursuant to an agreement authorized under (e) above, by the net disbursements of the casino licensee for the period as determined in (a) and (d) above.

(g) When recording or reporting the dollar value of its disbursements for goods or services with MBEs and WBEs, a casino licensee shall record or report a disbursement with an enterprise that has been certified as both an MBE and WBE only once. If a casino licensee has an agreement with a contractor in which the contractor agrees to award a portion of its contract to certified or provisionally certified MBEs or WBEs pursuant to (e) above and the contractor itself is a certified or provisionally certified MBE or WBE, a casino licensee shall not claim credit for any disbursement to the certified or provisionally certified MBE or WBE subcontractor if a corresponding credit is claimed for the casino contract.

19:53-5.6 Valuation of casino licensee disbursements for bus business

(a) When determining the amount of gross disbursements or net disbursements made by a casino licensee during any period, the total dollar value of the bus business to be reported by the casino licensee during the period, for the purposes of this subchapter, shall be determined by totalling all direct and indirect payments made to bus owners or operators by the casino licensee during the period.

(b) The amount of bus business to be reported pursuant to this section shall be equal to the value of the direct or indirect compensation provided to the bus owner or operator by the casino licensee. Examples of compensated bus business which must be reported pursuant to this section shall include, without limitation, arrangements whereby:

1. The casino licensee directly charters and pays for the use of the bus;

2. The casino licensee indirectly pays for the use of the bus by reimbursing the user of the bus specifically for the cost of transportation;

3. The casino licensee reimburses a third party for providing the bus for the use of other persons; or

4. The casino licensee pays for the cost of advertising or other goods and services which directly benefit the owner or operator of the bus.

(c) The amount of bus business to be reported pursuant to this section shall not include arrangements whereby a casino licensee agrees to provide complimentary goods or services to the passengers of a bus owner or operator in exchange for the promise of the bus owner or operator to bring its passengers to the casino hotel facility of the casino licensee.

(d) When recording or reporting the dollar value of its bus business, a casino licensee may record or report monies spent with an enterprise that has been certified as both an MBE and a WBE only once.

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19:53-5.7 Quarterly casino licensee disbursement reports

(a) Each casino licensee shall submit to the Commission and the Division, in a format prescribed by the Commission, a quarterly report on its purchases of goods and services, including bus business, which shall consist of the following information recorded in accordance with the requirements of N.J.A.C. 19:53-5.5:

1. The total dollar value of gross disbursements;
2. The total dollar value of allowable administrative costs, as defined in N.J.A.C. 19:53-5.5, deducted from gross disbursements;
3. The total dollar value of allowable direct labor costs, as defined in N.J.A.C. 19:53-5.5, deducted from gross disbursements;
4. The total dollar value of adjusted gross disbursements for goods and services made by the casino licensee during the quarter;
5. The total dollar value of net disbursements for goods and services made by the casino licensee during the quarter;
6. The name and vendor identification number of each certified and provisionally certified MBE or WBE with whom the casino licensee did business during the quarter, as well as:
 - i. The certification status of the enterprise (MBE or WBE);
 - ii. The total dollars disbursed to the enterprise; and
 - iii. The total amount of dollars, if any, which were disbursed to the certified or provisionally certified MBE or WBE by a contractor pursuant to an agreement as described in N.J.A.C. 19:53-5.5(e);
7. The total dollar amount of disbursements made to certified and provisionally-certified MBEs and WBEs during the quarter by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the net disbursements reported pursuant to (a)5 above that each listed amount represents; and
8. The total dollar amount of disbursements made during the quarter to certified and provisionally-certified MBEs and WBEs by contractors pursuant to agreements as described in N.J.A.C. 19:53-5.5(e).

(b) The quarterly reports required by this section shall be based on calendar quarters and shall be filed with the Commission and the Division by the last business day of the month following the expiration of the calendar quarter. The initial quarterly report of any casino licensee which receives its casino license on a date other than the beginning of the calendar quarter shall be based on the partial calendar quarter.

19:53-5.8 Annual report by casino licensees on disbursements to WBEs and MBEs; relation to annual EEBOP assessment

(a) Each casino licensee shall file an annual MBE/WBE disbursement report with the Commission and Division at least four months prior to the scheduled date of its EEBOP assessment hearing or casino license renewal hearing. The annual MBE/WBE disbursement report shall contain a yearly summary of the information required by N.J.A.C. 19:53-5.7(a)1 through 5, 7 and 8 for the four calendar quarters immediately preceding the filing deadline for the annual MBE/WBE disbursement report.

(b) Each casino licensee whose annual MBE/WBE disbursement report does not demonstrate that the casino licensee achieved the applicable participation goals specified in N.J.A.C. 19:53-5.3 shall be required to document its good faith efforts to implement and comply with the business section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

19:53-5.9 Required reporting adjustments for enterprises removed from the Commission MBE/WBE Directory

(a) A casino licensee shall be required to report separately in the MBE or WBE disbursement sections of its current quarterly disbursement report, required pursuant to N.J.A.C. 19:53-5.7, or its current annual disbursement report, required pursuant to N.J.A.C. 19:53-5.8, any disbursement made to a certified or provisionally certified MBE or WBE which is removed from the Commission MBE/WBE Directory prior to the submission of the report to the Commission and the Division.

(b) In determining the good faith efforts of a casino licensee to implement and comply with the provisions of its approved EEBOP pursuant to N.J.A.C. 19:53-6.8, a casino licensee may receive credit for any disbursement made to an MBE or WBE which was certified

or provisionally certified at the time of the disbursement even if such enterprise is subsequently removed from the Commission MBE/WBE Directory unless the casino licensee knew or should have known at the time of the disbursement that the MBE or WBE did not qualify for certification.

(c) Any disbursement to an MBE or WBE which is removed from the Commission MBE/WBE Directory during the current reporting period shall not be included in any report prepared by the Commission or any casino licensee concerning actual disbursements made to certified or provisionally certified MBEs and WBEs.

SUBCHAPTER 6. COMPLIANCE BY CASINO LICENSEES AND APPLICANTS—PREPARATION, IMPLEMENTATION AND REVIEW OF EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY PLAN (EEBOP)

19:53-6.1 Equal Employment and Business Opportunity Plan (EEBOP); purpose and basic elements

(a) In order to insure compliance with the requirements of section 134 of the Act and this chapter, each casino licensee and applicant shall be required to submit an Equal Employment and Business Opportunity Plan (EEBOP) to the Commission for its approval. The EEBOP of each casino licensee or applicant shall address in specific terms the strategies, procedures and internal requirements which the casino licensee or applicant intends to implement so that the equal employment opportunity, equal business opportunity and affirmative action objectives and goals of the Act and this chapter are achieved, both on a current and continuing basis.

(b) Each casino licensee or applicant shall be encouraged to use imagination and innovation in the development of its EEBOP. Although, in general, no particular format will be required, every EEBOP prepared by a casino license applicant shall include Sections, at a minimum, addressing the first three basic subject matter areas listed below, and every EEBOP prepared by a casino licensee shall contain sections addressing each of the following areas:

1. General regulatory requirements;
2. Construction requirements;
3. Operations work force requirements; and
4. Business requirements.

(c) The EEBOP of a casino license applicant which will be building or substantially renovating a casino hotel facility prior to licensure shall address all phases of the development of the project including planning and feasibility studies in preparation for initial construction.

19:53-6.2 General regulatory section of an EEBOP

(a) Every EEBOP submitted by a casino licensee or applicant shall include, at a minimum, the following:

1. A statement by the chief executive officer of the casino licensee or applicant setting forth the equal employment and business opportunity policies of the organization;
2. An acknowledgement by the chief executive officer of the obligations imposed by section 134 of the Act and this chapter; and
3. A description of the means by which the policies of the casino licensee or applicant concerning equal opportunity and affirmative action shall be disseminated and enforced including, without limitation, orientation or training sessions for staff as well as management, placement and supervisory personnel; the availability of the EEBOP to staff for review; and the inclusion of accountability for achieving the objectives of this chapter and the EEBOP of the casino licensee or applicant in the performance evaluations of executives, managers and supervisors.

(b) Other topics appropriate for inclusion in the general regulatory section of an EEBOP shall include, without limitation, the following:

1. A delineation of the role and responsibilities of the equal opportunity officer and his or her staff;
2. A description of the lines of communication and reporting within the organization as they relate to the objectives of this chapter; and
3. A description of the procedures and techniques which the casino licensee or applicant will use to monitor implementation of the EEBOP and to assess the need for modifications.

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(a) The construction section of an EEBOP prepared by a casino licensee or applicant shall describe in detail the means by which the licensee or applicant intends to comply with the equal opportunity and regulatory obligations imposed by N.J.A.C. 19:53-2. Topics appropriate for inclusion in the construction section of an EEBOP shall include, without limitation, the following:

1. Coordination and communication in the implementation of construction plans by the equal opportunity officer, the executive office, the facilities department, the purchasing department, and any other appropriate department;

2. Implementation of a monitoring system which will enable the casino licensee or applicant to evaluate the performance of contractors and subcontractors and the performance of the licensee's or applicant's own organization in fulfilling the reporting and documentation requirements imposed by this chapter; and

3. Procedures and penalties to be used by the casino licensee or applicant if a contractor or subcontractor does not fulfill its goal, documentation or reporting requirements.

(b) If a casino licensee or applicant has failed to achieve the contractor and subcontractor employment goals for women and minorities established pursuant to N.J.A.C. 19:53-2.3, topics appropriate for inclusion in the construction section of an EEBOP may also include, without limitation, the following:

1. Innovative strategies for increasing the participation of women and minorities in the construction work force and the utilization of certified and provisionally certified MBEs and WBEs as contractors and subcontractors, assuming that forecasted capital expenditures remain level; and

2. Specific objectives and timetables for the implementation of the strategies described pursuant to (b)1 above.

19:53-6.4 Operations work force section of an EEBOP

(a) The operations work force section of an EEBOP prepared by a casino licensee or applicant shall describe in detail the means by which the licensee or applicant intends to comply with the equal opportunity and regulatory obligations imposed by N.J.A.C. 19:53-4. Topics appropriate for inclusion in the operations work force section of an EEBOP shall include, without limitation, the following:

1. Coordination and communication in the personnel practices of the casino licensee or applicant by the equal opportunity officer, the executive office, the personnel department, and any other appropriate department;

2. The means by which the casino licensee or applicant shall address its obligation to provide equal employment opportunity and reasonable accommodation in employment to persons with disabilities in accordance with the requirements of N.J.A.C. 19:53-4.2; and

3. The means by which the casino licensee or applicant will insure that all required reports are completed and filed when due.

(b) If a casino licensee or applicant has failed to achieve the employment goals for women and minorities in the operations work force established pursuant to N.J.A.C. 19:53-4.4, topics appropriate for inclusion in the operations work force section of an EEBOP may also include, without limitation, the following:

1. Strategies and measurable objectives for improving the employment of women and minorities in each EEOC job category in which they are underrepresented including, without limitation, proactive initiatives in the following areas:

i. Recruitment, advertising, posting, use of referral agencies and search firms;

ii. Employment;

iii. Training, development or promotion;

iv. Retention; and

v. Lay off, discipline or terminations;

2. Timetables for achievement of the EEBOP objectives;

3. Strategies to improve the representation of women and minorities in positions with salaries of \$35,000 or more;

4. Recruitment resources, including agencies, publications, and groups which serve the interests of women and minorities;

5. Procedures for handling complaints concerning equal employment opportunity or sexual harassment and the means by which employees are advised of the procedures;

6. Efforts to eliminate racial or gender disparities in turnover rates among employees;

7. The use of exit interviews or other means to assess why employees leave on a voluntary basis;

8. Efforts to improve employee retention; and

9. Development and implementation of internal monitoring and analysis mechanisms to be used to review, evaluate and, if needed, correct plan progress.

19:53-6.5 Business section of an EEBOP

(a) The business section of an EEBOP prepared by a casino licensee shall describe in detail the means by which the licensee intends to comply with the equal business opportunity and regulatory obligations imposed by N.J.A.C. 19:53-5. Topics appropriate for inclusion in the business section of an EEBOP shall include, without limitation, the following:

1. Coordination and communication in the purchasing practices of the casino licensee by the equal opportunity officer, the executive office, the purchasing department and any other appropriate department; and

2. The means by which the casino licensee will insure that all of its disbursements are recorded in accordance with the requirements of N.J.A.C. 19:53-5.5 and 5.6 and reported in a timely manner.

(b) If a casino licensee has failed to achieve the participation goals for goods and services to be purchased from certified or provisionally certified minority and women businesses established pursuant to N.J.A.C. 19:53-5.3, topics appropriate for inclusion in the business section of an EEBOP may also include, without limitation, the following:

1. An analysis of the goods and services which are anticipated to be purchased by the casino licensee and the types of goods and services which might be purchased from certified and provisionally certified MBEs and WBEs based on availability;

2. Strategies and initiatives to be undertaken by the casino licensee to assist certified and provisionally certified MBEs and WBEs to compete, survive and grow in casino contracting and purchasing, which may include, without limitation, any efforts by the casino licensee to:

i. Assist MBEs and WBEs to apply for certification;

ii. Assist MBEs and WBEs to qualify for appropriate contracts;

iii. Provide assistance to MBEs and WBEs in seeking out financial sources for expansion, renovation or upgrading of products or services;

iv. Provide technical or financial assistance to MBEs and WBEs in seeking out bonding services, underwriting a bond, or waiving a bonding requirement to enable them to qualify for appropriate contracts;

3. Mentoring and other appropriate business development activities which may, without limitation, include:

i. Loaned executive programs;

ii. Provision of on-the-job trainers for specific functional areas of business, such as computers or personnel administration; and

iii. The loaning of equipment or services, such as computers, secretarial or data processing services;

4. The means by which the casino licensee will provide notice to certified and provisionally certified MBEs and WBEs of its intent to purchase goods or services;

5. Procedures which the casino licensee will use to document its good faith efforts to utilize the services of certified and provisionally certified MBEs and WBEs, such as documentation of affirmative efforts by the licensee to:

i. Increase financial assistance to certified and provisionally certified MBEs and WBEs through the use of low-cost loans;

ii. Develop special payment terms for certified and provisionally certified MBEs and WBEs;

iii. Contribute to local or regional Minority Enterprise Small Business Investment Corporations (MESICs);

iv. Encourage joint ventures between certified and provisionally certified MBEs and WBEs and majority-owned businesses or joint

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ventures with other certified and provisionally certified MBEs and WBEs;

- v. Provide technical assistance and mentoring; and
 - vi. Develop incentives for majority contractors to subcontract to certified and provisionally certified MBEs and WBEs, and to retain and sustain certified and provisionally certified MBEs and WBEs vendors through encouragement and development activities; and
6. Programs, consistent with N.J.A.C. 19:53-5.5, which require contractors to subcontract a portion of their contracts to certified or provisionally certified MBEs and WBEs.

19:53-6.6 Atlantic City small businesses

(a) In order to further the statutory goal of revitalizing Atlantic City as set forth in section 1 of the Act, each casino licensee and applicant shall be encouraged to include in its EEBOP strategies and objectives which are intended to foster the development of Atlantic City small businesses. For the purposes of this section, an "Atlantic City small business" shall be defined as a sole proprietorship, partnership or corporation whose management owns at least 51 percent of the business and is responsible for its daily and long-term operation, has 50 or fewer full-time employees and has its principal place of business (the location where the majority of its employees are located or based) in Atlantic City.

(b) Casino licensees and applicants are encouraged to assist Atlantic City small businesses by using the same kinds of techniques described in N.J.A.C. 19:53-6.5 or any other means deemed appropriate by the licensee or applicant.

(c) Any enterprise which meets the requirements in (a) above may be certified by the Commission as an Atlantic City small business if it files an application and affidavit with the Commission, in a form provided by the Commission, attesting that it is a bona fide Atlantic City small business. The affidavit shall be accompanied by a written acknowledgement of the penalties which may be imposed on the enterprise and the persons associated therewith if the enterprise makes any material misrepresentation of fact in its affidavit or application for certification. Any enterprise which misrepresents its status as an Atlantic City small business shall be subject to the same penalties set forth in N.J.A.C. 19:53-5.4(i).

(d) The Commission shall maintain a section in its directory of certified and provisionally certified MBEs and WBEs which lists all certified Atlantic City small businesses. An enterprise may be certified as both an MBE and WBE and an Atlantic City small business.

19:53-6.7 EEBOP filing requirements; review and approval; revisions

(a) Any entity which is an applicant for or holds a casino license as of the effective date of this chapter shall file its initial EEBOP with the Commission and Division within 120 days of the effective date of this chapter. All other casino license applicants shall file an EEBOP prior to the earlier of the start of actual construction of a casino hotel facility, the recruitment and employment of personnel necessary to undertake the business of the casino or hotel, or the filing of an application for casino licensure.

(b) After initial approval by the Commission, a casino licensee or applicant shall not be required to resubmit all or any part of the EEBOP for review or approval unless:

1. The EEBOP is voluntarily revised by the licensee or applicant pursuant to (c) below;
2. The Commission directs that the EEBOP be revised as a result of an annual EEBOP assessment hearing pursuant to N.J.A.C. 19:53-6.8; or
3. The Commission directs that the EEBOP be revised as a result of a special review of the EEBOP ordered pursuant to N.J.A.C. 19:53-6.9.

(c) A casino licensee or applicant may request the approval of the Commission to revise its EEBOP at any time. No material modification of an EEBOP may be implemented by a casino licensee or applicant until it has been approved by the Commission. Any request to revise an EEBOP shall be submitted at least 60 days in advance of the requested effective date of the change and shall include, without limitation, the following:

1. A clear and concise summary of any revisions, deletions or additions; and

2. A detailed explanation of the changes being proposed and their anticipated effect on the compliance of the casino licensee or applicant with the requirements of the Act and this chapter, which explanation shall include supporting data or documentation when available.

19:53-6.8 Annual EEBOP assessment hearing; statistical demonstration of compliance with obligations; demonstration of compliance through documentation of EEBOP implementation

(a) Each casino licensee or applicant shall be required to demonstrate its compliance with the requirements of the Act and this chapter through an annual assessment of its performance under its approved EEBOP.

(b) The annual EEBOP assessment of a casino licensee shall be scheduled either as part of its casino license renewal hearing or on the anniversary date of the license renewal, if the casino licensee is operating under a two year casino license.

(c) The annual EEBOP assessment of a casino license applicant shall occur on a schedule to be set by the Commission, which schedule shall be based on the anticipated date of either the initial licensure hearing of the applicant or, if a casino hotel is being built or renovated, the opening of the casino.

(d) Four months prior to the scheduled date of the casino license hearing or the annual EEBOP assessment hearing, the casino licensee or applicant shall submit the annual statistical report required pursuant to N.J.A.C. 19:53-4.6 and, in the case of a casino licensee, N.J.A.C. 19:53-5.8. The Commission shall review these reports and the report prepared pursuant to N.J.A.C. 19:53-2.10 and shall advise the casino licensee or applicant of its findings within 30 days.

(e) If the Commission finds, based on these reports, that the casino licensee or applicant has satisfied all of the performance goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the casino licensee or applicant shall be entitled to a determination that it has complied with the equal opportunity and affirmative action obligations imposed by the Act and this chapter and, except as otherwise provided in (g) below, no further annual EEBOP assessment proceedings shall be required.

(f) If the Commission finds that the casino licensee or applicant has failed to reach some or all of the performance goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the casino licensee or applicant shall be required to establish its good faith efforts to achieve such goals. The good faith of the casino licensee or applicant shall be demonstrated by its documentation, to the satisfaction of the Commission, of its implementation and compliance with those portions of its approved EEBOP which relate to the achievement of the performance goals as to which the casino licensee or applicant was deficient.

(g) Notwithstanding any other provision of this section, the Commission may direct any casino licensee or applicant to document its implementation and compliance with any programmatic portion of its approved EEBOP during the annual assessment period if such review is considered necessary to the achievement of the purposes of the Act and this chapter.

(h) Any documentation required by (f) or (g) above shall be submitted to the Commission and Division at least two months prior to the scheduled date of the annual EEBOP assessment hearing and shall include, as applicable and without limitation, the following:

1. An internal review and evaluation of each of the areas of the EEBOP which relate to the performance goals which were not achieved, including documentation of specific transactions or programs which were included in the EEBOP as a means to attain these goals;

2. An analysis by the casino licensee or applicant as to why the particular performance goals were not achieved, addressing such issues as the availability of workers or vendors, the performance of workers or vendors, or any other information which the casino licensee or applicant considers relevant to its failure to attain the particular performance goals;

3. An internal review and evaluation of each programmatic portion of its approved EEBOP as to which the Commission has directed an annual assessment pursuant to (g) above; and

4. Modifications to the approved EEBOP proposed by the casino licensee or applicant as a means to improve its performance in deficient areas during the next EEBOP assessment period.

(i) Upon completion of an annual EEBOP assessment hearing for a casino licensee or applicant which has failed to achieve some or all of the participation goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the Commission may find that the casino licensee or applicant has in fact exerted good faith efforts to comply with the obligations of the Act and this chapter if:

1. The casino licensee or applicant did implement and comply with the terms of its approved EEBOP during the assessment period; or

2. The failure of the casino licensee or applicant to comply with its approved EEBOP and, as a consequence, to achieve its performance goals was based on occurrences which were beyond the control of the casino licensee or applicant.

(j) If, upon completion of an annual EEBOP assessment hearing, the Commission determines that a casino licensee or applicant has failed to comply with the requirements of the Act, this chapter or its approved EEBOP, the Commission may impose one or more of the sanctions authorized by N.J.A.C. 19:53-6.11.

19:53-6.9 Special EEBOP reviews and hearings

(a) Notwithstanding any other provision of this chapter, the Commission may require a casino licensee or applicant to conduct a self assessment of all or any part of its approved EEBOP whenever the Commission has cause to question whether the EEBOP or the implementation of the EEBOP by the casino licensee or applicant is likely to achieve compliance with the obligations imposed by the Act and this chapter.

(b) Any casino licensee or applicant which is notified that a special review of its EEBOP shall be conducted pursuant to this section shall supply whatever documentation or reports are requested by the Commission. A special hearing on the EEBOP of the casino licensee or applicant may be ordered by the Commission at any time and shall be conducted under such terms and conditions as the Commission may direct. The sole purpose of such hearing shall be to determine whether the casino licensee or applicant should be required to make immediate modifications to its EEBOP consistent with the purposes of the Act and this chapter.

19:53-6.10 On-site monitoring and inspections

A representative of the Commission and a representative of the Division shall be entitled to enter the casino hotel, casino, casino simulcasting facility or any related facilities of a casino licensee or applicant for the purposes of determining whether the licensee or applicant is complying with the Act, this chapter and its approved EEBOP. In making such a determination, the Commission or Division shall be entitled to inspect or copy any relevant books or records.

19:53-6.11 Sanctions

(a) If the Commission determines that a casino licensee or applicant is in violation of any applicable provision of the Act, this chapter or its approved EEBOP, the Commission, as appropriate, may:

1. Impose penalties in accordance with N.J.S.A. 5:12-129;
2. Deny, suspend or revoke or refuse to renew the casino license;
3. Enter a cease and desist order which specifies the practice or contract to be discounted or altered by the casino licensee or applicant;
4. Issue public letters of reprimand or censure to be made a permanent part of the file of the casino licensee or applicant;
5. Assess appropriate civil penalties as allowed by the Act;
6. Refer to the Attorney General or his or her designee circumstances which may constitute violation of the "Law Against Discrimination," N.J.S.A. 10:5-1 et seq.;
7. Enforce in a court of law the applicable provisions of the Act, or join in or assist any enforcement proceeding initiated by an aggrieved person;

8. Impose license conditions; and

9. Take any other action authorized or permitted by the Act.

19:53-6.12 Waiver of reporting requirements for casino licensees

(a) If the contractor and subcontractor work force of a casino licensee meets all of the employment goals for women or minorities set forth in N.J.A.C. 19:53-2.3 for four consecutive quarters, the monthly reports required by N.J.A.C. 19:53-2.4(a)1 and 2 shall be waived.

(b) If the operations work force of a casino licensee meets all or any of the employment goals for women or minorities set forth in N.J.A.C. 19:53-4.4 for four consecutive quarters, the quarterly report required by N.J.A.C. 19:53-4.5 shall be waived as to any EEOC job categories for which compliance has been attained.

(c) If a casino licensee meets the applicable goals specified in N.J.A.C. 19:53-5.3 for goods and services purchased from certified and provisionally certified MBEs and WBEs for four consecutive quarters, the quarterly disbursement report required by N.J.A.C. 19:53-5.7 shall be waived.

(d) A waiver of the obligation to file certain reports as provided in this section shall not alter the obligation of a casino licensee to prepare and maintain such information and records on-site. In addition, the Commission reserves the right to seek and obtain from a casino licensee at any time any information that may be pertinent to determining the compliance of the casino licensee with the Act, this chapter and its approved EEBOP.

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Child Care Services Manual

Public Assistance Manual

Assistance Standards Handbook

Family Development Program Manual

Child Care: Entrance/Exit Levels for New Jersey

Cares for Kids (NJCK) Certificate Program; Child Care Payment Rates/Age Categories; Co-payment for Child Care

Proposed Amendments: N.J.A.C. 10:15-1.2; 10:15A-1.2; 10:15B-1.2 and 2.1; 10:15C-1.1; 10:81-14.18A; 10:82-5.3; and 10:86-10.2 and 10.6

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12, and 44:10-3; Family Support Act, Public Law 100-485; Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, Sections 5081 and 5082; and Family Development Act, P.L.1991, c.523.

Proposal Number: PRN 1993-218.

Submit comments by May 19, 1993 to:

Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments primarily increase and align child care payment rates and co-payment fees in the various Departmental child care service programs supervised by the Division of Family Development (DFD), in order to support a continuum of child care services for families in various stages of need through "seamless services" to recipients and providers. The entrance and exit income criteria are also increased for the Aid to Families with Dependent Children (AFDC) Title IV-A At-Risk Child Care (ARCC) and Child Care and Development Block Grant (CCDBG) programs, which New Jersey incorporated into one Statewide child care voucher program, the New Jersey Cares for Kids (NJCK) Child Care Certificate Program, in January, 1992.

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Both programs, IV-A At-Risk and CCDBG, were authorized under the Federal Omnibus Budget Reconciliation Act (OBRA) of 1990 (Public Law 101-508). The objective of the IV-A ARCC program is to provide child care to low-income families who need child care in order to accept or maintain employment, who are not currently AFDC recipients but who are at risk of becoming AFDC eligible. The purpose of the CCDBG program is to increase the availability, affordability and quality of child care for low-income families with a parent who is working or attending a training or educational program.

At time of implementation of the NJCK program, New Jersey set the income eligibility guidelines for entrance into the ARCC program at 150 percent of the Federal Poverty Income Guidelines and at 185 percent for the exit or ineligibility level. The counties' success history and rate in filling ARCC slots with the current entrance and exit criteria have been reviewed. It was found that the county agencies made great efforts to reach the target population; yet, in a significant number of counties, all ARCC slots could not be filled using the current entrance/exit criteria. However, when initially setting the exit income criteria for the ARCC component at this level, the Division realized that it would require a thorough review in order to plan adequately for families who are eligible to transfer from the ARCC component to the CCDBG component of the NJCK program. For example, families at 186 percent of the Federal Poverty Income Guidelines would drop out of the system if there were no funds available in the CCDBG component to facilitate their immediate transfer.

In an effort to serve more families under the ARCC program and preclude needy families from becoming ineligible for ARCC because of increased income, the income eligibility entrance level is increased from 185 percent to 200 percent of the Federal Poverty Income Guidelines. Additionally, in order to align exit level criteria of the ARCC Program with that of the CCDBG Program and the Social Services Block Grant (SSBG) program (the other child care program included under the Department's seamless system), recipient families will be able to remain eligible under the ARCC program as long as the annual gross family income, for the family size, does not exceed 75 percent of the State's median income (SMI) for a family of the same size.

At N.J.A.C. 10:15-1.2 and 10:15B-1.2, language is revised to reflect the ARCC entrance level increase from 185 percent to 200 percent of the Federal Poverty Income Guidelines. Additionally, text at N.J.A.C. 10:15B-1.2(b)3 allows recipient families to remain eligible under the IV-A At-Risk program as long as the annual gross family income does not exceed 75 percent of the State's median income (SMI), thus paralleling the exit level with other child care service programs.

Recent Title IV-A child care guidance from the Administration for Children and Families (ACF) governing the maximum age for infant/toddlers, requires changes relating to children's age categories of care, as follows:

- Infant/toddlers are now defined as those under two years of age;
- Early preschoolers are now defined as those age two up to 2.5 years;
- Preschoolers are now defined as those age 2.5 up to five years;
- School-age children are now defined as those age five or six (depending on the elementary school status) up to 13 years.

The age definitions are aligned with those age categories set forth in the Social Security Act as utilized in the AFDC child care disregards.

In conjunction with the revised age categories, Tables I, II and III at N.J.A.C. 10:15A-1.2(c) reflect revised maximum allowable child care payment rates for the NJCK Certificate Program. Included in the proposed amendments, for alignment with the NJCK Program, the child care payment rates at N.J.A.C. 10:82-5.3(g)5 Tables I, II and III are also revised for JOBS and Title IV-A child care support services, and at N.J.A.C. 10:86-10.2(d) for the Family Development Program (FDP) child care support services; thus, allowing for continuity among the programs.

The adjustment of the child care rates is a result of both a three percent Cost-of-Living-Adjustment (COLA) for center based child care providers, under contract with DHS through its Division of Youth and Family Services (DYFS), as well as a reduction of \$428,000 in appropriations for State funded child care services through DYFS. The reduction in the overall level of State funding used to support child care services through DYFS is being offset by the 10 percent increase in the family child care co-payment scales. The revised co-payment scales are included at N.J.A.C. 10:15C-1.1(d), 10:81-14.18A(d) and 10:86-10.6(d). Thus, the two aforementioned factors affect child care services provided through both the Divisions (that is, DFD and DYFS) and, therefore, in order to maintain a seamless system, adjustments must occur in all DHS child care components. The co-payment scales are aligned at N.J.A.C. 10:15C-1.1(d), 10:81-14.18A(d) and 10:86-10.6(b) to reflect the increases, income levels and family size up to 12 members in a family unit.

Lastly, at N.J.A.C. 10:15A-1.2(c), the source and address for requests for copies of the maximum child care payment rates are reversed to reflect current Department organization.

Social Impact

The change in the entrance/exit criteria should serve to more equitably and efficiently distribute present IV-A At-Risk resources to those in need. Likewise, this policy change should enable such families to stay the course of self-sufficiency, since help is made available in a more timely manner for a smooth transition of families losing post-AFDC child care and who are hoping to receive assistance through either IV-A At-Risk or CCDBG. After reviewing the fiscal operations of both the ARCC and CCDBG components to determine if such a smooth transfer from ARCC to CCDBG could be guaranteed, it was evident that this would not be possible without curtailed program spending in the CCDBG component. Additionally, upon review of the counties' success history and rate in filling ARCC slots with the current entrance and exit criteria, it was found that ARCC funds were under-utilized and no slots were available through the CCDBG component, resulting in waiting lists of families seeking child care assistance. The revised entrance/exit criteria amendments should provide the flexibility needed to fill slots in both components and thus permit use of resources where needed.

The child care rate increases are due to an alignment of child care rates with those of the Department's Division of Youth and Family Services (DYFS) child care programs. Since DYFS was appropriated a cost-of-living adjustment for child care in the FY '93 allocation, DFD, due to the seamless child care system, has commensurately increased rates in the child care programs it supervises. The increases, though slight, reflect the Department's intention to help families as much as possible with any available State resources.

The co-payment scales enable the State to continue subsidizing child care services when families are most in need and mandate, per Federal requirements in these three child care components, a parental contribution toward the cost of that care. While the co-payment amounts have been increased due to reduced appropriations, the increase in benefits received by families participating in the three child care programs will offset parental responsibility for the cost of care as evidenced below in the economic impact statement.

Economic Impact

The data in the following two charts is based on estimates made from the period of January, 1991 through June 30, 1992. All total amounts are calculated for a 12 month period. The increases in child care rate costs in Chart A represent a two percent increase applicable to licensed centers, registered and approved home arrangements; the costs are broken out by funding stream (JOBS/FDP, and so forth) for each type of care provided (licensed center care, and so forth). Co-payment increased cost estimates (Chart B) result from a 10 percent increase in the scales.

CHART A
CHILD CARE RATE ESTIMATE COSTS

	JOBS/FDP	IV-A AT-RISK (ARCC)	CCDBG	CCDBG-PRS	TOTAL
LICENSED CENTER	\$172,709	\$ 60,669	\$19,086	\$31,924	\$284,389
REGISTERED CARE	\$137,168	\$ 17,918	\$ 4,489	\$27,345	\$186,920
APPROVED HOME	\$105,519	\$ 14,968	\$ 3,993		\$124,480
BEFORE/AFTER SCHOOL		\$ 5,270	\$ 1,203		\$ 6,473
DYFS IN-HOME				\$ 2,544	\$ 2,544
SUMMER CAMP	0	\$ 1,597	\$ 773	\$ 304	\$ 2,673
TOTAL PROJECTED GROSS					
INCREASES	\$415,396	\$100,422	\$29,543	\$62,117	\$607,479
STATE SHARE	\$207,698	\$ 50,211	\$ 0	\$62,117	\$320,026
FEDERAL SHARE	\$207,698	\$ 50,211	\$29,543	\$ 0	\$287,452

CHART B
CO-PAYMENT INCREASE COSTS

	JOBS/FDP	ARCC	CCDBG	CCDBG-PRS	TOTAL
ESTIMATED GROSS INCREASE TO CLIENTS	\$ 72,648	\$ 25,105	\$ 9,124	\$15,529	\$122,407

Regulatory Flexibility Statement

Child care providers eligible to receive parent certificates for child care services through these programs will be affected. Some of these providers can be categorized as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Many of the providers affected by these rules already maintain a fee assessing system and should experience minimal disruption, since the requirements of the co-payment will be incorporated into their existing system. No additional professional services or costs will be needed to comply with the provisions of these rules.

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

10:15-1.2 Definitions

The following words and terms, when used in this chapter and N.J.A.C. 10:15A, 15B and 15C, shall have the following meanings, unless the context clearly indicates otherwise.

...
 "At-Risk" means working low-income families whose income upon entry into the program is at or below [185] **200** percent of the Federal Poverty Income Guidelines, which are published **annually** in the Federal Register. Such families must be in need of child care assistance in order to remain employed (or to accept employment) and to avoid dependency on public assistance (that is, AFDC).

...
 "Low income" for IV-A At-Risk means families with gross annual incomes at or below [185] **200** percent of the Federal Poverty Income Guidelines, as determined by family size, which are published annually in the Federal Register.

10:15A-1.2 Payment policies

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

(c) The maximum child care payment rates are set forth in Tables I, II and III below. The maximum child care payment rates utilized in the Department of Human Services child care service programs are available through a written request to the [Office of Child Care Development,] New Jersey Department of Human Services, **Division**

of Family Development, CN [700] 716, Trenton, NJ 08625, or the local Division of Youth and Family Services Regional Office, the county welfare agency or the county designated agency.

1.-3. (No change.)

4. Tables I, II, and III specify **monthly**, weekly and daily rates for the various age categories of children based on the hours of care provided.

[Table I

CHILD CARE VOUCHER MAXIMUM DAILY RATES

LICENSED CHILD CARE CENTERS,
SCHOOL-AGE PROGRAMS, DAY CAMPS

HOURS OF CARE PROVIDED

	Full-Time	Part-Time
Child's Service Category	6 hrs. or more per day	less than 6 hrs. per day
Infants/Toddlers		
Weekly	\$113.00	\$56.50
Daily	\$ 22.60	\$11.30
Pre-Schoolers (2.5 up to 5 yrs.)		
Weekly	\$ 92.00	\$46.00
Daily	\$ 18.40	\$ 9.20
Kindergartners & School-Agers (5-13 yrs.) and Special Needs Child (13 to 19 yrs.)		
Weekly	\$ 92.00	\$46.00
Daily	\$ 18.40	\$ 9.20]

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[Table II]

CHILD CARE VOUCHER MAXIMUM DAILY RATES

REGISTERED FAMILY DAY CARE HOMES

HOURS OF CARE PROVIDED

Child's Service Category	Full-Time	Three-Quarter Time*	One-Half Time*	One-Quarter Time*
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers				
Weekly	\$ 90.00	\$67.50	\$45.00	\$22.50
Daily	\$ 18.00	\$13.50	\$ 9.00	\$ 4.50
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$ 70.00	\$52.50	\$35.00	\$17.50
Daily	\$ 14.00	\$10.50	\$ 7.00	\$ 3.50
Kindergartners & School-Agers (5 up to 13 yrs.)				
Weekly	\$ 70.00	\$52.50	\$35.00	\$17.50
Daily	\$ 14.00	\$10.50	\$ 7.00	\$ 3.50
Special Needs Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$110.00	\$82.50	\$55.00	\$27.50
Daily	\$ 22.00	\$16.50	\$11.00	\$ 5.50
Special Needs Child(ren) (2.5 yrs. & up)				
Weekly	\$ 90.00	\$67.50	\$45.00	\$22.50
Daily	\$ 18.00	\$13.50	\$ 9.00	\$ 4.50

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.]

[Table III]

CHILD CARE VOUCHER MAXIMUM DAILY RATES

APPROVED HOME DAY CARE

HOURS OF CARE PROVIDED

Child's Service Category	Full-Time	Three-Quarter Time*	One-Half Time*	One-Quarter Time*
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers				
Weekly	\$55.00	\$41.25	\$27.50	\$13.75
Daily	\$11.00	\$ 8.25	\$ 5.50	\$ 2.75
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$41.00	\$30.75	\$20.50	\$10.25
Daily	\$ 8.20	\$ 6.15	\$ 4.10	\$ 2.05
Kindergartners & School-Agers (5 up to 13 yrs.)				
Weekly	\$41.00	\$30.75	\$20.50	\$10.25
Daily	\$ 8.20	\$ 6.15	\$ 4.10	\$ 2.05
Special Needs Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$66.00	\$49.50	\$33.00	\$16.50
Daily	\$13.20	\$ 9.90	\$ 6.60	\$ 3.30
Special Needs Child(ren) (2.5 yrs. & up)				
Weekly	\$55.00	\$41.25	\$27.50	\$13.75
Daily	\$11.00	\$ 8.25	\$ 5.50	\$ 2.75

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.]

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NJCK CHILD CARE CERTIFICATE/VOUCHER MAXIMUM RATES

NJCK CHILD CARE CERTIFICATE/VOUCHER MAXIMUM RATES

Table I

Table II

These rates shall be utilized for:

These rates shall be utilized for:

**LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS,
SUMMER DAY CAMPS**

REGISTERED FAMILY DAY CARE HOMES

Child's Service Category	Hours of Care Provided	
	Full Time 6 hrs. or more/day	Part-Time Less than 6 hrs./day
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	\$503.15	\$251.58
Weekly	\$116.20	\$ 58.10
Daily Equivalent	\$ 23.24	\$ 11.62
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	\$503.15	\$251.58
Weekly	\$116.20	\$ 58.10
Daily Equivalent	\$ 23.24	\$ 11.62
Pre-Schoolers (2.5 up to 5 yrs.)		
Monthly	\$414.82	\$207.41
Weekly	\$ 95.80	\$ 47.90
Daily Equivalent	\$ 19.16	\$ 9.58
Kindergartner & School-Agers (5-13 yrs.)		
Monthly	\$414.82	\$207.41
Weekly	\$ 95.80	\$ 47.90
Daily Equivalent	\$ 19.16	\$ 9.58
Special Needs		
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	\$503.15	\$251.58
Weekly	\$116.20	\$ 58.10
Daily Equivalent	\$ 23.24	\$ 11.62
Special Needs		
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	\$503.15	\$251.58
Weekly	\$116.20	\$ 58.10
Daily Equivalent	\$ 23.24	\$ 11.62
Special Needs (2.5 up to 19 yrs.)		
Monthly	\$414.82	\$207.41
Weekly	\$ 95.80	\$ 47.90
Daily Equivalent	\$ 19.16	\$ 9.58

Child's Service Category	Hours of Care Provided	
	Full Time 6 hrs. or more/day	Part-Time Less than 6 hrs./day
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	\$397.50	\$198.75
Weekly	\$ 91.80	\$ 45.90
Daily Equivalent	\$ 18.36	\$ 9.18
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	\$397.50	\$198.75
Weekly	\$ 91.80	\$ 45.90
Daily Equivalent	\$ 18.36	\$ 9.18
Pre-Schoolers (2.5 up to 5 yrs.)		
Monthly	\$309.17	\$154.59
Weekly	\$ 71.40	\$ 35.70
Daily Equivalent	\$ 14.28	\$ 7.14
Kindergartner & School-Agers (5-13 yrs.)		
Monthly	\$309.17	\$154.59
Weekly	\$ 71.40	\$ 35.70
Daily Equivalent	\$ 14.28	\$ 7.14
Special Needs		
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	\$485.83	\$242.92
Weekly	\$112.20	\$ 56.10
Daily Equivalent	\$ 22.44	\$ 11.22
Special Needs		
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	\$485.83	\$242.92
Weekly	\$112.20	\$ 56.10
Daily Equivalent	\$ 22.44	\$ 11.22
Special Needs (2.5 up to 19 yrs.)		
Monthly	\$397.50	\$198.75
Weekly	\$ 91.80	\$ 45.90
Daily Equivalent	\$ 18.36	\$ 9.18

The above represents the maximum authorized rates for child care. The NJCK Child Care Certificate Program may authorize payment for the actual cost of care up to these amounts. The required co-payment will be deducted from the appropriate rate before voucher payment is issued. Parent/applicant may select child care with a cost higher than these maximum rates; however, in such instances the parent/applicant is totally responsible for all expenses in excess of these authorized maximum rates as well as for the required co-payment.

The above represents the maximum authorized rates for child care. The NJCK Child Care Certificate Program may authorize payment for the actual cost of care up to these amounts. The required co-payment will be deducted from the appropriate rate before voucher payment is issued. Parent/applicant may select child care with a cost higher than these maximum rates; however, in such instances the parent/applicant is totally responsible for all expenses in excess of these authorized maximum rates as well as for the required co-payment.

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

NJCK CHILD CARE CERTIFICATE/VOUCHER MAXIMUM RATES

Table III

These rates shall be utilized for:

APPROVED HOME DAY CARE

Child's Service Category	Hours of Care Provided	
	Full Time 6 hrs. or more/day	Part-Time Less than 6 hrs./day
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	\$238.58	\$119.29
Weekly	\$ 55.10	\$ 27.55
Daily Equivalent	\$ 11.02	\$ 5.51
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	\$238.58	\$119.29
Weekly	\$ 55.10	\$ 27.55
Daily Equivalent	\$ 11.02	\$ 5.51
Pre-Schoolers (2.5 up to 5 yrs.)		
Monthly	\$185.32	\$ 92.66
Weekly	\$ 42.80	\$ 21.40
Daily Equivalent	\$ 8.56	\$ 4.28
Kindergartner & School-Agers (5-13 yrs.)		
Monthly	\$185.32	\$ 92.66
Weekly	\$ 42.80	\$ 21.40
Daily Equivalent	\$ 8.56	\$ 4.28
Special Needs		
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	\$291.40	\$145.70
Weekly	\$ 67.30	\$ 33.65
Daily Equivalent	\$ 13.46	\$ 6.73
Special Needs		
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	\$291.40	\$145.70
Weekly	\$ 67.30	\$ 33.65
Daily Equivalent	\$ 13.46	\$ 6.73
Special Needs (2.5 up to 19 yrs.)		
Monthly	\$238.58	\$119.29
Weekly	\$ 55.10	\$ 27.55
Daily Equivalent	\$ 11.02	\$ 5.51

The above represents the maximum authorized rates for child care. The NJCK Child Care Certificate Program may authorize payment for the actual cost of care up to these amounts. The required co-payment will be deducted from the appropriate rate before voucher payment is issued. Parent/applicant may select child care with a cost higher than these maximum rates; however, in such instances the parent/applicant is totally responsible for all expenses in excess of these authorized maximum rates as well as for the required co-payment.

(d)-(g) (No change.)

10:15B-1.2 Eligibility for IV-A "At-Risk" Child Care (ARCC) Program

(a) (No change.)

(b) Families shall be working low-income families or a working low-income family that has a protective services child in need of child care services residing in the family's home.

1. "Low-income" families are defined for purposes of this program as families whose gross annual income for the family size is at or below [185] 200 percent of the Federal Poverty Income Guidelines published annually in the Federal Register (reference the Federal Register, [Vol. 56, No. 34, dated February 20, 1991, page 5860] Vol. 57, No. 31, dated February 14, 1992, page 5455). Subsequent updates to these Guidelines in the Federal Register will be published as a public notice by the Department in the New Jersey Register.

2. The annual gross income of the family must fall at or below [185] 200 percent of the Federal Poverty Income Guidelines for the family size to establish income eligibility.

i. (No change.)

3. Recipient families may remain eligible under the IV-A At-Risk Program as long as the family's annual gross income, for the family size, does not exceed 75 percent of the State's median income (SMI) for a family of the same size. (The SMI for states is published by the Federal Administration for Children and Families in the Federal Register. The SMI was last published in the Federal Register, Vol. No. 53, No. 64, April 4, 1988. Subsequent updates to the SMI will be published as a public notice by the Department in the New Jersey Register.)

(c)-(h) (No change.)

10:15B-2.1 Description of CCDBG Program

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

(d) Priority consideration and placement of children through CCDBG assistance is given to children who are from families with "very low income," as well as children who have been identified as protective services children or as having special needs (see N.J.A.C. 10:15-1.2 for definition of a special needs child).

1. Families with "very low income" are defined as families with incomes at or below [185] 200 percent of the Federal Poverty [Level] Income Guidelines, as determined by family size.

(e) Groups identified for priority CCDBG participation include:

1.-2 (No change.)

3. Children in families with very low income at or below [185] 200 percent of the Federal Poverty [Level] Income Guidelines.

4. (No change.)

10:15C-1.1 Co-payment procedures

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

(d) The amount of the required co-payment is based on the family's annual gross income level, family size, number of children, and number of children in care. Assessed co-payments are apportioned weekly and are due for the entire period of time that subsidized child care assistance is received. Holidays, emergency closings, and absences do not exclude or reduce the required co-payment. There are two co-payment scales:

**[TABLE I
CO-PAYMENT SCALE**

**By Family Size
(Full-Time Care)****

Full time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income				
		2	3	4	5	6
1.00	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
4.00	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
6.00	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
9.00	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
11.00	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
14.00	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
18.00	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
22.00	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
27.00	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
32.00	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
37.00	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
43.00	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
50.00	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
57.00	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
61.00	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

**Full-time care is defined as 6 or more hours of care per day or 30 or more hours of care per week.]

**[TABLE II
CO-PAYMENT SCALE**

**By Family Size
(Part-Time Care)**

Part Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income				
		2	3	4	5	6
0.00	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
2.00	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
3.00	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
4.00	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
5.00	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
7.00	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
9.00	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
11.00	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
13.00	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
16.00	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
18.00	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
21.00	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
25.00	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
28.00	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
30.00	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

**Table I
CHILD CARE CO-PAYMENT SCALE
FULL TIME CARE†**

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income†††				
First Child	Second Child†††	First Child	Second Child†††		2	3	4	5	6
\$1.10	\$0.55	\$4.76	\$2.38	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
\$4.40	\$2.20	\$19.05	\$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
\$6.60	\$3.30	\$28.58	\$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
\$9.90	\$4.95	\$42.87	\$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
\$12.10	\$6.05	\$52.39	\$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
\$15.40	\$7.70	\$66.68	\$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
\$19.80	\$9.90	\$85.73	\$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
\$24.20	\$12.10	\$104.79	\$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
\$29.70	\$14.85	\$128.60	\$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
\$35.20	\$17.60	\$152.42	\$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
\$40.70	\$20.35	\$176.23	\$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
\$47.30	\$23.65	\$204.81	\$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
\$55.00	\$27.50	\$238.15	\$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
\$62.70	\$31.35	\$271.49	\$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
\$67.10	\$33.55	\$290.54	\$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child†††	First Child	Second Child†††		7	8	9	10	11	12
\$1.10	\$0.55	\$4.76	\$2.38	0% - 5%	0 - 3,510	0 - 3,588	0 - 3,666	0 - 3,744	0 - 3,822	0 - 3,900
\$4.40	\$2.20	\$19.05	\$9.53	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
\$6.60	\$3.30	\$28.58	\$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
\$9.90	\$4.95	\$42.87	\$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
\$12.10	\$6.05	\$52.39	\$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
\$15.40	\$7.70	\$66.68	\$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
\$19.80	\$9.90	\$85.73	\$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
\$24.20	\$12.10	\$104.79	\$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
\$29.70	\$14.85	\$128.60	\$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
\$35.20	\$17.60	\$152.42	\$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
\$40.70	\$20.35	\$176.23	\$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
\$47.30	\$23.65	\$204.81	\$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
\$55.00	\$27.50	\$238.15	\$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
\$62.70	\$31.35	\$271.49	\$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
\$67.10	\$33.55	\$290.54	\$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

†Full time care is defined as six (6) or more hours of care per day.

††The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

†††The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

††††Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of \$1.00 (\$2.00 for a Bi-weekly fee) for each \$1,000 of gross income above their scale.

**Table II
CHILD CARE CO-PAYMENT SCALE
PART-TIME CARE†**

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income†††				
First Child	Second Child†††	First Child	Second Child†††		2	3	4	5	6
\$0.00	\$0.00	\$0.00	\$0.00	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
\$2.20	\$1.10	\$9.53	\$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
\$3.30	\$1.65	\$14.29	\$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
\$4.40	\$2.20	\$19.05	\$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
\$5.50	\$2.75	\$23.82	\$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
\$7.70	\$3.85	\$33.34	\$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
\$9.90	\$4.95	\$42.87	\$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
\$12.10	\$6.05	\$52.39	\$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
\$14.30	\$7.15	\$61.92	\$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
\$17.60	\$8.80	\$76.21	\$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
\$19.80	\$9.90	\$85.73	\$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
\$23.10	\$11.55	\$100.02	\$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
\$27.50	\$13.75	\$119.08	\$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
\$30.80	\$15.40	\$133.36	\$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
\$33.00	\$16.50	\$142.89	\$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child†††	First Child	Second Child†††		7	8	9	10	11	12
\$0.00	\$0.00	\$0.00	\$0.00	0% - 5%	0 - 3,510	0 - 3,588	0 - 3,666	0 - 3,744	0 - 3,822	0 - 3,900
\$2.20	\$1.10	\$9.53	\$4.76	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
\$3.30	\$1.65	\$14.29	\$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
\$4.40	\$2.20	\$19.05	\$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
\$5.50	\$2.75	\$23.82	\$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
\$7.70	\$3.85	\$33.34	\$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
\$9.90	\$4.95	\$42.87	\$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
\$12.10	\$6.05	\$52.39	\$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
\$14.30	\$7.15	\$61.92	\$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
\$17.60	\$8.80	\$76.21	\$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
\$19.80	\$9.90	\$85.73	\$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
\$23.10	\$11.55	\$100.02	\$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
\$27.50	\$13.75	\$119.08	\$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
\$30.80	\$15.40	\$133.36	\$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
\$33.00	\$16.50	\$142.89	\$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

†Part-time care is defined as less than six (6) hours of care per day.

††The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

†††The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

††††Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of \$.50 (\$1.00 for a Bi-weekly fee) for each \$1,000 of gross income above their scale.

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

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

10:81-14.18A REACH post-AFDC co-payment scale

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

(d) The co-payment scales are as follows:

1. (No change.)

2. Assessed co-payments are apportioned weekly and are due for the entire 52-week period that subsidized child care assistance is received. Holidays, emergency closings, and absences do not exclude or reduce the required fee co-payment.

[TABLE I
CO-PAYMENT SCALE

By Family Size
(Full-Time Care)**

Full time* Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income				
		2	3	4	5	6
1.00	0% - 5%	0 - 1,760	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
4.00	6% - 10%	1,769 - 3,536	2,105 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
6.00	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,841 - 10,295
9.00	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
11.00	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
14.00	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
18.00	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
22.00	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
27.00	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
32.00	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 31,317
37.00	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
43.00	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
50.00	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 41,612
57.00	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	41,613 - 43,044
61.00	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

**Full-time care is defined as 6 or more hours of care per day or 30 more hours of care per week.]

Table I
CHILD CARE CO-PAYMENT SCALE
FULL TIME CARE†

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income†††				
First Child	Second Child†††	First Child	Second Child†††		2	3	4	5	6
\$1.10	\$0.55	\$4.76	\$2.38	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
\$4.40	\$2.20	\$19.05	\$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
\$6.60	\$3.30	\$28.58	\$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
\$9.90	\$4.95	\$42.87	\$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
\$12.10	\$6.05	\$52.39	\$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
\$15.40	\$7.70	\$66.68	\$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
\$19.80	\$9.90	\$85.73	\$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
\$24.20	\$12.10	\$104.79	\$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
\$29.70	\$14.85	\$128.60	\$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
\$35.20	\$17.60	\$152.42	\$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
\$40.70	\$20.35	\$176.23	\$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
\$47.30	\$23.65	\$204.81	\$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
\$55.00	\$27.50	\$238.15	\$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
\$62.70	\$31.35	\$271.49	\$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
\$67.10	\$33.55	\$290.54	\$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child†††	First Child	Second Child†††		7	8	9	10	11	12
\$1.10	\$0.55	\$4.76	\$2.38	0% - 5%	0 - 3,510	0 - 3,588	0 - 3,666	0 - 3,744	0 - 3,822	0 - 3,900
\$4.40	\$2.20	\$19.05	\$9.53	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
\$6.60	\$3.30	\$28.58	\$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
\$9.90	\$4.95	\$42.87	\$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
\$12.10	\$6.05	\$52.39	\$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
\$15.40	\$7.70	\$66.68	\$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
\$19.80	\$9.90	\$85.73	\$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
\$24.20	\$12.10	\$104.79	\$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
\$29.70	\$14.85	\$128.60	\$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
\$35.20	\$17.60	\$152.42	\$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
\$40.70	\$20.35	\$176.23	\$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
\$47.30	\$23.65	\$204.81	\$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
\$55.00	\$27.50	\$238.15	\$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
\$62.70	\$31.35	\$271.49	\$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
\$67.10	\$33.55	\$290.54	\$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

†Full time care is defined as six (6) or more hours of care per day.

††The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

†††The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

††††Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of \$1.00 (\$2.00 for a Bi-weekly fee) for each \$1,000 of gross income above their scale.

**Table II
CHILD CARE CO-PAYMENT SCALE
PART-TIME CARE†**

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income†††				
First Child	Second Child†††	First Child	Second Child†††		2	3	4	5	6
\$0.00	\$0.00	\$0.00	\$0.00	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
\$2.20	\$1.10	\$9.53	\$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
\$3.30	\$1.65	\$14.29	\$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
\$4.40	\$2.20	\$19.05	\$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
\$5.50	\$2.75	\$23.82	\$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
\$7.70	\$3.85	\$33.34	\$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
\$9.90	\$4.95	\$42.87	\$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
\$12.10	\$6.05	\$52.39	\$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
\$14.30	\$7.15	\$61.92	\$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
\$17.60	\$8.80	\$76.21	\$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
\$19.80	\$9.90	\$85.73	\$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
\$23.10	\$11.55	\$100.02	\$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
\$27.50	\$13.75	\$119.08	\$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
\$30.80	\$15.40	\$133.36	\$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
\$33.00	\$16.50	\$142.89	\$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child†††	First Child	Second Child†††		7	8	9	10	11	12
\$0.00	\$0.00	\$0.00	\$0.00	0% - 5%	0 - 3,510	0 - 3,588	0 - 3,666	0 - 3,744	0 - 3,822	0 - 3,900
\$2.20	\$1.10	\$9.53	\$4.76	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
\$3.30	\$1.65	\$14.29	\$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
\$4.40	\$2.20	\$19.05	\$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
\$5.50	\$2.75	\$23.82	\$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
\$7.70	\$3.85	\$33.34	\$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
\$9.90	\$4.95	\$42.87	\$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
\$12.10	\$6.05	\$52.39	\$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
\$14.30	\$7.15	\$61.92	\$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
\$17.60	\$8.80	\$76.21	\$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
\$19.80	\$9.90	\$85.73	\$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
\$23.10	\$11.55	\$100.02	\$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
\$27.50	\$13.75	\$119.08	\$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
\$30.80	\$15.40	\$133.36	\$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
\$33.00	\$16.50	\$142.89	\$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

†Part-time care is defined as less than six (6) hours of care per day.

††The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

†††The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

††††Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of \$.50 (\$1.00 for a Bi-weekly fee) for each \$1,000 of gross income above their scale.

(e)-(h) (No change.)

10:82-5.3 Payment for child care through Title IV-A funds

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

(g) Statewide maximum child care payment rates are based upon either the age or special needs status of the child and on the number of hours of care provided in the various types of child care arrangements. Included in the types of arrangements are registered homes,

approved homes, in-home care, child care centers and day camps, and the hours of care provided (that is, full and part-time day care and care before and after school and during school recesses).

1.-4. (No change.)

5. The maximum authorized rates for child care are set forth in Tables I, II and III below, as determined by the type of child care arrangements, and based upon either the age or special needs status of the child and the hours of care provided.

[CHILD CARE MAXIMUM DAILY RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS,
SUMMER DAY CAMPS

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time	Three-Quarter Time*	One-Half Time*	One-Quarter Time*
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers				
Special Needs Child (0 up to 2.5 yrs.)				
Weekly	\$114.00	\$85.50	\$57.00	\$28.50
Daily	\$ 22.80	\$17.10	\$11.40	\$ 5.70
Pre-Schoolers & Special Needs Child (2.5 up to 5 yrs.)				
Weekly	\$ 94.00	\$70.50	\$47.00	\$23.50
Daily	\$ 18.80	\$14.10	\$ 9.40	\$ 4.70
Kindergartners & School-Agers & Special Needs Child (5-13 yrs.) and Special Needs Child (13-19 yrs.)				
Weekly	\$ 94.00	\$70.50	\$47.00	\$23.50
Daily	\$ 18.80	\$14.10	\$ 9.40	\$ 4.70

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.]

[TABLE II
CO-PAYMENT SCALE

By Family Size
(Part-Time Care)**

Part Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income				
		2	3	4	5	6
0.00	0% - 5%	0 - 1,768	0 - 2,600	0 - 2,600	0 - 3,016	0 - 3,432
2.00	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
3.00	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	8,864 - 10,295
4.00	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
5.00	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
7.00	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
9.00	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
11.00	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
13.00	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
16.00	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 31,317
18.00	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
21.00	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
25.00	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 41,612
28.00	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	41,613 - 43,044
30.00	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476]

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

[CHILD CARE MAXIMUM DAILY RATES

Table II

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time	Three-Quarter Time*	One-Half Time*	One-Quarter Time*
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$ 90.00	\$67.50	\$45.00	\$22.50
Daily	\$ 18.00	\$13.50	\$ 9.00	\$ 4.50
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$ 70.00	\$52.50	\$35.00	\$17.50
Daily	\$ 14.00	\$10.50	\$ 7.00	\$ 3.50
Kindergartners & School-Agers (5 up to 13 yrs.)				
Weekly	\$ 70.00	\$52.50	\$35.00	\$17.50
Daily	\$ 14.00	\$10.50	\$ 7.00	\$ 3.50
Special Needs Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$110.00	\$82.50	\$55.00	\$27.50
Daily	\$ 22.00	\$16.50	\$11.00	\$ 5.50
Special Needs Child(ren) (2.5 yrs. & up)				
Weekly	\$ 90.00	\$67.50	\$45.00	\$22.50
Daily	\$ 18.00	\$13.50	\$ 9.00	\$ 4.50

[CHILD CARE MAXIMUM DAILY RATES

Table III

These rates shall be utilized for:

APPROVED HOME DAY CARE

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time	Three-Quarter Time*	One-Half Time*	One-Quarter Time*
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$55.00	\$41.25	\$27.50	\$13.75
Daily	\$11.00	\$ 8.25	\$ 5.50	\$ 2.75
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$41.00	\$30.75	\$20.50	\$10.25
Daily	\$ 8.20	\$ 6.15	\$ 4.10	\$ 2.05
Kindergartners & School-Agers (5 up to 13 yrs.)				
Weekly	\$41.00	\$30.75	\$20.50	\$10.25
Daily	\$ 8.20	\$ 6.15	\$ 4.10	\$ 2.05
Special Needs Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$66.00	\$49.50	\$33.00	\$16.50
Daily	\$13.20	\$ 9.90	\$ 6.60	\$ 3.30
Special Needs Child(ren) (2.5 yrs. & up)				
Weekly	\$55.00	\$41.25	\$27.50	\$13.75
Daily	\$11.00	\$ 8.25	\$ 5.50	\$ 2.75

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.]

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.]

HUMAN SERVICES

PROPOSALS

IV-A CHILD CARE MAXIMUM RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, SUMMER DAY CAMPS

	HOURS OF CARE PROVIDED			
	Full-Time 6 hrs. or more per day	Three-Quarter Time† 4 or 5 hrs. per day	One-Half Time† 2 or 3 hrs. per day	One-Quarter Time† 1 hr. per day
Child's Service Category:				
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$116.20	\$87.15	\$58.10	\$29.05
Daily	\$ 23.24	\$17.43	\$11.62	\$ 5.81
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$116.20	\$87.15	\$58.10	\$29.05
Daily	\$ 23.24	\$17.43	\$11.62	\$ 5.81
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$ 95.80	\$71.85	\$47.90	\$23.95
Daily	\$ 19.16	\$14.37	\$ 9.58	\$ 4.79
Kindergartners & School-Agers (5-13 yrs.)				
Weekly	\$ 95.80	\$71.85	\$47.90	\$23.95
Daily	\$ 19.16	\$14.37	\$ 9.58	\$ 4.79
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$116.20	\$87.15	\$58.10	\$29.05
Daily	\$ 23.24	\$17.43	\$11.62	\$ 5.81
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$116.20	\$87.15	\$58.10	\$29.05
Daily	\$ 23.24	\$17.43	\$11.62	\$ 5.81
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	\$ 95.80	\$71.85	\$47.90	\$23.95
Daily	\$ 19.16	\$14.37	\$ 9.58	\$ 4.79

†Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and fifteen minutes is rounded to two hours.

IV-A CHILD CARE MAXIMUM RATES

Table II

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

	HOURS OF CARE PROVIDED			
	Full-Time 6 hrs. or more per day	Three-Quarter Time† 4 or 5 hrs. per day	One-Half Time† 2 or 3 hrs. per day	One-Quarter Time† 1 hr. per day
Child's Service Category:				
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$ 91.80	\$68.85	\$45.90	\$22.95
Daily	\$ 18.36	\$13.77	\$ 9.18	\$ 4.59
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$ 91.80	\$68.85	\$45.90	\$22.95
Daily	\$ 18.36	\$13.77	\$ 9.18	\$ 4.59
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$ 71.40	\$53.55	\$35.70	\$17.85
Daily	\$ 14.28	\$10.71	\$ 7.14	\$ 3.57
Kindergartners & School-Agers (5-13 yrs.)				
Weekly	\$ 71.40	\$53.55	\$35.70	\$17.85
Daily	\$ 14.28	\$10.71	\$ 7.14	\$ 3.57
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$112.20	\$84.15	\$56.10	\$28.05
Daily	\$ 22.44	\$16.83	\$11.22	\$ 5.61
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$112.20	\$84.15	\$56.10	\$28.05
Daily	\$ 22.44	\$16.83	\$11.22	\$ 5.61
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	\$ 91.80	\$68.85	\$45.90	\$22.95
Daily	\$ 18.36	\$13.77	\$ 9.18	\$ 4.59

†Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and fifteen minutes is rounded to two hours.

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

IV-A CHILD CARE MAXIMUM RATES

[CHILD CARE MAXIMUM DAILY RATES

Table III

Table I

These rates shall be utilized for:

These rates shall be utilized for:

APPROVED HOME DAY CARE

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, DAY CAMPS

HOURS OF CARE PROVIDED

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time	Three-Quarter Time†	One-Half Time†	One-Quarter Time†
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$55.10	\$41.30	\$27.55	\$13.75
Daily	\$11.02	\$ 8.26	\$ 5.51	\$ 2.75
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$55.10	\$41.30	\$27.55	\$13.75
Daily	\$11.02	\$ 8.26	\$ 5.51	\$ 2.75
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$42.80	\$32.10	\$21.40	\$10.70
Daily	\$ 8.56	\$ 6.42	\$ 4.28	\$ 2.14
Kindergartners & School-Agers (5-13 yrs.)				
Weekly	\$42.80	\$32.10	\$21.40	\$10.70
Daily	\$ 8.56	\$ 6.42	\$ 4.28	\$ 2.14
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$67.30	\$50.50	\$33.65	\$16.80
Daily	\$13.46	\$10.10	\$ 6.73	\$ 3.36
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$67.30	\$50.50	\$33.65	\$16.80
Daily	\$13.46	\$10.10	\$ 6.73	\$ 3.36
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	\$55.10	\$41.30	\$27.55	\$13.75
Daily	\$11.02	\$ 8.26	\$ 5.51	\$ 2.75

Child's Service Category:	Full-Time	Three-Quarter Time*	One-Half Time*	One-Quarter Time*
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$114.00	\$85.50	\$57.00	\$28.50
Daily	\$ 22.80	\$17.10	\$11.40	\$ 5.70
Pre-Schoolers & Special Needs Child (2.5 up to 5 yrs.)				
Weekly	\$ 94.00	\$70.50	\$47.00	\$23.50
Daily	\$ 18.80	\$14.10	\$ 9.40	\$ 4.70
Kindergartners & School-Agers & Special Needs Child (5-13 yrs.) and Special Needs Child (13-19 yrs.)				
Weekly	\$ 94.00	\$70.50	\$47.00	\$23.50
Daily	\$ 18.80	\$14.10	\$ 9.40	\$ 4.70

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.]

†Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and fifteen minutes is rounded to two hours.

(h) (No change.)

10:86-10.2 Types of care and duration of child care payments

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

(d) The maximum child care payment rates, set forth in Tables I, II and III below, specify weekly and daily rates for the various age categories of children based on the hours of care provided.

1.-3. (No change.)

HUMAN SERVICES

PROPOSALS

[CHILD CARE MAXIMUM DAILY RATES

[CHILD CARE MAXIMUM DAILY RATES

Table II

Table III

These rates shall be utilized for:

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

APPROVED HOME DAY CARE

HOURS OF CARE PROVIDED

HOURS OF CARE PROVIDED

Child's Service Category:	HOURS OF CARE PROVIDED			
	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$ 90.00	\$67.50	\$45.00	\$22.50
Daily	\$ 18.00	\$13.50	\$ 9.00	\$ 4.50
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$ 70.00	\$52.50	\$35.00	\$17.50
Daily	\$ 14.00	\$10.50	\$ 7.00	\$ 3.50
Kindergartners & School-Agers (5 up to 13 yrs.)				
Weekly	\$ 70.00	\$52.50	\$35.00	\$17.50
Daily	\$ 14.00	\$10.50	\$ 7.00	\$ 3.50
Special Needs Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$110.00	\$82.50	\$55.00	\$27.50
Daily	\$ 22.00	\$16.50	\$11.00	\$ 5.50
Special Needs Child(ren) (2.5 yrs. & up)				
Weekly	\$ 90.00	\$67.50	\$45.00	\$22.50
Daily	\$ 18.00	\$13.50	\$ 9.00	\$ 4.50

Child's Service Category:	HOURS OF CARE PROVIDED			
	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$55.00	\$41.25	\$27.50	\$13.75
Daily	\$11.00	\$ 8.25	\$ 5.50	\$ 2.75
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$41.00	\$30.75	\$20.50	\$10.25
Daily	\$ 8.20	\$ 6.15	\$ 4.10	\$ 2.05
Kindergartners & School-Agers (5 up to 13 yrs.)				
Weekly	\$41.00	\$30.75	\$20.50	\$10.25
Daily	\$ 8.20	\$ 6.15	\$ 4.10	\$ 2.05
Special Needs Infants/Toddlers (0 up to 2.5 yrs.)				
Weekly	\$66.00	\$49.50	\$33.00	\$16.50
Daily	\$13.20	\$ 9.90	\$ 6.60	\$ 3.30
Special Needs Child(ren) (2.5 yrs. & up)				
Weekly	\$55.00	\$41.25	\$27.50	\$13.75
Daily	\$11.00	\$ 8.25	\$ 5.50	\$ 2.75

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PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

FDP CHILD CARE MAXIMUM RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, SUMMER DAY CAMPS

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time	Three-Quarter Time†	One-Half Time†	One-Quarter Time†
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$116.20	\$87.15	\$58.10	\$29.05
Daily	\$ 23.24	\$17.43	\$11.62	\$ 5.81
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$116.20	\$87.15	\$58.10	\$29.05
Daily	\$ 23.24	\$17.43	\$11.62	\$ 5.81
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$ 95.80	\$71.85	\$47.90	\$23.95
Daily	\$ 19.16	\$14.37	\$ 9.58	\$ 4.79
Kindergartners & School-Agers (5-13 yrs.)				
Weekly	\$ 95.80	\$71.85	\$47.90	\$23.95
Daily	\$ 19.16	\$14.37	\$ 9.58	\$ 4.79
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$116.20	\$87.15	\$58.10	\$29.05
Daily	\$ 23.24	\$17.43	\$11.62	\$ 5.81
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$116.20	\$87.15	\$58.10	\$29.05
Daily	\$ 23.24	\$17.43	\$11.62	\$ 5.81
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	\$ 95.80	\$71.85	\$47.90	\$23.95
Daily	\$ 19.16	\$14.37	\$ 9.58	\$ 4.79

†Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

FDP CHILD CARE MAXIMUM RATES

Table II

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time	Three-Quarter Time†	One-Half Time†	One-Quarter Time†
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$ 91.80	\$68.85	\$45.90	\$22.95
Daily	\$ 18.36	\$13.77	\$ 9.18	\$ 4.59
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$ 91.80	\$68.85	\$45.90	\$22.95
Daily	\$ 18.36	\$13.77	\$ 9.18	\$ 4.59
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$ 71.40	\$53.55	\$35.70	\$17.85
Daily	\$ 14.28	\$10.71	\$ 7.14	\$ 3.57
Kindergartners & School-Agers (5 up to 13 yrs.)				
Weekly	\$ 71.40	\$53.55	\$35.70	\$17.85
Daily	\$ 14.28	\$10.71	\$ 7.14	\$ 3.57
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$112.20	\$84.15	\$56.10	\$28.05
Daily	\$ 22.44	\$16.83	\$11.22	\$ 5.61
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$112.20	\$84.15	\$56.10	\$28.05
Daily	\$ 22.44	\$16.83	\$11.22	\$ 5.61
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	\$ 91.80	\$68.85	\$45.90	\$22.95
Daily	\$ 18.36	\$13.77	\$ 9.18	\$ 4.59

†Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

FDP CHILD CARE MAXIMUM RATES

Table III

These rates shall be utilized for:

APPROVED HOME DAY CARE

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time	Three-Quarter Time†	One-Half Time†	One-Quarter Time†
	6 hrs. or more per day	4 or 5 hrs. per day	2 or 3 hrs. per day	1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$55.10	\$41.30	\$27.55	\$13.75
Daily	\$11.02	\$ 8.26	\$ 5.51	\$ 2.75
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$55.10	\$41.30	\$27.55	\$13.75
Daily	\$11.02	\$ 8.26	\$ 5.51	\$ 2.75
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	\$42.80	\$32.10	\$21.40	\$10.70
Daily	\$ 8.56	\$ 6.42	\$ 4.28	\$ 2.14
Kindergartners & School-Agers (5 up to 13 yrs.)				
Weekly	\$42.80	\$32.10	\$21.40	\$10.70
Daily	\$ 8.56	\$ 6.42	\$ 4.28	\$ 2.14
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	\$67.30	\$50.50	\$33.65	\$16.80
Daily	\$13.46	\$10.10	\$ 6.73	\$ 3.36
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	\$67.30	\$50.50	\$33.65	\$16.80
Daily	\$13.46	\$10.10	\$ 6.73	\$ 3.36
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	\$55.10	\$41.30	\$27.55	\$13.75
Daily	\$11.02	\$ 8.26	\$ 5.51	\$ 2.75

†Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

10:86-10.6 Co-payment scales

(a) (No change.)

(b) The co-payment scales are as follows:

1.-2. (No change.)

[TABLE I
CO-PAYMENT SCALE

By Family Size
(Full-Time Care)**

Full Time* Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income				
		2	3	4	5	6
1.00	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
4.00	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
6.00	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
9.00	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
11.00	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
14.00	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
18.00	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
22.00	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
27.00	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
32.00	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
37.00	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
43.00	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
50.00	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
57.00	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
61.00	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

**Full-time care is defined as 6 or more hours of care per day or 30 or more hours of care per week.]

[TABLE I (Continued)
CO-PAYMENT SCALE

By Family Size
(Full-Time Care)**

Full Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income					
		7	8	9	10	11	12
1.00	0% - 5%	0 - 3,510	0 - 3,588	0 - 3,666	0 - 3,744	0 - 3,822	0 - 3,900
4.00	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
6.00	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
9.00	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
11.00	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
14.00	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
18.00	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
22.00	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
27.00	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
32.00	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
37.00	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
43.00	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
50.00	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
57.00	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
61.00	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

**Full-time care is defined as 6 or more hours of care per day or 30 or more hours of care per week.]

[TABLE II
CO-PAYMENT SCALE

By Family Size
(Part-Time Care)

Part Time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income				
		2	3	4	5	6
0.00	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
2.00	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
3.00	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
4.00	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
5.00	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
7.00	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
9.00	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
11.00	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
13.00	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
16.00	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
18.00	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
21.00	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
25.00	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
28.00	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
30.00	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476]

[TABLE II (Continued)
CO-PAYMENT SCALE

By Family Size
(Part-Time Care)

Part time Weekly Fee	Percent of State 1989 Median Family Income	Family Size and Annual Income					
		7	8	9	10	11	12
0.00	0% - 5%	0 - 3,510	0 - 3,588	0 - 3,666	0 - 3,744	0 - 3,822	0 - 3,900
2.00	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
3.00	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
4.00	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
5.00	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
7.00	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
9.00	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
11.00	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
13.00	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
16.00	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
18.00	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
21.00	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
25.00	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
28.00	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
30.00	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496]

PROPOSALS

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HUMAN SERVICES

**Table I
CHILD CARE CO-PAYMENT SCALE
FULL TIME CARE†**

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income††††				
First Child	Second Child†††	First Child	Second Child†††		2	3	4	5	6
\$1.10	\$0.55	\$4.76	\$2.38	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
\$4.40	\$2.20	\$19.05	\$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
\$6.60	\$3.30	\$28.58	\$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
\$9.90	\$4.95	\$42.87	\$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
\$12.10	\$6.05	\$52.39	\$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
\$15.40	\$7.70	\$66.68	\$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
\$19.80	\$9.90	\$85.73	\$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
\$24.20	\$12.10	\$104.79	\$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
\$29.70	\$14.85	\$128.60	\$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
\$35.20	\$17.60	\$152.42	\$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
\$40.70	\$20.35	\$176.23	\$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
\$47.30	\$23.65	\$204.81	\$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
\$55.00	\$27.50	\$238.15	\$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
\$62.70	\$31.35	\$271.49	\$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
\$67.10	\$33.55	\$290.54	\$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child†††	First Child	Second Child†††		7	8	9	10	11	12
\$1.10	\$0.55	\$4.76	\$2.38	0% - 5%	0 - 3,510	0 - 3,588	0 - 3,666	0 - 3,744	0 - 3,822	0 - 3,900
\$4.40	\$2.20	\$19.05	\$9.53	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
\$6.60	\$3.30	\$28.58	\$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
\$9.90	\$4.95	\$42.87	\$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
\$12.10	\$6.05	\$52.39	\$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
\$15.40	\$7.70	\$66.68	\$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
\$19.80	\$9.90	\$85.73	\$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
\$24.20	\$12.10	\$104.79	\$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
\$29.70	\$14.85	\$128.60	\$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
\$35.20	\$17.60	\$152.42	\$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
\$40.70	\$20.35	\$176.23	\$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
\$47.30	\$23.65	\$204.81	\$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
\$55.00	\$27.50	\$238.15	\$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
\$62.70	\$31.35	\$271.49	\$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
\$67.10	\$33.55	\$290.54	\$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

†Full time care is defined as six (6) or more hours of care per day.

††The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

†††The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

††††Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of \$1.00 (\$2.00 for a Bi-weekly fee) for each \$1,000 of gross income above their scale.

**Table II
CHILD CARE CO-PAYMENT SCALE
PART-TIME CARE†**

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income†††				
First Child	Second Child†††	First Child	Second Child†††		2	3	4	5	6
\$0.00	\$0.00	\$0.00	\$0.00	0% - 5%	0 - 1,768	0 - 2,184	0 - 2,600	0 - 3,016	0 - 3,432
\$2.20	\$1.10	\$9.53	\$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
\$3.30	\$1.65	\$14.29	\$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
\$4.40	\$2.20	\$19.05	\$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
\$5.50	\$2.75	\$23.82	\$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
\$7.70	\$3.85	\$33.34	\$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
\$9.90	\$4.95	\$42.87	\$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
\$12.10	\$6.05	\$52.39	\$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
\$14.30	\$7.15	\$61.92	\$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
\$17.60	\$8.80	\$76.21	\$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
\$19.80	\$9.90	\$85.73	\$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
\$23.10	\$11.55	\$100.02	\$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
\$27.50	\$13.75	\$119.08	\$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
\$30.80	\$15.40	\$133.36	\$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
\$33.00	\$16.50	\$142.89	\$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment††		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child†††	First Child	Second Child†††		7	8	9	10	11	12
\$0.00	\$0.00	\$0.00	\$0.00	0% - 5%	0 - 3,510	0 - 3,588	0 - 3,666	0 - 3,744	0 - 3,822	0 - 3,900
\$2.20	\$1.10	\$9.53	\$4.76	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
\$3.30	\$1.65	\$14.29	\$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
\$4.40	\$2.20	\$19.05	\$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
\$5.50	\$2.75	\$23.82	\$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
\$7.70	\$3.85	\$33.34	\$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
\$9.90	\$4.95	\$42.87	\$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
\$12.10	\$6.05	\$52.39	\$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
\$14.30	\$7.15	\$61.92	\$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
\$17.60	\$8.80	\$76.21	\$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
\$19.80	\$9.90	\$85.73	\$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
\$23.10	\$11.55	\$100.02	\$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
\$27.50	\$13.75	\$119.08	\$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
\$30.80	\$15.40	\$133.36	\$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
\$33.00	\$16.50	\$142.89	\$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

†Part-time care is defined as less than six (6) hours of care per day.

††The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

†††The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

††††Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of \$.50 (\$1.00 for a Bi-weekly fee) for each \$1,000 of gross income above their scale.

(c)-(f) (No change.)

(a)

**DIVISION OF FAMILY DEVELOPMENT
General Assistance Manual
Elimination of Time-Limited Eligibility Periods for
Employable GA Recipients
Proposed Amendments: N.J.A.C. 10:85-1.1, 3.1, 3.2,
4.2 and 7.2**

Authorized By: William Waldman, Acting Commissioner,
Department of Human Services.

Authority: N.J.S.A. 44:8-111(d), and Assembly Bill 60 as
introduced December 14, 1992, enacted January 13, 1993 and
effective January 13, 1993.

Proposal Number: PRN 1993-222.

(CITE 25 N.J.R. 1714)

Submit comments by May 19, 1993 to:
Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments are initiated as a result of a supplemental appropriation for State fiscal year (SFY) 1993, enacted January 13, 1993 (Assembly Bill No. 60, as introduced December 14, 1992, and approved January 13, 1993). The appropriations impact the General Assistance (GA) program by ending the time limit for receipt of assistance by employable GA recipients which was previously set at six calendar months in a State fiscal year.

The proposed deletion of N.J.A.C. 10:85-1.1(g)3ii removes references to the six-month eligibility limitation for employable GA recipients.

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

Inasmuch as subparagraph (g)3ii was deleted, for grammatical purposes the word "situations" was changed to "situation" in paragraph (g)3.

The proposed deletions of N.J.A.C. 10:85-3.1(a)4i and 4.2(a)6 remove language concerning the six-month time-limited eligibility period for employable GA recipients.

N.J.A.C. 10:85-3.1(a)6 is proposed for deletion as obsolete, since the paragraph delineates the specifics of the six-month time-limited period, that is, what constitutes a month in the time-limited period, when to count the penalty months in determining the SFY eligibility period, notice requirements, and applicability to the receipt of Emergency Assistance and temporary rental assistance.

The proposed deletion of N.J.A.C. 10:85-3.2(c)1iv(2) removes reference to Form GA-53 (Notice of Time-limited Availability of General Assistance for Employable Clients), which is no longer in use.

The Department is also proposing to delete N.J.A.C. 10:85-7.2(b)2i concerning expiration notice requirements on the time-limited eligibility period, and has recodified N.J.A.C. 10:85-7.2(b)2ii as N.J.A.C. 10:85-7.2(b)2i.

Social Impact

The proposed amendments ensure that current recipients of GA who are considered employable will not lose eligibility for assistance because of previous fiscal constraints which limited eligibility to six calendar months in a State fiscal year. The appropriation avoids an increase in homelessness at a time when the economy handicaps employment acquisition and the season presents the greatest threat to health and safety.

Economic Impact

The proposed amendments restore benefits to approximately 690 employable GA recipients each month Statewide, who would have become ineligible for receipt of GA benefits. The projected cost to restore GA benefits to employable recipients for the remainder of this State fiscal year 1993 is approximately \$9,116,131.

Regulatory Flexibility Statement

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

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

10:85-1.1 Purpose of the General Assistance program

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

(g) Financial assistance for maintenance requirements or other needs, including medical assistance, shall not be authorized through General Assistance when, during the same period, such needs are actually being provided by any other source.

1.-2. (No change.)

3. The following [situations] **situation** shall be included as duplicative assistance within the meaning of the penalty provisions stipulated in this subsection:

i. General Assistance benefits received from any MWD during any imposed sanction period, such as set forth at N.J.A.C. 10:85-3.2(g)7[.].

[ii. General Assistance benefits received from any MWD during the ineligibility period for employable clients in a State fiscal year as set forth at N.J.A.C. 10:85-3.1(a)4i and 3.1(a)6.]

10:85-3.1 Persons eligible for General Assistance

(a) General Assistance shall be provided to all eligible needy persons who, while in the State, are entitled to receive such assistance. Entitlement does not extend to persons who have been found eligible for or are recipients of public assistance programs administered by the county welfare agency, or who have been found ineligible for such programs due to voluntary refusal to comply with program requirements. (See also (c) and (d) below.)

1.-3. (No change.)

4. An "employable" person is any person applying for or receiving assistance who is able-bodied and does not meet any one of the criteria of "unemployable" delineated in (a)5 below.

[i. Eligible individuals determined "employable" shall be eligible to receive benefits for up to a maximum cumulative total of any six calendar months in a State fiscal year (SFY) (July 1-June 30) (see (a)6 below).]

5. (No change.)

[6. Criteria concerning the eligibility period for receipt of GA benefits of employable persons, up to a maximum cumulative total of any six calendar months in a State fiscal year (SFY) (July 1-June 30), are as follows:

i. All or any part of a month for which assistance is provided shall be considered a calendar month for the purpose of determining the eligibility period for employable clients.

ii. The eligibility period in a SFY for the receipt of assistance for employables shall be determined based on when the months of GA eligibility fall within the SFY.

(1) Example 1: A GA employable client receives four months of GA benefits in September, October, November, and December. The case is terminated by the MWD in January due to receipt of earned income. The individual reapplies in April and is determined GA eligible and employable. This individual may be eligible to receive assistance benefits for up to two months of the three remaining months in the SFY, which would constitute his or her maximum six calendar month eligibility period. If instead, the individual reapplied in June, that individual's eligibility period for that SFY would only be five months, not the maximum six months.

(2) Example 2: A GA employable client who receives six months of GA benefits from July through December shall have exhausted his or her eligibility period for receipt of assistance for that SFY and shall not be eligible for any further GA assistance benefits for the remaining months of January through June.

iii. Employable clients who incur any penalty of ineligibility shall be considered to be in receipt of assistance during the penalty month(s) and those penalty month(s) shall be counted when determining the SFY eligibility period for such clients.

iv. Employable recipients who terminate benefits at their own request, or for whom benefits are terminated by the MWD due to a determination of ineligibility for a reason other than a sanction penalty, shall be considered to have been in receipt of assistance only for those months in which assistance benefits were actually provided.

v. The limited eligibility period for GA employable clients shall also apply to the period of eligibility for Emergency Assistance (EA) and Temporary Rental Assistance (TRA) benefits, since such benefits are contingent on GA eligibility.

vi. Appropriate timely and time-limited notices shall be provided to employable GA clients whose SFY eligibility period ends in accordance with the notice provisions for GA at N.J.A.C. 10:85-7 and for EA at N.J.A.C. 10:85-4.6.

vii. At the time of expiration of the time-limited eligibility period for employables, the MWD shall advise the client verbally and in writing that if his or her circumstances change to an unemployable status before the end of that State fiscal year, he or she may reapply for assistance.]

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

10:85-3.2 Application process

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

(c) Rules concerning taking applications are:

1. Application/affidavit: Any person who indicates a wish to apply for General Assistance shall be recognized as an applicant. Such individual will be assisted by an MWD worker in completing the application (Form GA-1). He or she shall then be required to sign under oath the attached affidavit attesting to the correctness of his or her statements.

i.-iii. (No change.)

iv. The following procedures apply at the time of application:

(1) (No change.)

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[(2) Employable applicant(s) shall be required to sign two copies of Form GA-53 (Notice of Time-limited Availability of General Assistance for Employable Clients), incorporated herein by reference at Appendix D, Exhibit 3. The applicant shall retain one copy and the original shall be filed in the case record. The MWD shall fully explain to the employable applicant(s) that the eligibility period for assistance benefits provided to employable individuals shall be time-limited up to a maximum of six calendar months during the State fiscal year which is from July 1-June 30.]

- [(3)](2) (No change in text.)
- v. (No change.)
- 2.-7. (No change.)
- (d)-(i) (No change.)

10:85-4.2 Periods for which assistance is granted

(a) General assistance is granted to meet needs of individuals in a variety of situations. The director of welfare shall determine which of the following is appropriate:

- 1.-5. (No change.)

[6. GA recipients determined to be employable shall be limited to a cumulative total of any six calendar months of eligibility for GA benefits in each State fiscal year (July 1-June 30) (see N.J.A.C. 10:85-3.1(a)3 and 4).]

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

10:85-7.2 Notices to applicants or recipients

- (a) (No change.)
- (b) Exceptions to timely notice are:
 - 1. (No change.)

2. Time-limited assistance: When it is mutually understood between the applicant and the MWD that assistance is requested for and will be granted to cover only a limited period of time, or is limited to a specific purpose or an emergency grant (see N.J.A.C. 10:85-4.2(a)4 and 5) or when other circumstances warrant the MWD to grant assistance to cover a limited period of time, the MWD will send a time-limited notice promptly when such assistance is granted. No further notice will be required.

[i. Employable GA recipients shall be notified of the expiration date of their time-limited, six-month period of eligibility for receipt of assistance benefits (see N.J.A.C. 10:85-3.1(a)6) via Form GA-33C (Time-limited Benefit Period Expiration Notice for General Assistance Employables), incorporated herein by reference on Appendix D, Exhibit 2.

(1) The MWD shall send Form GA-33C to the employable client the month prior to the month in which the time-limited period of eligibility expires.

(2) If, due to intermittent periods of GA eligibility throughout a State fiscal year, Form GA-33C cannot be provided in accordance with (b)2i(1) above, the MWD shall send Form GA-33C to the employable client no later than 10 calendar days prior to the end of the month in which the time-limited period of eligibility actually expires.]

- [ii.]i. (No change in text.)
- (c) (No change.)

(a)

**DIVISION OF YOUTH AND FAMILY SERVICES
Manual of Requirements for Residential Child Care
Facilities**

Proposed Repeal and New Rules: N.J.A.C. 10:127

Authorized By: William Waldman, Acting Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:1-14 and 30:4C-4.

Proposal Number: PRN 1993-239.

Submit comments in writing by May 19, 1993 to:

Richard Crane
Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 30:1-14 and 30:4C-4, the Department of Human Services is authorized to inspect, evaluate and approve publicly or privately operated residential child care facilities that provide board, lodging, care and treatment services for children who are placed and/or financed by the Division of Youth and Family Services or any other New Jersey State agency. The proposed new rules constitute a comprehensive revision of the existing Manual of Requirements for Residential Child Care Facilities, which was adopted in August 1988 and is due to expire on August 26, 1993.

The proposed new rules were developed with extensive input from the community, including representatives from residential facilities, the legal profession and child advocacy groups including the New Jersey Association of Children's Residential Facilities (NJACRF), the professional consortium that represents this field. Over the past two years, an Ad Hoc Citizens' Advisory Committee participated in review meetings, draft reviews and initiated numerous comments and revisions. The final draft was distributed to members of this Ad Hoc Citizens' Advisory Committee, residential facilities, other New Jersey State agencies and child advocacy groups for review and comment.

These proposed rules include new requirements for restrictive behavior management practices, adventure (wilderness) activities, and facilities that provide services to pregnant and parenting adolescents. Drafts of the rules or specific sections of the drafts were also distributed to and reviewed by licensing agencies from other states, the Child Welfare League of America, adventure activity groups/associations and clinicians.

Subchapter 1 (N.J.A.C. 10:127-1) cites the legal authority for the proposed new rules as well as delineates the type of facility that qualifies to be an approved children's residential facility (N.J.A.C. 10:127-1.1). Existing provisions have been revised to more clearly define what is meant by a residential facility and to further explain the types of residential programs that are regulated by the Division (N.J.A.C. 10:127-1.2). This subchapter also includes an expanded definitions section, which defines new terms not previously covered in the existing chapters, such as "adventure activity," "exclusion," "infant" and "restrictive behavior management practice" (N.J.A.C. 10:127-1.3).

Subchapter 2 (N.J.A.C. 10:127-2) is an entirely new subchapter, written to make the application process for facility approval consistent with those recently adopted in other chapters promulgated by the Division. This subchapter, which was previously entitled "Administration" and is now called "Approval Procedures," clarifies provisions that were previously addressed in the existing subchapter 1. The new subchapter more clearly defines what the approval process is, outlines the application process for a facility seeking a certificate of approval (N.J.A.C. 10:127-2.1), describes the issuance of a certificate of approval (N.J.A.C. 10:127-2.2) and sets the criteria for denying, suspending, revoking or refusing to renew a certificate of approval (N.J.A.C. 10:127-2.3). Subchapter 2 also delineates an administrative hearing process to be used when a facility fails to comply with the applicable provisions of these rules (N.J.A.C. 10:127-2.4), specifies the procedures for responding to complaints that may impact on a facility's certificate of approval (N.J.A.C. 10:127-2.5) and notes the guidelines for public access to records maintained by the Division's Bureau of Licensing (N.J.A.C. 10:127-2.6).

Subchapter 3, Administration (N.J.A.C. 10:127-3) deals with administrative provisions previously addressed in the existing subchapter 2. The revised subchapter specifies that the facility must develop and give to parents a statement of purpose which describes the facility's philosophy, goals, objectives, characteristics of the clients and treatment services available (N.J.A.C. 10:127-3.1). For the first time, this subchapter calls for a "Rights of Children" statement to be prepared and posted, which explains the rights of children placed in a residential facility (N.J.A.C. 10:127-3.2), as well as an information statement that must be given to parents and staff, including information about licensing requirements, abuse or neglect complaints, search and seizure policies, visitation, discipline practices and parental consents, to enable parents to become more involved in the decision-making process for their children (N.J.A.C. 10:127-3.3). The facility must also have a governing board with communi-

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ty participation (N.J.A.C. 10:127-3.4), and the facility must set a conflict of interest policy as required by its contract with the Department of Human Services (N.J.A.C. 10:127-3.5). Subchapter 3 also requires that the facility establish an intake and admission policy for clients including a pre-placement visit to the facility (N.J.A.C. 10:127-3.6), and specifies reporting requirements for suspected or actual child abuse or neglect, the hospitalization of a child, the death of a child, closing or relocation of the facility, reportable diseases, damage to the facility, change or anticipated change of the director or changes in the services offered (N.J.A.C. 10:127-3.7). The facility must maintain administrative records, client records, staff records, records for all client health-related issues, records for pregnant/parenting adolescents, records on the use of psychotropic medication, records for adventure activities and documentation of training and staff development activities (N.J.A.C. 10:127-3.8), and the facility must have comprehensive general liability insurance coverage (N.J.A.C. 10:127-3.9).

Subchapter 4 (N.J.A.C. 10:127-4) has been updated to specify physical facility requirements that reflect the current Department of Community Affairs building standards, including the initial approval requirements for all facilities located in New Jersey, compliance with the New Jersey Uniform Construction Code and the New Jersey Uniform Fire Code, (N.J.A.C. 10:127-4.1) and the initial approval requirements for all facilities located outside of New Jersey (N.J.A.C. 10:127-4.2). Subchapter 4 further specifies the maintenance and sanitation requirements for facilities located either in or out of New Jersey (N.J.A.C. 10:127-4.3) and additional maintenance and sanitation requirements for all facilities located in New Jersey for heating, fireplaces, lighting, ventilation, toilets, lead paint, asbestos, kitchens, living space and swimming pools in accordance with the New Jersey Uniform Construction Code and the New Jersey Uniform Fire Code (N.J.A.C. 10:127-4.4). The facility must develop guidelines for emergency evacuations, medical emergencies, fire prevention and first aid (N.J.A.C. 10:127-4.5). The facility is required for the first time to establish guidelines for staff members, children, visitors and family members who use tobacco products, and must limit smoking to only certain designated areas (N.J.A.C. 10:127-4.6).

Subchapter 5 (N.J.A.C. 10:127-5) specifies the general requirements for the director of the facility and staff members employed by the facility. All staff must provide references and are required to disclose criminal convictions. A new section is included to help prevent child abuse and neglect, requiring the director and staff members to report any suspected or actual child abuse and neglect incidents involving the children, and to cooperate with all investigations (N.J.A.C. 10:127-5.1). Staff qualification requirements have been expanded, and specific responsibilities for each type of staff member have been added, including the facility administrator, social services/clinical director, social service worker, child care director, and child care staff member. New qualifications have been added for recreation, education, medical and food services staff members (N.J.A.C. 10:127-5.2). The facility must maintain new staff to child ratios that may vary depending upon the time of day (N.J.A.C. 10:127-5.3). The requirements for staff training and development have been expanded to include the facility's statement of purpose, search and seizure policy, emergency procedures, protocols for medication, infection control procedures, behavior management techniques, alcohol and drug abuse, human sexuality, AIDS and suicide prevention (N.J.A.C. 10:127-5.4). The facility must establish guidelines if it chooses to utilize volunteers and student interns with the children (N.J.A.C. 10:127-5.5).

Subchapter 6 (N.J.A.C. 10:127-6) expands the existing requirements for program activities to include more detailed treatment planning, a designated treatment team (N.J.A.C. 10:127-6.1), and more specific discharge planning as children complete their program and return to the community (N.J.A.C. 10:127-6.2). Requirements for the grouping of children in living units within the facility are modified to facilitate the treatment and supervision of children (N.J.A.C. 10:127-6.3). Expanded requirements that address work and employment (N.J.A.C. 10:127-6.4) and money and allowance (N.J.A.C. 10:127-6.5) are intended to help the client gain experience and responsibility in the workplace, learn to handle money and learn the importance of banking. Improved requirements for visitation and communication (N.J.A.C. 10:127-6.6) outline the role of the treatment team and the placing agency in assessing the benefits and detriments, as well as the therapeutic value, of visits and communication from family members and friends. New provisions require the facility to allow the clients reasonable access to a telephone for conversations with their Division case manager, other persons included in the client's treatment planning, or their parents.

Expanded education requirements (N.J.A.C. 10:127-6.7) for the clients specify how the facility must ensure that all school-age children receive an appropriate education. Recreation requirements specify that children must be afforded a balanced program of on-grounds and off-grounds activities (N.J.A.C. 10:127-6.8). Requirements for religion outline the facility's responsibilities for ensuring that the clients have access to religious services as well as ensuring that clients are not forced or coerced into a particular religious activity or service (N.J.A.C. 10:127-6.9). Subchapter 6 also contains new requirements to ensure safe, clean and comfortable sleep/rest for the clients as well as adequate opportunity for uninterrupted sleep (N.J.A.C. 10:127-6.10). Improved food and nutrition requirements (N.J.A.C. 10:127-6.11) specify the meals that need to be provided, proper methods for food storage and the ability to provide for individualized diets. For the first time, facilities that choose to have pets must meet specific requirements (N.J.A.C. 10:127-6.12), including making sure pets are domesticated, free from disease and appropriately vaccinated, as well as ensuring appropriate health and sanitary measures.

The expanded requirements for restrictive behavior management practices provide for proper use of techniques that may be utilized as an intervention to help the client gain control of his or her behavior, including physical restraint, mechanical restraint, isolation and exclusion. Prior to the child's admission, the facility must provide an explanation to the parents, the child and the Division's case manager of any restrictive behavior management technique that may be used at the facility (N.J.A.C. 10:127-6.13). Requirements for the discipline and control of the clients are intended to help clients develop self-control and conform to acceptable patterns of social behavior. These requirements prohibit the following types of punishment: corporal punishment; group punishment; mechanical restraint; chemical restraint; deprivation of meals, sleep, mail or clothing; verbal abuse; seclusion in a locked room; forced physical exercise; suspension from the program; and refusal of entry to the facility (N.J.A.C. 10:127-6.14). If the facility chooses to conduct searches, screen for drugs or seize contraband or weapons the facility must follow revised policies and procedures as proposed (N.J.A.C. 10:127-6.15). Existing requirements that prohibit firearms and weapons from being maintained in residential facilities are continued (N.J.A.C. 10:127-6.16). New provisions indicate that aversive conditioning procedures may be used with prior approval from the Bureau (N.J.A.C. 10:127-6.17).

Subchapter 7 (N.J.A.C. 10:127-7) consolidates the health requirements for children who are placed in a residential facility and for the staff who are employed by such a facility into one subchapter. The health requirements for children have been expanded to require the facility to develop and implement a comprehensive health plan to ensure that all of the child's health needs are met (N.J.A.C. 10:127-7.1). The facility must follow specific guidelines for physical examinations for a child's admittance, yearly medical examinations and periodic dental check-ups (N.J.A.C. 10:127-7.2). The facility is required to adhere to general medical practices for routine and emergency care, and the facility must now contact the New Jersey State Department of Health or local health department when a child or staff member has a reportable disease (N.J.A.C. 10:127-7.3). The requirements for prescribing, dispensing, documenting, storing, monitoring and disposing of medication (N.J.A.C. 10:127-7.4), as well as for psychotropic medication including informed consent (N.J.A.C. 10:127-7.5) have been expanded and refined. This section also includes new procedures for the facility to follow when a parent, legal guardian or child refuses or revokes consent for medication.

Requirements for the health education and physical care of the children have been expanded to include instruction for the children in hygiene, grooming, personal care, sexually responsible behavior, AIDS and other sexually transmitted diseases and the health consequences of using tobacco products, alcohol and drug abuse, and require that children have adequate hygiene supplies and clothing (N.J.A.C. 10:127-7.6). Health requirements for staff include testing for tuberculosis, a current physical examination and documentation from a physician that a staff member is able to return to work after a physical or mental illness (N.J.A.C. 10:127-7.7). New requirements for environmental sanitation and staff hygiene outline methods for cleaning and disinfecting materials that come into contact with blood, vomit, urine, fecal matter and other body secretions (N.J.A.C. 10:127-7.8).

Subchapter 8 (N.J.A.C. 10:127-8) is updated to reflect current New Jersey Division of Motor Vehicle regulations, and outlines the requirements the facility must follow when providing transportation services for the children. The facility must be in compliance with all applicable provisions of New Jersey Division of Motor Vehicles law, N.J.S.A. 39:1-1

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et seq. (N.J.A.C. 10:127-8.1). The facility must maintain vehicle liability insurance in amounts specified for every vehicle owned or leased that is used to transport children (N.J.A.C. 10:127-8.2). Subchapter 8 also expands additional requirements for facilities that transport physically handicapped, non-ambulatory children (N.J.A.C. 10:127-8.3). The facility must meet revised requirements for motor vehicle records, including current copies of driver's licenses, vehicle registrations, insurance policies and identifying information of the lessor or contractor, if applicable (N.J.A.C. 10:127-8.4).

Subchapter 9 (N.J.A.C. 10:127-9) is an entirely new subchapter that outlines the requirements for facilities that utilize adventure activities as part of their program. These activities include biking, canoeing, kayaking, tubing, caving, hiking, horseback riding, ropes, rock climbing, sailing, boating, snow skiing, solos (solitary camping), swimming, water skiing and camping. The requirements contain state-of-the-art information for each type of activity and specify that children must receive specific safety instruction for activities they intend to participate in, that parents must sign a consent form and that certain activities such as hunting and parachuting are prohibited (N.J.A.C. 10:127-9.1). Facilities that engage in adventure activities must develop plans for emergency evacuation and search and rescue (N.J.A.C. 10:127-9.2). These plans must include guidelines for evaluating weather conditions, transporting accident victims, constructing a litter in the event of an injury, evacuating children and staff, contacting emergency personnel and other guidelines for dealing with emergencies. These plans must also include detailed guidelines for conducting a search in the event a child or staff member becomes lost during an activity. Subchapter 9 also describes the reporting requirements facilities must follow, including providing written descriptions to the Bureau of all high and medium risk adventure activities prior to their implementation.

Facilities that offer biking as an activity must follow the requirements specified (N.J.A.C. 10:127-9.4), including safety inspections of the bikes, use of protective helmets, periodic rest breaks and possession of safety equipment. Facilities that provide canoeing, kayaking or tubing activities must ensure that water temperature is not less than 55 degrees Fahrenheit, and ensure that the children wear approved life jackets, follow safety procedures, and avoid waters that are unsafe (N.J.A.C. 10:127-9.5). Facilities that permit children to visit and explore caves must provide helmets, follow safety guidelines for caving and ensure that staff are experienced in caving (N.J.A.C. 10:127-9.6). Requirements for hiking include providing first aid for insect, animal and snake bites and ensuring weight limitations for back packs (N.J.A.C. 10:127-9.7). Children who engage in horseback riding (N.J.A.C. 10:127-9.8) must follow such safety practices as wearing boots and protective head gear. The facility must ensure that horses it owns are cared for properly and watered and fed regularly, and must maintain documentation of compliance with these requirements. The requirements for ropes and rock climbing include inspecting the ropes, instructing children in safety procedures, wearing helmets and having certified staff implementing the activity (N.J.A.C. 10:127-9.9). A facility that engages in sailing or boating activities must ensure that all vessels meet applicable Federal, state and local laws, children are provided with life jackets and staff complete an approved boating course (N.J.A.C. 10:127-9.10). Provisions for snow skiing (N.J.A.C. 10:127-9.11) require that children are provided with appropriate ski equipment, clothing and eye protection, and prohibit skiing in avalanche areas or in temperatures below zero degrees Fahrenheit. Facilities that utilize solo camping must ensure that the children are physically capable, are provided with sufficient equipment, food and water and are closely monitored (N.J.A.C. 10:127-9.12). The requirements for swimming (N.J.A.C. 10:127-9.13) include ensuring staff certification in life-saving, prohibiting swimming at night or in unsafe areas, testing the children's ability to swim and ensuring that the water temperature is at least 55 degrees Fahrenheit. Water skiing requirements (N.J.A.C. 10:127-9.14) prohibit water skiing at night and in crowded areas and require that equipment be checked on a regular basis. The requirements for camping outline the guidelines for tents, campsites, bathing, food storage, latrines and permits (N.J.A.C. 10:127-9.15). Facilities that use wagon trains (N.J.A.C. 10:127-9.16) must provide proper care for animals and ensure that the wagons are in good repair.

Provisions for general health and sanitary practices for adventure activities (N.J.A.C. 10:127-9.17) require that children are in good health prior to their participation, and specify procedures for the treatment of insect, snake and animal bites, food storage, drinking water requirements and the disposal of animal waste.

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The requirements for qualifications for staff supervising adventure activities include certification in CPR and first aid and certification or experience in a particular adventure activity (N.J.A.C. 10:127-9.18). The staff to child ratio requirements specify that at least two staff members must be present when nine or more children are engaged in an adventure activity, and when more than 12 children are present, there must be at least one additional staff member for every additional six children (N.J.A.C. 10:127-9.19). Special requirements for communication and visits for those children involved in activities in remote areas are specified (N.J.A.C. 10:127-9.20), including requirements that children can be reached by family member(s) in an emergency, and have privacy during a visit and access to the telephone and mail. The facility must explain these policies and procedures to all families and children upon admission and give parents a written explanation of its policy.

Subchapter 10 (N.J.A.C. 10:127-10) is an entirely new subchapter that specifies the requirements for facilities that provide services to pregnant and parenting adolescents. The general requirements (N.J.A.C. 10:127-10.1) identify the various program services that facilities must provide, and outline specific maintenance and safety requirements for equipment such as safety gates, furniture, electrical outlet covers, toilets, play areas, cribs and playpens. Staff and staff to child ratio requirements specify that staff members must be at least 21 years of age; require facilities that serve three or more pregnant or parenting adolescents to have at least one staff member who is certified in first aid and CPR; and specify the number of staff needed depending upon the particular mix of mothers and babies and time of day (N.J.A.C. 10:127-10.2). Requirements for staff development and training (N.J.A.C. 10:127-10.3) specify that the facility must develop and maintain on file a training plan to ensure that staff receive instruction in the facility's statement of purpose and protocols for dispensing medication, and stipulate that staff receive at least 24 hours of training each year in topics that are relevant to adolescent mothers and their children. Case management requirements (N.J.A.C. 10:127-10.4) outline the requirements for treatment of the adolescents and the infants, including staff participation in the treatment plan, assessments for strengths and weaknesses, parenting capabilities, academic progress, assessment of the health and development of the infant, treatment goals, budgeting and job training. Requirements for planned and emergency discharges are specified (N.J.A.C. 10:127-10.5).

The requirements for services regarding paternal involvement (N.J.A.C. 10:127-10.6) deal with the various issues involved in establishing paternity and specify that the facility discuss these issues at individual and group meetings. Requirements for services to the adolescent's family (N.J.A.C. 10:127-10.7) specify that the facility must attempt in-person contacts with the parents of the adolescent to discuss their involvement with their daughter and grandchild. Requirements for parenting education (N.J.A.C. 10:127-10.8) outline the topics for the adolescent mothers, which include infant and child development, stimulation activities, health care, nutrition and maintaining relationships with their families. Infant stimulation requirements specify activities that the mother must implement with her child at the various stages of development including sensory activities, language activities, manipulative activities, building activities, large muscle activities, music activities, art activities and science and math activities (N.J.A.C. 10:127-10.9). The requirements for infant toys and equipment (N.J.A.C. 10:127-10.10) specify that toys and equipment must be safe, non-toxic and free of hazards, and that the facility must have a choker tube available to test the size of toys to ensure that the infants cannot swallow toys or parts of toys. The requirements for recreation specify that the facility must teach the adolescent how to manage time and money and use public transportation in order to participate in recreational activities in the community (N.J.A.C. 10:127-10.11). The requirements for money and allowance (N.J.A.C. 10:127-10.12) outline how adolescents can earn money, how to deal with property damage caused by the adolescent or her child and guidelines for restitution. Visiting and communication requirements are specified (N.J.A.C. 10:127-10.13), including having regular contact with family members and the infant's father, visiting hours and denial of visits. The requirements for behavior management prohibit corporal punishment, abusive language, ridicule, forced physical exercise, deprivation of meals and seclusion in a locked room (N.J.A.C. 10:127-10.14). The requirements for comprehensive health plans for pregnant adolescents outline prenatal care for expectant mothers, including visits to the obstetrician, referrals to the Supplemental Feeding Program for Women, Infants and Children (WIC) and making appropriate hospital arrangements for the delivery (N.J.A.C. 10:127-10.15).

Comprehensive health plans for infants are specified (N.J.A.C. 10:127-10.16), including regular check-ups, immunizations and developmental screenings. The requirements for comprehensive health care for adolescent mothers who are not pregnant specify that they receive regular physical examinations and dental care (N.J.A.C. 10:127-10.17). The requirements for the care of sick infants identify a variety of illnesses that require a physician's care (N.J.A.C. 10:127-10.18). General medical practices are outlined (N.J.A.C. 10:127-10.19), including explaining any medical, dental, psychological and psychiatric treatment to the adolescent and the facility's responsibility to report serious illness and accidents to the Bureau and the adolescent's parents. The requirements for medication ensure that all medication is authorized by a physician, stored in a locked cabinet and documented in a medication log book after it has been dispensed. The facility shall ensure that adolescents follow the advice of the infant's physician for administering medication to their infants (N.J.A.C. 10:127-10.20).

The environmental sanitation requirements for disinfecting (N.J.A.C. 10:127-10.21) specify the types of disinfectant the facility must utilize for cleaning toilet training chairs, sinks, diapering surfaces, toys, mops, and thermometers. The requirements for personal hygiene for adolescents and staff indicate washing their hands with soap and water before preparing or serving food and after diapering, toileting, and coming into contact with blood, fecal matter, urine, vomit or saliva (N.J.A.C. 10:127-10.22). The requirements for health education and physical care for adolescents and infants (N.J.A.C. 10:127-10.23) specify training in personal care, hygiene and grooming habits as well as instructing adolescents in the changing of their baby's diapers, and ensuring that each adolescent bathes and grooms her infant daily. The facility is required to provide adolescents with necessary personal hygiene items. Requirements for food and nutrition specify that balanced meals must be provided, and that the facility must follow individualized diets and feeding schedules (N.J.A.C. 10:127-10.24). Life skills development requirements specify the type of instruction a mother must receive prior to her discharge from the facility, including meal planning, meal preparation, food shopping and locating affordable housing, and require the facility to document in the adolescent mother's record that she has received the training specified (N.J.A.C. 10:127-10.25).

Social Impact

The Division anticipates that the adoption of the proposed new rules will have a positive social impact on the facilities, as well as the quality of care received by children who are placed in residential facilities for treatment. The proposed repeal and new rules strengthen, clarify and expand many of the guidelines, policies and procedures that facilities utilize in the delivery of services to children and their families. This chapter ensures the health, safety and well being of children receiving residential treatment services, while at the same time protecting the rights of the children and parents.

For the first time there are requirements that insure parents are provided with current and accurate information about the facility's treatment program, including behavior management techniques that may be used. The concept of informed consent as it applies to the administration and control of psychotropic medication is clearly outlined in the proposed new rules. This requirement safeguards the rights of the child and permits the parent(s) to become part of the decisionmaking process. Requirements for important health issues have been established, including limits on the use of tobacco products at the facility by staff, children and visitors and environmental sanitation requirements. The chapter as proposed provides new rules that address adventure activities such as biking, boating, camping, hiking and rock climbing—activities that are becoming more frequently utilized as part of the treatment services for children to help them overcome emotional disturbances. This chapter helps to strengthen and emphasize the use and importance of safety practices, safety equipment and certified staff to reduce the risk of harm while the children are participating in any approved adventure activity. It should be noted that New Jersey is known nationally regarding the development of requirements for adventure activities. The proposed new rules also contain innovative requirements that will enable the Division to more effectively regulate facilities that provide services to pregnant and parenting adolescents and their children. It is therefore anticipated that these new rules will have a positive social impact, as discussed here and described in the Summary.

Economic Impact

In general, facilities that are regulated by the rules of this chapter would incur certain operational, administrative and attendant costs in

order to achieve compliance with the requirements. The Division does not anticipate any major negative economic impact from the proposed new rules on the 45 residential child care facilities that serve these children or on the Division itself, since the facilities are already providing these services under the provisions of the existing chapter. The development of these requirements through a participatory process involving constituents, child care advocates and other child care professionals enabled the Division to carefully discuss and review each requirement in an effort to keep any additional costs at a minimum.

Facilities that choose to provide adventure activities may incur some minor additional expenses for safety equipment, such as life jackets for boating activities. In addition, some adventure activities may require the presence of staff with appropriate certifications such as a lifesaving certificate for staff supervising swimming activities in non-supervised public recreational bathing facilities. Facilities that choose to serve pregnant and parenting adolescents may need to increase slightly their staff to child ratios due to the new requirements, although a Division survey of these types of programs indicated that any potential costs to meet staff to child/infant ratios would not be significant.

Some minor economic impact may result from the expanded recordkeeping requirements as well as other administrative costs. However, the added costs will not be prohibitive and, as such, the facilities will continue to operate without reducing the existing level of service.

Regulatory Flexibility Analysis

These proposed new rules affect approximately 45 residential child care facilities, all of which fall within the definition of a small business, as defined in the State Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is not appropriate or necessary to establish differential regulations that would apply to larger and smaller entities, as all the regulated entities are considered small businesses.

While these proposed rules will clarify and expand the requirements for residential facilities, they will not place any unnecessary, excessive or overly stringent standards on the facilities. The proposed new rules maintain the existing approach to require minimum baseline reporting, recordkeeping and other rules (as specified in the Summary) with which these facilities must comply in order to ensure a safe, healthy and therapeutic environment for the emotionally disturbed children served in these settings. These minimum baseline requirements are routine expectations that any residential facility serving emotionally disturbed children should meet as part of its daily program operations, and are utilized by the Division as the main criteria for establishing the costs of services and for developing contracts.

The proposed new rules also impose a number of new, revised and expanded reporting and recordkeeping requirements on these residential child care facilities, which are necessary to administer and operate the facilities, also as discussed specifically in the above Summary. These requirements include: a new information statement for parents and staff members (N.J.A.C. 10:127-3.3); a revised conflict of interest policy (N.J.A.C. 10:127-3.5); a revised visitation policy (N.J.A.C. 10:127-6.6); a new restrictive behavior management policy (N.J.A.C. 10:127-6.13); a revised search and seizure policy (N.J.A.C. 10:127-6.15); new recordkeeping on reportable and communicable diseases (N.J.A.C. 10:127-7.3); expanded recordkeeping on psychotropic medication (N.J.A.C. 10:127-7.5); revised transportation recordkeeping (N.J.A.C. 10:127-8.4); new recordkeeping for adventure activities (N.J.A.C. 10:127-9); and new recordkeeping for pregnant/parenting adolescents and their infants (N.J.A.C. 10:127-10). The Division anticipates that these requirements will not impose an undue burden on the facilities. The proposed new rules do not require that providers use outside professional services to comply with requirements; however, they may do so if they choose. There are no capital costs associated with the proposed new rules.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:127.

Full text of the proposed new rules follows:

CHAPTER 127
MANUAL OF REQUIREMENTS FOR RESIDENTIAL
CHILD CARE FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

10:127-1.1 Legal authority

(a) This chapter is promulgated pursuant to N.J.S.A. 30:1-14 and 15 and 30:4C-4.

(b) Under N.J.S.A. 30:1-14 and 30:4C-4, the Department of Human Services is authorized to inspect, evaluate, and approve publicly or privately operated facilities that provide board, lodging, care and treatment services for children who are placed and/or financed by the Division of Youth and Family Services or any other New Jersey State agency.

(c) Under N.J.S.A. 30:1-14, the following facilities shall be subject to inspection, evaluation, and approval by the Department of Human Services, Division of Youth and Family Services:

1. New Jersey-based children's residential facilities, as defined in this chapter, except facilities that are licensed, approved or regulated pursuant to State law by the Division of Developmental Disabilities or the Division of Mental Health and Hospitals, both of the Department of Human Services, by the State Department of Health, by the State Department of Education, by the State Department of Corrections or by any other New Jersey State agency; and

2. Out-of-State children's residential facilities as defined in this chapter, that serve one or more children under the supervision of the Division of Youth and Family Services. As a condition of approval by the Department, such facilities shall be licensed, certified, or otherwise approved to operate in the state where the facility is located.

(d) In order to be approved, a children's residential facility shall demonstrate to the satisfaction of the Department of Human Services or its duly authorized agent that it complies with all applicable provisions of this chapter.

(e) Responsibility for ensuring that the facility specified in (c) above complies with the provisions of the statutes cited in (a) above and of this chapter is delegated by the Department of Human Services to the Division of Youth and Family Services, Bureau of Licensing. The Division is authorized to visit and inspect such facilities, as described in N.J.A.C. 10:127-1.2(a) and (b), to determine the extent of their compliance with such provisions.

(f) Under N.J.S.A. 30:1-15, the Department of Human Services is also authorized to visit and inspect publicly or privately maintained institutions or other institutions and noninstitutional agencies that:

1. Provide board, lodging or care for children who are not placed or financed by the Division of Youth and Family Services or any other New Jersey State agency; and

2. Are not subject to licensing or regulation by any New Jersey State agency.

(g) The Division of Youth and Family Services is authorized to visit and inspect such facilities as described in (f) above to assess the general health, safety, and well-being of the children and the care and treatment they are receiving, but cannot require their compliance with this chapter and must secure an order from a court of competent jurisdiction, pursuant to N.J.S.A. 30:1-16, to compel correction of serious deficiencies.

10:127-1.2 Definition and types of children's residential facilities

(a) "Residential child care facility" or "residential facility" or "facility" means any public or private establishment that provides room, board, care and treatment services for 16 or more children on a 24 hour-a-day basis.

(b) Residential child care facilities that are subject to the provisions of this chapter include:

1. Division-contracted or Division-operated residential child care facilities that serve children with emotional and/or behavioral problems and provide on-grounds educational programming;

2. Division-contracted or Division-operated residential child care facilities that serve children with emotional and/or behavioral problems who attend schools in the community; and

3. Division-contracted residential child care facilities that provide:

- i. Drug and alcohol treatment services;
- ii. Psychiatric services;
- iii. Services to children with physical disabilities; or
- iv. Adventure programs that serve children with emotional and/or behavioral problems.

10:127-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Adventure activity" means a planned activity of a wilderness or athletic nature that requires specially trained staff members and/or special equipment that is utilized with children to assist in their development of self-confidence and insight.

"Bureau" means the Bureau of Licensing of the Division of Youth and Family Services, New Jersey Department of Human Services.

"Chapter" means the rules contained in the Manual of Requirements for Residential Child Care Facilities, as specified in N.J.A.C. 10:127-1.1 to 10.25 and reflect provisions that constitute minimum baseline requirements below which no facility that is subject to the authority of N.J.S.A. 30:1-14 and N.J.S.A. 30:4C-4 is legally permitted to operate.

"Child" means any person who is under 18 years of age and/or any person between the ages of 18 and 21 who is under the supervision of the Division in placement in a residential child care facility.

"Denial of a certificate" means the withholding by the Bureau of an initial certificate of approval for which a facility has applied.

"Department" means the New Jersey Department of Human Services.

"Director" means the on-site staff member responsible for the daily operation and management of the facility.

"Division" means the Division of Youth and Family Services, New Jersey Department of Human Services.

"Exclusion" means removing a child to an area or room in the facility where there is limited stimulation. This removal shall be a therapeutic intervention and a time for the child to reflect on his or her behavior in order to gain control so he or she can return to the other children.

"Infant" means any person who is under the care of his or her adolescent mother in a facility serving adolescent mothers.

"Parent" means a birth or adoptive parent, legal guardian, or any other person having responsibility for, or custody of, a child.

"Person" means any individual, agency, corporation, company, association, organization, society, firm, partnership, joint stock company, the State or any political subdivision thereof.

"Placing agency" means an agency that assumes responsibility for payment of room and board for a child placed in a facility.

"Refusal to renew a certificate" means the non-issuance of a certificate of approval by the Bureau to a facility after its existing certificate has expired.

"Regular certificate of approval" or "regular certificate" means a document issued by the Bureau to a facility indicating that the facility is in full compliance with all applicable provisions of this chapter.

"Restraint" means the holding of a child so that he or she cannot move all or part of his or her body.

"Restrictive behavior management practice" means the use of restraint, exclusion, mechanical restraint and a behavior management room as part of a comprehensive treatment plan to help the child develop self-control, to reduce maladaptive behavior, to protect the child and others from harm or to prevent serious disruption to the therapeutic environment.

"Revocation of a certificate" means a permanent removal of a facility's current certificate of approval to operate.

"Shall" denotes a provision of this chapter that a facility must meet to qualify for a certificate of approval.

"Should" denotes a recommendation reflecting goals towards which a facility is encouraged to work.

"Staff member" or "staff" means any person employed by or working for or at a facility on a regularly scheduled basis. This

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includes full-time, part-time, substitute, volunteer, student intern, contract or consulting personnel, whether compensated or not.

"Suspension of a certificate" means a temporary removal of a facility's current certificate of approval to operate.

"Temporary certificate of approval" or "temporary certificate" means a document issued by the Bureau, to a facility that is in substantial compliance with all applicable provisions of this chapter, provided that no serious or imminent hazard affecting the children exists in the facility.

SUBCHAPTER 2. APPROVAL PROCEDURES**10:127-2.1 Application for a certificate of approval**

(a) No person shall operate a residential child care facility that provides board, lodging, care and treatment services for children who are placed or financed by the Division or by any other New Jersey State agency without first securing a certificate of approval from the Bureau, except for facilities that are subject to licensing or regulatory approval pursuant to State law by any other New Jersey State agency.

(b) A facility applying to the Bureau for an initial certificate of approval shall submit a completed application form to the Bureau, including the documentation specified in N.J.A.C. 10:127-4.1(a), (b) and (c), at least 45 calendar days prior to the anticipated opening of the facility.

(c) A facility applying to the Bureau for a renewal of its certificate of approval shall submit a completed application form to the Bureau, including the documentation specified in N.J.A.C. 10:127-4.1(d), at least 45 calendar days prior to the expiration of its existing regular certificate.

(d) The application form referenced in (b) and (c) above shall include the following:

1. General identifying information;
2. Name(s) of the sponsors;
3. Names of members of the governing boards;
4. A description of the agency's program, including program philosophy, goals and objectives;
5. A list of staff members; and
6. A list of residents placed by the Division.

10:127-2.2 Issuance of a certificate of approval

(a) The Bureau shall issue a regular certificate of approval to a facility that has achieved full compliance with all applicable provisions of this chapter.

(b) If the Bureau determines that a facility is in substantial compliance with, but does not meet all applicable provisions of, this chapter, and provided that there is no serious or imminent hazard to the education, health, safety, well-being or treatment needs of the children, the Bureau shall issue a temporary certificate to the facility and indicate in writing the steps the facility must take to secure a regular certificate of approval.

(c) A temporary certificate may be issued for a period not to exceed six months. The Bureau may issue as many temporary certificates as it deems necessary.

(d) Each certification period, which may include the issuance of one or more temporary certificates or one regular certificate, shall be two years.

1. In determining the expiration date of the first regular certificate of approval, the Bureau shall compute the two-year approval period from the date of issuance of the first temporary or regular certificate.

2. In determining the expiration date of a renewed regular certificate, the Bureau shall compute the two-year approval period from the date on which the previous regular certificate expired. If however, the facility has ceased to operate for a period of one year following the expiration date of its previous regular certificate, the Bureau shall compute the date of expiration from the date of issuance of a new certificate.

(e) The certificate of approval shall be issued to a specific facility and shall not be transferable.

(f) The facility shall maintain its certificate of approval on file.

(g) No facility shall make claims either in advertising or in any written or verbal announcement or presentation contrary to its approval status.

10:127-2.3 Denying, suspending, revoking or refusing to renew a certificate of approval

(a) The Bureau may deny, suspend, revoke or refuse to renew a certificate of approval for good cause, including, but not limited to, the following:

1. Failure to comply with the provisions of this chapter;
2. Violation of the terms and conditions of a certificate of approval;
3. Fraud or misrepresentation in obtaining a certificate;
4. Refusal to furnish the Division with files, reports, or records as required by this chapter;
5. Refusal to permit an authorized representative of the Division to gain admission to the facility or to conduct an inspection or investigation;
6. Any activity, policy, or staff conduct that adversely affects or is deemed by the Bureau to be detrimental to the education, health, safety, well-being or treatment needs of children or that otherwise demonstrates unfitness by the director or staff members of the facility to operate a residential child care facility;
7. Failure of an out-of-State facility to maintain a license, approval or certificate in its own state; and
8. Failure by the director to secure and maintain on file criminal conviction disclosures, as specified in N.J.A.C. 10:127-5.1(b)1.

(b) The Bureau shall provide written notice to the facility if it intends to deny, suspend, revoke or refuse to renew its application for a certificate. This notice shall specify the Bureau's reasons for such action and the need for the facility to come into compliance prior to such action being taken.

(c) If the Bureau denies, revokes, or refuses to renew a certificate of approval, as specified in (a) above, the facility shall be prohibited from reapplying for a certificate of approval for one year from the date of certificate denial, revocation or refusal to renew. After the one-year period has elapsed, the facility may submit to the Bureau a new application for a certificate.

(d) If a certificate is suspended, the Bureau shall issue or reinstate the certificate once the facility achieves compliance with the provisions of this chapter. In such a case, the Bureau shall not require the facility to submit a new application for a certificate unless such reapplication is expressly made a condition of the issuance or reinstatement of the certificate.

(e) Each certificate of approval issued by the Bureau to a facility remains the property of the State of New Jersey. If the Bureau suspends or revokes a certificate of approval, the facility shall return the certificate of approval to the Bureau immediately.

10:127-2.4 Administrative hearings

(a) If a facility fails to comply with all applicable provisions of this chapter, the Bureau shall issue a directive ordering compliance. Prior to the Bureau's decision to deny, suspend, refuse to renew or revoke a facility's certificate of approval, the facility shall have the opportunity to request an administrative hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) As long as the Division determines that children are not at risk and that no imminent dangers exist, the Bureau may permit a facility that has requested an administrative hearing, as specified in (a) above, to continue to operate until a final decision is rendered as a result of the hearing.

10:127-2.5 Complaints

(a) Whenever the Bureau receives a report questioning the approval status or compliance of a facility or alleging a violation of this chapter, the Bureau shall ensure that the allegation is promptly investigated to determine whether the complaint is substantiated.

(b) If a serious complaint is received that alleges imminent hazard or risk to the health, safety and welfare of the children, the Bureau shall investigate the complaint within 48 hours.

(c) After the report of the investigation has been completed, the Bureau shall notify the facility in writing of the results of the investigation within 15 days, pursuant to the State Public Records

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Law, N.J.S.A. 47:1A-1 et seq., with the exception of any information not permitted to be disclosed pursuant to the Child Abuse and Neglect Law, N.J.S.A. 9:6-8.10a, or any other State law.

(d) Whenever the Division, through its Bureau of Licensing, Institutional Abuse Investigation Unit or District Offices, conducts complaint investigations, the facility shall cooperate with all Division investigators.

10:127-2.6 Public access to the Bureau's licensing records

Licensing files maintained by the Bureau are public records and shall be readily accessible for examination by any person, under the direction and supervision of the Bureau, except when public access to records is restricted, in keeping with the State Public Records Law, N.J.S.A. 47:1A-1 et seq., or other applicable statutes.

SUBCHAPTER 3. ADMINISTRATION**10:127-3.1 Statement of purpose**

(a) The facility shall maintain on file a written statement of purpose that shall identify the following:

1. The facility's philosophy, goals, and objectives;
2. Characteristics of the children to be served;
3. Types of treatment services provided to the children, including those provided directly by the facility and those provided in cooperation with community agencies or outside individuals;
4. Procedures for implementing those services; and
5. Criteria for completion of the program.

(b) The facility shall give this statement of purpose to the parents of the children being considered for services, and shall make it available to all staff members.

(c) The facility shall secure and maintain on file a record of the parents' and staff members' signatures attesting to their acknowledgment of the statement of purpose.

10:127-3.2 Rights of children

(a) The facility shall prepare a list of children's rights and shall post it in prominent locations in the facility, including in each living unit, or give it to the children and document such in each child's record. At a minimum, the list shall specify the children's right to:

1. Receive prompt medical treatment;
2. Have access to an appropriate education;
3. Live in a safe, clean and healthy environment;
4. Be free of physical or sexual harassment or abuse and corporal punishment;
5. Attend religious services of their choice; and
6. Have unimpeded communication to the Division.

(b) The facility shall give this list of children's rights to the parents of the children being considered for admission and shall make it available to all staff members.

(c) The facility shall secure and maintain on file a record of the parents' and staff members' signatures attesting to their acknowledgment of the list of children's rights.

(d) If the facility chooses to develop a search and seizure policy, the facility shall give all children, staff and parents a copy of this policy, as specified in N.J.A.C. 10:127-6.15.

(e) The facility shall prepare, post or give to all staff members and children a written grievance procedure governing how the children may raise questions about or voice disagreements and concerns about procedures, care and specific incidents. The facility shall not take or threaten to take retaliatory or disciplinary action of any kind against a child who uses the grievance procedure. The facility shall provide a procedure to explain the above to children who are developmentally disabled.

10:127-3.3 Information to parents and staff members

(a) The facility shall provide to every parent within five working days of his or her child's placement, and to every person upon becoming a staff member, a written document indicating that the facility is required to:

1. Secure a certificate of approval to operate from the Bureau of Licensing;
2. Comply with all applicable provisions of the manual;

3. Retain a current copy of the manual and make it available for review by parents of resident children;

4. Indicate how parents may secure a copy of the manual by contacting the Bureau of Licensing, Division of Youth and Family Services, CN 717, Trenton, New Jersey 08625-0717;

5. Afford parents the opportunity and time to review and discuss with the facility director any questions or concerns about policies, requirements, provisions, or alleged violations of the manual;

6. Advise parents that if they believe or suspect that the facility is in violation of any provision of the manual, they may report such alleged violations to the Bureau;

7. Make available, upon request, for parents' review the Bureau's Inspection/Violation and Complaint Reports on the facility, as well as any letters of enforcement or other actions taken against the facility during the current certificate of approval period;

8. Inform parents that they may request a copy of the facility's behavior management policy, including policies for searches, as specified in N.J.A.C. 10:127-6.13, 6.14, and 6.15;

9. Inform parents that the facility is required to provide the child's parents with copies of the facility's visitation and communication policies, a copy of the procedures for expressing concern or registering complaints regarding their child's placement, and a description of its religious policies, including a statement that the child has a right to practice his or her religion;

10. Indicate through this document that any person who has reasonable cause to believe that a child residing in the facility has been or is being subjected to any form of hitting, corporal punishment, abusive language, ridicule, or harsh, humiliating, or frightening treatment, or any other kind of child abuse, neglect or exploitation by any person, whether working at the facility or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control. TOLL FREE in New Jersey at 1-800-792-8610, or for out-of-State calls use (609) 292-8799 or any District Office immediately, and indicate that such reports may be made anonymously;

11. Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse and neglect by contacting the Division;

12. Inform parents that the facility must secure written consent from the child's parents before the facility may involve the child in fund-raising, publicity, or audiovisual activities related to the facility; and

13. Inform parents that the facility will develop a visitation schedule for parents and children, as specified in N.J.A.C. 10:127-6.6, 9.20 and 10.13.

(b) The facility shall comply with the requirements specified in (a) above by:

1. Securing the parent's and staff member's signature on a record attesting to receipt of the document; and
2. Maintaining the record on file; or
3. If the parents cannot be reached or refuse to sign the document after repeated requests, the facility shall document in the record the attempts made to secure the parent's signature.

10:127-3.4 Community participation

(a) Each facility shall have a governing board that offers direction to the facility on its policies, staff recruitment and selection, physical environment, and program activities. Such a board shall include representatives from the civic, business or educational community.

(b) The governing board shall meet at least every six months. The facility shall keep on file a list of current membership of the governing board and a record of its meetings.

10:127-3.5 Conflict of interest

(a) Each facility receiving funds from the Division shall adopt a written conflict of interest policy, as required by the facility's contract with the Department of Human Services.

1. The facility shall ensure that a copy of the adopted policy, with its effective date, is forwarded to all governing board members and staff members and is posted in a prominent location or kept on file at the facility.

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2. The governing board shall ensure that the conflict of interest policy is adhered to by the facility director through the governing board's review of the facility's policies involving the purchasing of goods or services and hiring practices.

10:127-3.6 Intake and admissions

(a) The facility shall ensure that the child and his or her parents have an opportunity to visit the facility prior to the child's placement.

(b) For all placements, the facility shall have the following information on file in the child's record upon the child's admission:

1. The child's full name, nicknames, if any, gender, date of birth, religion, and race;
2. The name, address, telephone number, and relationship to the child of the person(s) with whom the child was living at the time of admission;
3. The name, address, and telephone number of the child's father, mother, foster parents, or legal guardians, if different from (b)2 above;
4. The name, address, and telephone number of the case manager of the Division's District Office or other placing agency;
5. The name, address, and telephone number of the person to notify in an emergency;
6. The names of siblings, their ages, and gender;
7. The reason for placement of the child;
8. A Medicaid card, if applicable;
9. A Social Security Number, if available; and
10. A statement signed by the parent(s) or legal guardian, granting consent for emergency medical or surgical care, semi-annual dental care and annual physical examinations for the child.

(c) For all placements, the facility shall have the following information on file in the child's record within 30 calendar days of the child's admission:

1. Schools attended, grade level, and employer, if any;
 2. Discharge summaries from previous placements, if any;
 3. The child's medical history, including chronic conditions, past serious illnesses, allergies, medications, immunizations and special diet; and
 4. A discharge plan, including the estimated duration of care.
- (d) If the facility is unable to obtain the information specified in (c) above within 30 calendar days of the child's admission, the facility shall document in the child's file its efforts to obtain such information.

(e) Immediately following the child's admission, the facility shall:

1. Give each child a secure place to store valuables;
2. Ask the child to sign or otherwise verify that a staff member explained house rules and regulations, children's rights as specified in N.J.A.C. 10:127-3.2, discipline policy and search and seizure policy, if any; and
3. Inform each child of fire exits and evacuation procedures.

10:127-3.7 Reporting requirements

(a) The director or any staff member shall notify verbally the Office of Child Abuse Control or District Office immediately whenever there is reasonable cause to believe that a child has been or is being abused or neglected by staff members, children or any other person, as required by the New Jersey Child Abuse and Neglect Law, N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14. Copies of the law and information about it are available from the Division, upon request.

(b) The facility shall notify the Bureau verbally of any of the following changes or events by the next working day after the facility learns of their occurrence, to be followed by written notification to the Bureau within five working days:

1. injury, accident or illness that results in the admittance of a child to a hospital;
2. The death of a child while the child was on the premises of the facility or in the care of a staff member or volunteer;
3. Temporary or permanent closing of the facility; and
4. Any criminal conviction of a staff member, as specified in N.J.A.C. 10:127-5.1(b).

(c) The facility shall notify the Bureau verbally of any of the following changes or events by the next working day after the facility learns of their occurrence:

1. The occurrence of a reportable disease, as specified in Chapter II of the State Sanitary Code, codified at N.J.A.C. 8:57;

2. Proposed relocation of the facility to a site not approved by local municipal officials and the Bureau, as specified in N.J.A.C. 10:127-4.1;

3. Damage to the premises of the facility caused by fire, accident or the weather; and

4. Proposed use of space involving rooms not approved by the Bureau, as specified in N.J.A.C. 10:127-4.1(a)5.

(d) The facility shall notify the Bureau in writing at least 30 calendar days before any of the following proposed changes or events:

1. The anticipated closing or relocation of the facility for any reason other than temporary closings for holidays and vacations;
2. A change or anticipated change of director of the facility;
3. A change of type of children served; or
4. A change of services offered.

(e) The facility shall notify the Division or the appropriate District Office and the child's parents within 24 hours of any unauthorized absence of a child from the facility. For out-of-state facilities, the phone number of the Office of Child Abuse Control is 1-609-292-8799.

10:127-3.8 Records

(a) The facility's records shall be open for inspection by authorized representatives of the Bureau, the Division's Institutional Abuse Investigation Unit (IAIU), the Division's contracting units and Division case managers provided that they may only secure information about children under the Division's supervision.

(b) Each facility shall maintain on file the following administrative records until the expiration of its regular certificate of approval:

1. The following records shall be maintained in files located at the facility:
 - i. A copy of this chapter;
 - ii. A statement of purpose, as specified in N.J.A.C. 10:127-3.1 and 9.1;
 - iii. The Life/Safety and Program Inspection/Violation reports and Complaint Investigation Summary from the Bureau, if applicable, as well as letters of enforcement or other actions taken against the facility if applicable, that cover the current certificate of approval period;
 - iv. The document providing information to parents, as specified in N.J.A.C. 10:127-3.3(a);
 - v. A record of each parent's signature attesting to the receipt of the information to parents document, as specified in N.J.A.C. 10:127-3.3(b)1;
 - vi. Documentation of the use of extermination services, if applicable, as specified in N.J.A.C. 10:127-4.3(a)7;
 - vii. Policies and procedures regarding behavior management, as specified in N.J.A.C. 10:127-6.13, 6.14 and 10.14;
 - viii. A record of in-service training conducted for staff members, as specified in N.J.A.C. 10:127-5.4 and 10.3;
 - ix. A record of all incidents and accidents, recorded on incident and accident report forms, noting all details of the incident and accident and any actions taken by the staff members, as specified in N.J.A.C. 10:127-6.13, 7.3(b) and 9.3(a) and (b);
 - x. A copy of the comprehensive health plan, as specified in N.J.A.C. 10:127-7.1, 10.15 and 10.16;
 - xi. Copies of menus of food served to the children, including special diets, as specified in N.J.A.C. 10:127-6.11 and 10.24;
 - xii. Aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge, as specified in N.J.A.C. 10:127-5.2(a)10;
 - xiii. A record of signed parental consent for children's participation in fund-raising, publicity, photography, or audiovisual activities related to the facility, as specified in N.J.A.C. 10:127-3.3(a)12;
 - xiv. A copy of the children's grievance procedures, as specified in N.J.A.C. 10:127-3.2(e);
 - xv. A record of signed parental consent for medical treatment for each child, as specified in N.J.A.C. 10:127-3.6(b)10;

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xvi. A daily log book, in which an on-duty staff member shall comment on the activities and events of each day and staff member response to those events, as specified in N.J.A.C. 10:127-5.2;

xvii. A daily log book, a separate log book or notation in the child's case record, in which all visits to the child shall be recorded, as specified in N.J.A.C. 10:127-5.2;

xviii. A copy of the staff members' work schedules and time sheets, as specified in N.J.A.C. 10:127-5.2;

xix. A medication log book, as specified in N.J.A.C. 10:127-7.4, 7.5 and 10.20;

xx. A written daily schedule of planned recreational, leisure time and physical exercise activities, as specified in N.J.A.C. 10:127-6.8(b) and 10.11;

xxi. A record of pet vaccinations and the name and address of the licensed veterinarian providing care for the pets, if applicable, as specified in N.J.A.C. 10:127-6.12;

xxii. A copy of the parenting education curriculum, if applicable, as specified in N.J.A.C. 10:127-10.8;

xxiii. Documentation of the information received from the National Weather Service and park service, if applicable, as specified in N.J.A.C. 10:127-9.1(n) and (o);

xxiv. A copy of the plan for emergency evacuation procedures, if applicable, as specified in N.J.A.C. 10:127-9.2(a);

xxv. A copy of the plan for search and rescue procedures, if applicable, as specified in N.J.A.C. 10:127-9.2(b);

xxvi. Copies of biking permits, if applicable, as specified in N.J.A.C. 10:127-9.4(a);

xxvii. Documentation that permission was obtained to enter a cave from the owner or public authority, if applicable, as specified in N.J.A.C. 10:127-9.6(c);

xxviii. Documentation of the care of horses, if applicable, as specified in N.J.A.C. 10:127-9.8(d);

xxix. Documentation on the safety of ropes used in climbing, if applicable, as specified in N.J.A.C. 10:127-9.9(d);

xxx. A copy of the plan for boating activities, if applicable, as specified in N.J.A.C. 10:127-9.10(b);

xxxi. Copies of all permits, certificates or licenses for camping, if applicable, as specified in N.J.A.C. 10:127-9.15(a);

xxxii. A copy of the policy for treating snake, animal and insect bites and ingestion of or contact with poisonous plants, if applicable, as specified in N.J.A.C. 10:127-9.17(c);

xxxiii. A copy of the plan and procedures that enable children to receive an emergency message, and send and receive mail, if applicable, as specified in N.J.A.C. 10:127-9.20(c);

xxxiv. Documentation that children were permitted to make free telephone calls, if applicable, as specified in N.J.A.C. 10:127-9.20(e);

xxxv. A copy of the policy for visiting and communication for parents, if applicable, as specified in N.J.A.C. 10:127-9.20(g); and

xxxvi. A copy of the feed plan for horses, if applicable, as specified in N.J.A.C. 10:127-9.8 and 9.16.

2. The following records shall be maintained in files located either at the facility's administrative office or at the facility:

i. A record of comprehensive general liability insurance, as specified in N.J.A.C. 10:127-3.9;

ii. A record of performance of required monthly fire drills and/or evacuation drills, as specified in N.J.A.C. 10:127-4.5(c);

iii. A record of training sessions for staff members on evacuation procedures, the use of fire extinguishers, the location of fire alarms, and emergency medical procedures, as specified in N.J.A.C. 10:127-5.4(a)3;

iv. A copy of the facility's vehicle insurance policy, as specified in N.J.A.C. 10:127-8.2; and

v. Transportation records, if transportation is provided to children residing in the facility, as specified in N.J.A.C. 10:127-8.4.

3. For all facilities whose programs are primarily adventure based, the following records shall be maintained on location:

i. A copy of this chapter;

ii. The Life/Safety and Program Inspection/Violation Reports and Complaint Investigation Summary Reports from the Bureau, if appli-

cable, as well as letters of enforcement or other actions taken against the facility, if applicable, that cover the current certificate of approval period;

iii. Policies and procedures regarding behavior management, as specified in N.J.A.C. 10:127-6.13, 6.14 and 10.14;

iv. A record of all incidents and accidents, recorded on incident and accident report forms, noting all details of the incident and accident and any actions taken by the staff members, as specified in N.J.A.C. 10:127-6.13, 7.3(b) and 9.3(a) and (b);

v. Copies of menus of food served to the children, including special diets, as specified in N.J.A.C. 10:127-6.11 and 10.24;

vi. A record of signed parental consent for children's participation in fund-raising, publicity, photography, or audiovisual activities related to the facility, as specified in N.J.A.C. 10:127-3.3(a)12;

vii. A record of signed parental consent for medical treatment for each child as specified in N.J.A.C. 10:127-3.6(b)10;

viii. A daily log book, in which an on-duty staff member shall comment on the activities and events of each day and staff member response to those events, as specified in N.J.A.C. 10:127-5.2;

ix. A copy of staff members' work schedules and time sheets, as specified in N.J.A.C. 10:127-5.2;

x. A medication log book, as specified in N.J.A.C. 10:127-7.4, 7.5, and 10.20;

xi. A written daily schedule of planned recreational, leisure time and physical exercise activities, as specified in N.J.A.C. 10:127-6.8(b) and 10.11;

xii. A copy of the plan for emergency evacuation procedures, as specified in N.J.A.C. 10:127-9.2(a); and

xiii. A copy of the plan for search and rescue procedures, as specified in N.J.A.C. 10:127-9.2(b).

(c) The facility shall maintain on file the following staff records throughout a staff member's employment and for one year after the staff member has stopped working at the facility:

1. The following records for the director and all staff members shall be maintained in files located either at the facility's administrative office or at the facility:

i. Applications for employment, with disclosure statement(s), as specified in N.J.A.C. 10:127-5.1(b) and 9.18;

ii. References on the director and staff members, as specified in N.J.A.C. 10:127-5.1(b) and 9.18;

iii. A record of each staff member's signature attesting to his or her receipt of the policy statement on the disciplining of children by staff members, as specified in N.J.A.C. 10:127-3.3(b);

iv. A record of each staff member's signature attesting to his or her receipt of the information to parents document, as specified in N.J.A.C. 10:127-3.3(b); and

v. Health information, as specified in N.J.A.C. 10:127-7.7.

2. The following staff records shall be maintained in files located at the facility:

i. Current staff member attendance sheets;

ii. Reasons for discontinuance of employment, if applicable, as specified in N.J.A.C. 10:127-5.1;

iii. A full written disclosure of the director's and every staff member's background, previous work experience and criminal convictions, if any, as specified in N.J.A.C. 10:127-5.1(b) and 9.18;

iv. Documentation that every staff member received and reviewed a copy of the facility's statement of purpose, grievance policy, children's bill of rights, fireplace policy, search and seizure policy, and information to parents statement, as specified in N.J.A.C. 10:127-3.1(b), 3.2(b) to (d), 3.3(b) and 4.4(c)6;

v. A written annual performance evaluation, as specified in N.J.A.C. 10:127-5.2; and

vi. Documentation of training received by staff members, as specified in N.J.A.C. 10:127-5.4 and 10.3.

(d) The facility shall maintain on file the following children's records during the child's placement at the facility for at least three years following the discharge of the child:

1. Identifying information, as specified in N.J.A.C. 10:127-3.6(b) and (c);

2. A copy of each treatment plan developed for the child as specified in N.J.A.C. 10:127-6.1 and a copy of the case management

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plan for facilities that serve pregnant and parenting adolescents, as specified in N.J.A.C. 10:127-10.4;

3. Education records, as specified in N.J.A.C. 10:127-6.7;
4. Reports of incidents, including, but not limited to, acts of aggression, violent or destructive behavior, discovery of contraband, suicidal threats, discovery of a weapon, inappropriate sexual behavior, involvement with the police and documentation of efforts made to locate runaways, as specified in N.J.A.C. 10:127-6.13, 6.14 and 6.15;
5. Reports of accidents, as specified in N.J.A.C. 10:127-7.3 and 9.3(a) and (b);
6. Documentation of the opening of a child's mail by facility staff member, as specified in N.J.A.C. 10:127-6.6;
7. Medical records, as specified in N.J.A.C. 10:127-7.2 and 9.17(a) and (b);
8. Explanations of medical treatment, as specified in N.J.A.C. 10:127-10.19;
9. A discharge summary, as specified in N.J.A.C. 10:127-6.2 and 10.5;
10. An aftercare plan, as specified in N.J.A.C. 10:127-6.2 and 10.5;
11. An infant's feeding schedule, as specified in N.J.A.C. 10:127-10.24;
12. Documentation that an adolescent mother received life skills development training, as specified in N.J.A.C. 10:127-10.25; and
13. Documentation that a child received information on adventure activities, as specified in N.J.A.C. 10:127-9.1(c).

(e) The facility shall ensure the confidentiality of the records for each child enumerated in (d) above, in accordance with New Jersey State law, including N.J.S.A. 9:6-8.10(a) covering abuse and neglect information. The facility shall ensure that all entries in the child's record indicate the entry date and the name and signature of the person making the entry.

10:127-3.9 Comprehensive general liability insurance

The facility shall secure comprehensive general liability insurance coverage and shall maintain on file a copy of the insurance policy.

SUBCHAPTER 4. PHYSICAL FACILITY REQUIREMENTS

10:127-4.1 Physical facility initial approval requirements for all facilities located in New Jersey

(a) An applicant seeking an initial certificate of approval, as specified in N.J.A.C. 10:127-2.1, to operate a facility located in New Jersey 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 facility shall submit to the Bureau a copy of a Certificate of Occupancy (CO) issued by the municipality in which it is located, reflecting the facility's compliance with provisions of the NJUCC, for one of the following use group classifications:

- i. R-2 (Residential) for buildings accommodating children 2½ years of age and older for more than 30 calendar days and having a total occupancy of more than five and fewer than 16 children; or
- ii. I-1 (Institutional) for buildings accommodating 16 or more children over 2½ years of age; or
- iii. I-2 (Institutional) for buildings accommodating six or more children who are under 2½ years of age.

2. For facilities that are planning to construct a new building, the facility 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 from the Bureau before the facility can open.

3. For buildings constructed after the adoption of the NJUCC (1977), whose construction code use group classification is already R-2, I-1 or I-2 and that have not had major alterations or renovations

since receipt of the CO, the facility shall obtain the CO issued by the municipality in which it is located at the time the building was originally constructed or approved for use in the NJUCC's R-2, I-1 or I-2 use group classification. The facility 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 children's residential facility and that have not had major alterations or renovations, the facility 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 buildings' 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 facility. The facility shall submit a copy of the building's CCO or letter reflecting the building's compliance to the Bureau.

5. The facility shall obtain a new CO 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 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 facility is located;
- iii. Increases the floor area or the number of stories to the building or premises where the facility is located; or
- iv. Relocates to another site.

6. Whenever a municipality grants a facility a written variation from any of the requirements of the NJUCC, the Bureau may accept such variations as meeting the applicable requirements of this manual.

i. When the Bureau does not accept the variation, the non-acceptance shall be based on the best interests of the residents of the facility, and shall include consideration for their health and safety.

ii. Should the facility disagree with the Bureau, the facility may seek a hearing in accordance with N.J.A.C. 10:127-2.4(a) and the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1, as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) An applicant seeking an initial approval, as specified in N.J.A.C. 10:127-2.1, to operate a 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 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 facility's compliance with all applicable provisions of the NJUFC. The 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. 10:127-2.1, to operate a facility shall comply with all applicable provisions of the State Sanitary Code, as specified in N.J.A.C. 8:24. The 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 facility complies with applicable provisions of local, county and State health codes and poses no health hazard to the children served. The 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 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 facility.

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10:127-4.2 Physical facility initial approval requirements for all facilities located outside of New Jersey

(a) A facility located in a state other than New Jersey shall submit with each application documentation that the facility meets the provisions of all applicable codes governing building, fire, safety and health requirements in the state, county and municipality in which the facility is located.

(b) All facilities located in a state other than New Jersey shall also comply with the physical facility and life-safety requirements specified in N.J.A.C. 10:127-4, with the exception of N.J.A.C. 10:127-4.4(c), (f)3, (g), (h), (i), and (l).

10:127-4.3 Maintenance and sanitation requirements for all facilities

(a) The facility shall maintain all indoor areas in a safe and sanitary manner by ensuring that:

1. The facility is free of moisture resulting from water leaks or seepage;
2. All lally columns in areas used by the children have protective padding from the floor to a height of at least 72 inches;
3. Floors, walls, ceilings and other surfaces are kept clean and in good repair;
4. Stairways are free of hazards such as boxes, loose steps, torn carpeting or raised strips;
5. Carpeting is secured to the floor;
6. Garbage and food receptacles are:
 - i. Made of durable, leakproof and nonabsorbent materials;
 - ii. Covered in a secure manner;
 - iii. Emptied to the outdoor garbage receptacle when filled; and
 - iv. Lined and maintained in a sanitary manner;
7. The facility is free of rodent or insect infestation. If there is evidence of rodent or insect infestation, immediate action shall be taken to remove such infestation. The facility shall maintain on file a record documenting the use of extermination services in these cases;
8. Toilets, wash basins, kitchen sinks, and other plumbing are maintained in good operating and sanitary condition;
9. All corrosive agents, insecticides, bleaches, detergents, polishes, any products under pressure in an aerosol can, and any toxic substances are stored in a locked cabinet or in an enclosure located in an area not accessible to children. Bleaches, detergents, polishes and specific aerosol products may be made available to children 12 years of age and older with facility supervision;
10. Ventilation outlets are clean and free from obstructions, and filters are replaced when saturated;
11. Walls are painted or otherwise covered whenever there is evidence of:
 - i. Excessive peeling or chipped paint; or
 - ii. Heavily soiled conditions; and
12. All shelving is secured and not overloaded.

(b) The facility shall maintain all outdoor areas in a safe and sanitary manner by ensuring that:

1. The building, land and outdoor play area are free from any hazards to the health, safety or welfare of the children;
2. The outdoor play area is graded or provided with drains to dispose of surface water;
3. The building structure is maintained to prevent:
 - i. Water from entering;
 - ii. Excessive drafts or heat loss; and
 - iii. Infestation from rodents and insects;
4. The railings of balconies, landings, porches, or steps are maintained in safe condition;
5. Garbage receptacles are:
 - i. Made of durable, leakproof and nonabsorbent materials; and
 - ii. Covered in a secure manner, maintained in a sanitary manner and located in an outdoor area; and
6. All fencing or other natural or man-made barriers or enclosures, shall be maintained in proper condition.

(c) The Bureau shall also require the facility to take whatever steps are necessary to correct any conditions in the facility that may endanger in any way the health, safety and well-being of the children served.

10:127-4.4 Additional maintenance and sanitation requirements for all facilities located in New Jersey

(a) The facility shall meet the following lighting requirements:

1. All fluorescent tubes and incandescent light bulbs shall have protective covers or shields;

2. During activities in the facility, at least 20 foot-candles of natural or artificial light shall be provided in all rooms used by the children. This illumination shall be measured three feet above the floor at the farthest point from the light source; and

3. Parking areas, pedestrian walkways, or other exterior portions of the premises subject to use by children and staff at night shall be illuminated to provide safe entrance to and egress from the facility.

(b) The facility shall meet the following heating requirements:

1. A minimum temperature of 65 degrees Fahrenheit shall be maintained in all rooms used by the children;

2. Working fireplaces, steam and hot water pipes, radiators and electric space heaters shall be protected by screens, guards, insulation or any other suitable, non-combustible protective device; and

3. The facility shall not use portable liquid fuel-burning or wood-burning heating appliances.

(c) The facility shall ensure that fireplaces meet the following requirements:

1. The use of a fireplace for the children served by the facility shall not pose a serious risk of fire hazard to occupants of the facility, as determined by the local fire official;

2. The fireplace shall be approved by the local government construction official and fire official, in accordance with applicable provisions of the NJUCC and the NJUFC, respectively;

3. The facility shall obtain a copy of these certificates or statements of approval and submit them to the Bureau;

4. The facility shall develop guidelines, in conjunction with the local fire official, that ensure proper use of the fireplace, safety procedures, and an action plan to be followed in the event of an emergency;

5. The guidelines specified in (c)4 above shall include, but not be limited to, staff member supervision, storage of wood, storage and safeguarding of matches, instruction in the use of fireplace implements, use of the screen, posting of emergency phone numbers for police and fire departments and hospitals, posting of emergency procedures and exits, and methods and safeguards for extinguishing the fire; and

6. The guidelines specified in (c)4 above shall be maintained on file by the facility and reviewed by all staff members and children in the facility.

(d) The facility shall meet the following ventilation requirements:

1. Crawl spaces, attic spaces, and all doors and windows used for natural ventilation shall have insect screening;

2. All floor or window fans that are accessible to the children shall have a grille, screen, mesh or other protective covering designed to prevent a child from coming into contact with the blades of the fan; and

3. Ventilation outlets shall be clean and free from obstructions and filters shall be replaced when saturated.

(e) The facility shall ensure that mirrors, dispensers, and other equipment are fastened securely.

(f) Facilities that serve children with special needs shall ensure that:

1. For non-ambulatory children, the toilet facilities are located on the same floor where the children's bedrooms and activities are located;

2. The width and height of toilets and sinks accommodate the children served; and

3. Grab bars are provided in toilet and bathroom areas, as specified in N.J.A.C. 5:23-7, the Barrier-free Subcode of the NJUCC.

(g) The facility shall not use lead paint on and shall remove lead paint from any interior or exterior surfaces of a building used as a facility, or on any furniture, toys or other equipment used therein, in accordance with the provisions of the State Lead Paint Law, pursuant to N.J.S.A. 24:14A-1 et seq., and with the provisions of the State Sanitary code, as specified in N.J.A.C. 8:51-7. When lead

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paint is found in areas of a facility not specified in N.J.A.C. 8:51-7, the Bureau shall determine whether the lead paint is hazardous to the health, safety and well-being of the children served and, if considered to be hazardous, the facility shall remove the lead paint hazard.

(h) The facility shall not use spray coatings containing asbestos on any interior or exterior surfaces of the facility or on any equipment used therein, in accordance with rules of the State Department of Environmental Protection, as specified in N.J.A.C. 7:27-17.2 and with applicable provisions of the Asbestos Hazard Abatement Subcode of the NJUCC, as specified in N.J.A.C. 5:23-8. If the New Jersey Department of Health determines the presence of sprayed-on asbestos-containing materials, and concludes that corrective action must be taken to minimize exposure potential, the facility shall follow the recommendation of the State Health Department for enclosure, removal or other appropriate action to remove the threat or risk of asbestos contamination.

(i) The facility shall ensure that swimming pools and natural bathing places used by the children:

1. Comply with applicable provisions of the Public Recreational Bathing Rules, as specified in N.J.A.C. 8:26, and with applicable provisions of the Building Subcode and Barrier-free Subcode of the NJUCC, as specified in N.J.A.C. 5:23; and

2. Provide for supervision of the children, in accordance with applicable provisions of the New Jersey Youth Camp Safety Act rules, as specified in N.J.A.C. 8:25.

(j) The facility shall ensure that materials and furniture for indoor and outdoor use are of sturdy and safe construction, easy to clean and free of hazards that may be injurious to children.

(k) The facility shall ensure that toilet facilities meet the following requirements:

1. At least one toilet, wash basin and bath tub or shower is provided for every six children in the facility. These facilities shall not be located more than one floor from any bedroom; and

2. A supply of hot tap water not exceeding 110 degrees Fahrenheit and cold running water is provided.

(l) A facility utilizing a kitchen facility or food preparation area shall ensure that the cooking equipment and kitchen facility are kept clean and sanitary and are operated in compliance with applicable provisions of Chapter XII, State Sanitary Code, as codified at N.J.A.C. 8:24.

(m) The facility shall obtain prior approval from the Bureau for all space used by the children.

(n) The facility shall not care for more children than the number specified in the certificate of approval.

(o) The facility shall meet the following space requirements to ensure the safety, treatment, recreational, dining and sleeping needs of the children, including:

1. Adequate space for the implementation of treatment services, including individual, group and family counseling sessions and treatment team meetings;

2. A recreation room or area that can accommodate indoor individual or group activities;

3. A dining area large enough to accommodate tables and chairs for all the children; and

4. Rooms for sleeping:

i. Any bedroom used by a child shall have a minimum ceiling height of seven feet and six inches.

ii. Any bedroom containing a single bed occupied by one child shall provide a minimum of 70 square feet of floor space, including space that is occupied by furniture.

iii. Any bedroom containing two or more single beds and occupied by more than one child shall provide a minimum of 70 square feet of floor space for the first child and 50 square feet of floor space for each additional child, including space that is occupied by furniture.

iv. Any bedroom containing bunk beds or any combination of single beds and bunk beds shall provide 50 square feet of floor space for each child, including space that is occupied by furniture.

10:127-4.5 Emergency evacuation instructions, medical emergencies, fire prevention, first aid and equipment

(a) The facility shall prepare and post on each floor written emergency evacuation instructions that include:

1. A diagram showing how the facility is to be evacuated in the event of an emergency; and

2. The location of fire alarms and fire extinguishers.

(b) The facility shall maintain the following information near a staff telephone or other accessible area for use in the event of medical emergency:

1. The name, address and telephone number of the physician retained by the facility or of the health facility to be used in emergencies;

2. The location of written authorizations from parents for emergency medical care for each child;

3. The procedure for obtaining emergency transportation;

4. The procedure for obtaining substitute or on-call supervision, if needed;

5. The telephone numbers of the local police, fire department, ambulance service and poison control centers; and

6. The location of the first aid kit and any additional first aid supplies.

(c) The facility shall prepare written fire prevention instructions, which specify that:

1. The facility shall conduct fire drills at least once a month, which shall include all staff members and children, and shall inform all staff members and children of the procedures for leaving the building in an emergency situation;

2. The facility shall maintain on file a record of each fire drill, which shall include:

i. The date and time of the drill;

ii. The weather condition at the time of evacuation;

iii. A notation of any problems encountered during the drill;

iv. The number of participating children and staff members;

v. The total amount of time taken to evacuate the facility; and

vi. The signature of the staff members conducting the drill.

3. Each facility 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 the NJUCC; and

4. The facility shall ensure that all staff members are trained in the use and operation of fire extinguishers.

(d) The following equipment shall be placed in a location that is convenient and accessible to staff members:

1. A standard first aid kit, which is fully restocked within 24 hours of use; and

2. The American Red Cross First Aid Manual or its equivalent.

10:127-4.6 Special requirements for staff members, children, visitors or family members who use tobacco products

(a) If the facility permits the smoking of tobacco products or the use of smokeless tobacco, the facility shall designate one area or room within the facility or an outside area where staff members, children, as identified in (d) below, visitors or family members may use tobacco products.

(b) The facility shall prohibit the smoking of tobacco products or the use of smokeless tobacco in:

1. The presence of infants and toddlers;

2. Bedrooms used by children and staff members;

3. Dining areas when children are participating in meals;

4. Kitchen areas when meals are being prepared; and

5. Administrative and staff offices when children are present.

(c) The facility shall ensure that staff members comply with the provisions of N.J.S.A. 2A:170-51, which prohibits them from directly or indirectly selling, giving or furnishing to a minor under 18 years of age any cigarettes made of tobacco or any other matter or substance than can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco.

(d) The facility may permit children who smoke tobacco products or use smokeless tobacco to continue to do so, provided that the following conditions exist:

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1. The child shall only be permitted to smoke tobacco products or use smokeless tobacco in the designated area or room identified in (a) above;

2. The treatment team shall develop goals that will direct, guide and counsel the child to stop smoking tobacco products or using smokeless tobacco; and

3. The child shall be provided with written and verbal information that outlines the serious health hazards stemming from smoking tobacco products or using smokeless tobacco.

(e) The facility shall not utilize tobacco products as a reward in its behavior management program or in any of its policies or practices.

SUBCHAPTER 5. STAFF REQUIREMENTS

10:127-5.1 General requirements for director and all staff members

(a) The director and every staff member shall:

1. Be of good character and reputation;

2. Be in sufficient physical, mental and emotional health to perform his or her job duties satisfactorily; and

3. Possess skills, attributes and characteristics conducive to and suitable for operating a facility or dealing with children, as applicable.

(b) Prior to hiring or utilizing a director or a staff member who will be working at the facility, the facility shall secure and maintain on file:

1. A signed application for employment from each individual, indicating the applicant's name, address and telephone number, education and work experience, and disclosure of the presence or absence of criminal convictions. The employment application shall be updated to indicate the reasons for discontinuance of employment, if applicable; and

2. Two written or two verbal references on each individual. These references shall be secured from former employers or other persons who have knowledge of the individual's work experience or education and who can attest to the individual's suitability to work with children. The verbal references shall be documented in writing by the facility.

(c) Failure by the director or other staff member to comply with the requirements specified in (a) and (b) above, and/or any evidence demonstrating unfitness or unsuitability to fulfill the responsibilities and duties of his or her position or to serve or deal with children in an appropriate manner, shall constitute grounds for one or more of the following actions:

1. Removal of the director or staff member from his or her position by the governing board;

2. Reassignment to other duties that do not involve contact with children;

3. Termination from the facility; or

4. Denial, refusal to renew, suspension or revocation of the facility's certificate of approval by the Bureau.

(d) Evidence of conviction for crimes of violence, felonies, illegal substance abuse or child abuse and neglect shall be among those actions that are considered in determining an individual's suitability to serve as director or staff member in a facility.

(e) Evidence of conviction of a crime, in and of itself, shall not automatically preclude an individual from serving as director or staff member or from working in the facility and shall not automatically result in the removal or termination of a director or staff member. The facility shall submit a written justification to the Bureau, indicating and documenting why it feels the individual at issue should not be precluded from working or holding a leadership position at the facility. The Bureau, after assessing the facts on a case by case basis, shall make the final determination, in keeping with the provisions of the State Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., which provides that a person convicted of a crime may not be disqualified or discriminated against by a licensing authority unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license is sought.

(f) The facility shall disclose to the Bureau, in writing, information about and circumstances surrounding any previous denial, suspension, revocation or refusal to renew a certificate of approval

or a license to operate a facility either by the Bureau or by the licensing agency of another state. Evidence of a previous denial, suspension, revocation or refusal to renew a certificate of approval or license, shall not in and of itself result in an automatic disqualification of the prospective facility to secure a certificate of approval for another or the same facility, but shall constitute grounds for the Bureau to investigate the circumstances that led to the original negative action and make a determination as to whether to reject or process the new application for a certificate of approval.

(g) Requirements to prevent child abuse or neglect are as follows:

1. The director or any staff member shall verbally notify the Division's Office of Child Abuse Control or appropriate District Office immediately whenever there is reasonable cause to believe that a child has been subjected to abuse or neglect by a staff member, or any other person other than the child's parent or family member, pursuant to the State Child Abuse and Neglect Law (N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14). This provision shall also apply to facilities located outside of New Jersey, notwithstanding the child abuse and neglect provisions of the state in which the facility is located;

2. The facility shall report any suspected abuse or neglect of the child by his or her parents or other family members to the Division case manager/supervisor assigned to the family;

3. When reporting to the Division as specified in (g)1 above, the facility shall also notify the parent(s) of the incident(s) reported which might indicate possible abuse or neglect involving the child. Such notification shall be made on the same day on which the incident(s) occurred. The facility shall maintain on file a record of such incident(s) and documentation that the parent(s) have been informed of them;

4. The Division, during the course of investigating an allegation of child abuse and neglect, may determine that immediate, corrective action is necessary to protect the children whenever:

i. The director or staff member has been found by the Division's Institutional Abuse Investigation Unit (IAIU) to pose a risk of harm to children;

ii. The director or staff member has committed an act of child abuse or neglect, as substantiated by the IAIU; or

iii. The director or staff member has been convicted of such acts;

5. Whenever the IAIU makes such a determination, the governing board or director shall carry out the Division's recommendation for immediate remedial action and long term corrective action. Such remedial action may include, but not be limited to:

i. Removal or suspension of the affected director or staff member from the facility or reassignment to other duties that do not involve contact with the children; or

ii. When the director or staff member resides at the facility, removal of the affected employee from the premises;

6. Such suspension, removal or reassignment, as specified in (g)5 above, shall remain in effect until the results of the Division's investigation have been determined, and a final decision in the matter has been rendered by the Division; and

7. Substantiation of the child abuse and neglect allegation by the Division's IAIU shall not, in and of itself, automatically result in the termination of the accused director or staff member from his or her position in the facility, but shall constitute grounds for possible termination if the person's continued employment at the facility would place the children at risk. Such determination shall be made by the Bureau after considering information provided by the agency, the director, the affected staff member, the IAIU and law enforcement authorities, as applicable.

(h) The facility shall utilize medical, dental, and psychological personnel serving children on either a staff or community provider basis who shall:

1. Be responsible for ensuring that the medical, dental, and psychological needs of the children are met; and

2. Be licensed to practice in the state where the staff member or community provider is located, as required by the laws of that state.

10:127-5.2 Staff qualifications

(a) Residential child care facilities shall have a full-time administrator or director, social service staff, teaching staff members (if the

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facility provides an on-grounds educational program), medical and nursing staff, child care staff, a staff member(s) designated to plan and implement the facility's recreational program, a staff member(s) designated to direct and be responsible for food services, and staff who shall be responsible for daily housekeeping and maintenance.

(b) The full-time administrator or director of the facility shall:

1. Be at least 21 years of age;
2. Have one of the following qualifications:
 - i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and four years of professional experience in the human services field, two of which shall have been in a supervisory or administrative position;
 - ii. A master's degree from an accredited graduate school in social work, psychology or a related field and three years of professional experience in the human services field; or
 - iii. For publicly operated facilities, meet the requirements of the State Department of Personnel for the position, if applicable;
3. Be responsible for implementing the overall planning, operation, and management of the facility, including the facility's recreational and food programs;
4. Designate staff members to be in charge at all times during his or her absence;
5. Be on call to assist the staff in admissions, emergencies, and/or other responsibilities;
6. Be responsible for ensuring that all staff members receive an annual performance evaluation;
7. Be responsible for ensuring that all staff members' work schedules and time sheets are maintained;
8. Be responsible for ensuring that a daily log book, separate log book, or the child's case record contains a written notation of all visits to children;
9. Be responsible for ensuring that on-duty staff members complete entries in the daily log book that reflect the activities and events of each day; and
10. Be responsible for maintaining aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge.

(c) The social services/clinical director of the facility shall:

1. Be at least 21 years of age;
2. Have one of the following qualifications:
 - i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and three years of professional clinical experience in the human services field, one year of which shall have been in a supervisory or administrative position; or
 - ii. A master's degree from an accredited graduate school in social work, psychology or a related field and two years of professional experience in the human services field; or
 - iii. For publicly operated facilities, meet the requirements of the State Department of Personnel for the position, if applicable;
3. Ensure that any staff member or consultant that utilizes the title or designation of social worker, licensed clinical social worker, licensed social worker, certified social worker, medical social worker, social work technician or any other title or designation which includes the words social worker, or any abbreviations such as SW, LCSW, LSW, CSW or SWT, is certified or licensed pursuant to N.J.S.A. 45:15BB-1 (Social Workers Licensing Act of 1991);
4. Be responsible for the overall treatment planning for children;
5. Provide support and technical assistance to the social services staff; and
6. Provide clinical supervision to staff and ensure that social services staff receive job performance evaluations.

(d) Each social service worker shall:

1. Be at least 21 years of age;
2. Provide services for children as outlined in the treatment plan; and
3. Have one of the following qualifications:
 - i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and one year of professional experience in the human services field;

- ii. A master's degree from an accredited graduate school in social work, psychology or a related field; or
- iii. Meet the requirements of the State Department of Personnel for the position, if applicable.

(e) The child care director of the facility shall:

1. Be at least 21 years of age;
2. Have one of the following qualifications:
 - i. A bachelor's degree in the human services field from an accredited college or university and three years of professional experience in the human services field, two years of which shall have been in a supervisory or administrative position in a residential child care facility, group home or children's shelter;
 - ii. A master's degree from an accredited graduate school in the human services field and one year of professional experience in the human services field in a residential child care facility, group home or children's shelter; or
 - iii. For publicly operated facilities, meet the requirements of the State Department of Personnel for the position, if applicable;
3. Be responsible for the daily operation of the child care program; and
4. Ensure that all child care staff receive job performance evaluations:

(f) Each child care staff member shall:

1. Be at least 18 years of age;
2. Provide daily care and supervision of the children;
3. Inform the social service staff members or director of any incidents that may impact on the child's treatment planning, as specified in N.J.A.C. 10:127-6.1 and 6.2; and
4. Have one of the following qualifications:
 - i. A high school or high school equivalency diploma and one year of experience working with children in a group setting;
 - ii. An associate's or bachelor's degree from an accredited college or university in a field that is unrelated to social work or psychology and six months experience working with children in a group setting;
 - iii. An associate's or bachelor's degree from an accredited college or university in social work, psychology or a related field; or
 - iv. Meet the requirements of the State Department of Personnel for the position, if applicable.

(g) Each staff member designated to plan and implement the facility's recreational program shall:

1. Be at least 21 years of age;
2. Meet the qualification(s) for child care staff as specified in (f) above; and
3. Have at least three years experience in planning or implementing recreational activities for children in residential child care centers, group homes, children's shelters, children's camps or Boy Scouts/Girl Scouts.

(h) Education staff of the facility including administrative, supervisory and teaching staff shall comply with the staff qualifications, certifications, licenses and experience requirements of the New Jersey Department of Education or the equivalent agency in the state where the facility is located.

(i) Each physician, nurse, dentist, psychologist, speech therapist, physical therapist and occupational therapist employed by the facility or providing services on a contracted basis to the facility shall:

1. Be licensed/credentialed to practice in the state where the staff member or community provider is located, if required by the laws of that state; and
2. Be responsible for ensuring that the needs of the children for medical, dental, psychological, psychiatric or other services are met.

(j) Each staff member designated to direct and be responsible for providing food services shall:

1. Be registered or eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association or meet the applicable requirements established by the state where the facility is located;
2. Meet the requirements of the Child Nutrition Program;
3. Have a bachelor's degree from a college or university with a major in foods, nutrition, food service or institution management, or the equivalent course work for a major in the subject area; and have completed a dietetic internship accredited by the American

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Dietetic Association or a dietetic traineeship approved by the American Dietetic Association or have one year of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care setting;

4. Have a master's degree plus six months of full-time, or full-time equivalent experience in nutrition and/or food service management in a health care setting; or

5. Develop a plan approved by a dietician or dietary consultant who meets the qualifications specified in (j)1 through 4 above.

10:127-5.3 Staff to child ratios

(a) Each residential child care facility shall meet the following staff to child ratios:

1. The facility shall have a social services/clinical director when its capacity is more than 80 children;

2. The facility shall have a child care director when its capacity is more than 50 children;

3. There shall be at least one social services worker for every 20 children;

4. There shall be at least one full-time nurse at a facility that serves at least 35 children. A facility that serves fewer than 35 children shall have at least access to a part-time nurse;

5. There shall be at least one child care staff member for every six or fewer children during the waking hours;

6. During sleeping hours, there shall be at least one child care staff member in each living unit in the facility and at least one additional staff member awake and on-duty for each 50 children or fraction thereof, in the facility; and

7. There shall be at least one child care staff member awake and on-duty in living units that are co-educational during sleeping hours.

(b) A facility that has a capacity of 30 or fewer children may utilize the administrator/director of the facility to serve as the director of one other program area, provided that such person meets the qualifications for that position.

10:127-5.4 Staff training and development

(a) The facility shall develop a training plan and the director shall ensure that all staff members, upon employment, are trained in:

1. The facility's statement of purpose, as specified in N.J.A.C. 10:127-3.1;

2. The facility's behavior management policy and search and seizure policy, if any, as specified in N.J.A.C. 10:127-6.14 and 6.15;

3. Emergency procedures, as specified in N.J.A.C. 10:127-4.5(a), (b) and (c);

4. Protocols for medication, as specified in N.J.A.C. 10:127-7.4 and 7.5;

5. Infection control procedures, as specified in N.J.A.C. 10:127-7.8;

6. The facility's techniques for safe physical and mechanical restraint, if applicable, as specified in N.J.A.C. 10:127-6.13(i) and (k);

7. The facility's policy and procedures for utilizing a behavior management room, if applicable, as specified in N.J.A.C. 10:127-6.13(m); and

8. The facility's policy and procedures for utilizing exclusion, as specified in N.J.A.C. 10:127-6.13(j).

(b) The facility shall ensure that every new staff member is accompanied on his or her duties by an experienced staff member as part of an orientation, until the new staff member is familiar with daily routines and operations of the facility.

(c) The facility shall document in each staff member's record that all social service and child care staff members, including full and part-time staff members, receive a minimum of a total of 12 hours of training each year in the following areas:

1. The principles of behavior management;

2. Alcohol and substance abuse;

3. Human sexuality and AIDS; and

4. Suicide prevention.

(d) The facility's training plan may include in-depth discussions at staff meetings, attendance at workshops, conferences or relevant college courses.

10:127-5.5 Volunteers and student interns

(a) The facility may use volunteers or student interns to support the activities of regular paid staff members, but shall not use volunteers or student interns to substitute for paid staff members.

(b) The facility shall ensure that volunteers and student interns are briefed fully on any special needs or problems they might encounter while working with the children.

(c) The facility shall ensure that volunteers and student interns who have contact with children or parents receive an orientation to the facility's program and are supervised by paid staff members. Volunteers and student interns shall receive authorization from the facility prior to accompanying children off-grounds to trips, medical appointments and visits.

(d) The facility shall require an application, disclosure and references, as specified in N.J.A.C. 10:127-5.1(b)1 and 2, for volunteers and student interns who provide activities or transportation to a child by themselves.

SUBCHAPTER 6. PROGRAM REQUIREMENTS

10:127-6.1 Treatment plan for children in residential child care facilities

(a) The facility shall develop, implement and maintain on file a written individual treatment plan for each child. The plan shall delineate how to meet that child's needs and to remediate the problems and behavior in order to assist the child in completing the program.

(b) The facility shall form a treatment team that is responsible for the development of a treatment plan for each child. The treatment team shall consist of each of the following:

1. Staff members representing the clinical and social work components;

2. Staff members representing the child care component;

3. Staff members representing the administration of the facility, if necessary;

4. Representatives from the child's responsible school district and/or current school district, if necessary;

5. The Division's case manager; and

6. The child's parents, if appropriate.

(c) The facility shall document in the child's record that the Division's case manager or other placing agency, the child's therapist, parents or legal guardian and the child's responsible and/or current school district, if appropriate, were invited to participate as members of the treatment team and assist in the development of the treatment plan and all subsequent revisions.

(d) The facility shall develop the initial treatment plan within 30 calendar days following a child's admission, commence with the treatment plan for three months, then review or revise the treatment plan at least every six months thereafter.

(e) The treatment plan shall include the following information:

1. The name of the child;

2. The date of the child's admission;

3. The date when the plan is developed or revised;

4. The names and titles of all persons attending the development or review meeting;

5. The child's social, familial, emotional, behavioral, and academic strengths and weaknesses;

6. A statement of who can and cannot visit the child (if applicable), and the reason(s) why;

7. Specific treatment goals and objectives in each program area and projected time frames for completing each goal and objective;

8. The name of the staff member responsible for implementation of each treatment goal and objective;

9. Techniques to be used to achieve each treatment goal and objective;

10. Criteria to be used to determine whether each treatment goal is achieved;

11. A notation of progress made from the previous plan;

12. Documentation of efforts to achieve timely discharge, including, but not limited to, services needed by parents or other persons to whom the child will be discharged; and

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13. For children who are 14 years of age or older, how the child is being prepared for self-sufficiency. This information may be documented in the child's individual education plan (I.E.P.). The documentation shall include, but not be limited to, instruction in:

- i. Food preparation;
- ii. Budgeting and money management; and
- iii. Vocational planning and employment search efforts.

(f) The facility shall send to the Division's case manager or other placing agency a copy of the treatment plan and any revisions to it within 30 calendar days after the treatment planning meeting and retain a copy of the plan in the child's record for at least three years after the child's discharge.

(g) The facility shall ensure that the child's treatment plan and any revisions to it are explained to the child, his or her parents, and all staff members responsible for the plan's implementation. If the facility does not explain the child's treatment plan to the child's parents, the facility shall document in the child's case record the reasons why the plan was not explained to the parents.

10:127-6.2 Discharge planning

(a) For discharges that can be anticipated, the facility shall develop a plan with the Division's case manager or other placing agency staff at least 30 days before the child's discharge. The plan shall be sent to the Division's case manager or other placing agency and shall specify the following information:

- 1. The date of admission;
- 2. The anticipated or actual date of discharge;
- 3. Details of the events and circumstances leading to the decision to discharge;
- 4. The name and address of the individual or agency to whom the child will be discharged and the rationale for planning a discharge to that individual or agency; and
- 5. An assessment of the child's continuing needs, including, but not limited to, consideration of health care, behavior management and educational or vocational training.

(b) For discharges that were not anticipated at least 30 calendar days ahead of time, the facility shall send the Division's case manager or other placing agency a written plan at least 10 working days prior to the child's discharge. This plan shall specify the following information:

- 1. The date of admission;
- 2. Details of the events and circumstances leading to the discharge;
- 3. Efforts made to locate a runaway, if relevant;
- 4. An assessment of the child's continuing needs including, but not limited to, health care, behavior management and educational and vocational training; and
- 5. Recommendations for providing follow-up services in the child's new environment.

(c) For emergency discharges that result in the immediate placement of the child in a facility such as a detention center, hospital, psychiatric facility or any other placement outside the facility, the facility shall notify the Division's case manager or other placing agency by the next working day by telephone. The facility shall send a written discharge plan within 15 days after the child's discharge. This plan shall specify the information outlined in (b)1 through 5 above.

10:127-6.3 Grouping of children within living units

The facility shall determine the composition and size of children's groups within the living units on the basis of the children's treatment needs, gender, age and level of functioning.

10:127-6.4 Work and employment

(a) The facility shall not allow a child to be responsible for duties assigned to staff members.

(b) The facility may require children to perform work assignments in the facility that have an instructive value, including normal household chores, so long as these assignments are not scheduled to interfere with a child's school program, other aspects of the treatment or case management plan, or any regularly scheduled program activity for the children in the facility.

(c) The facility's staff members may encourage children to hold part-time employment outside the facility, but shall ensure that the work does not interfere with the child's school program, or other aspects of the treatment or case management plan.

1. The facility may require a child to maintain specific academic and behavioral standards as a condition for seeking or maintaining employment.

2. The facility may prohibit a child's employment, if a child does not maintain appropriate academic or behavioral standards, or if the job is determined to be detrimental to his or her health, safety or well-being.

10:127-6.5 Money and allowance

(a) The facility shall provide opportunities for all children to receive an allowance or to earn an allowance up to an amount as specified in their placement contract.

(b) The facility shall not require a child to assume responsibility for expenses for his or her care and treatment, except for amounts needed to pay for damage done to the facility by the child.

1. When a child damages the building or the facility's property, the facility shall identify the child who damaged the building or property in an incident report before requiring the child to pay restitution.

2. The restitution payments shall not exceed 30 percent of a child's weekly income from allowance.

3. Children who are working or have savings shall have the option to make a lump sum payment for intentional damages, if deemed clinically appropriate and consistent with the child's treatment plan.

4. The facility may offer the child the option of performing additional chores in lieu of restitution payments.

10:127-6.6 Visitation and communication

(a) The treatment team shall determine the family members and friends with whom the child may communicate and visit.

1. The treatment team shall identify visitors with whom the child may have contact at intake and may revise the list at subsequent treatment planning or case management meetings.

2. Between treatment planning or case management meetings, the facility may curtail a child's contact with individuals after consultation with the Division or other placing agency if the facility:

- i. Informs the child of the conditions of and reasons for restriction or termination; and
- ii. Documents in the child's record the reasons for curtailing contact with the specified individuals.

(b) The facility shall develop a visiting policy and explain the visiting policy to the child and parents at intake. The visiting policy shall specify:

- 1. The hours for visiting family members and how alternative hours may be arranged;
- 2. That family visits shall not be denied for a child's infraction of rules, but may be denied if such visits would be contrary to the child's treatment plan;
- 3. That visitors who appear to be under the influence of drugs or alcohol shall not be allowed to visit or to transport the child;
- 4. That the child may visit his or her Division case manager or other placing agency worker upon reasonable request and that these visits shall not be unreasonably denied; and
- 5. The hours when a child may visit with friends and whether a child's visits with friends may be curtailed for a child's infraction of the rules.

(c) The facility shall adhere to the following for the use of the telephone by children:

1. The facility shall permit reasonable access to a telephone by the child for telephone conversations with the Division's case managers or other professional persons involved in the child's treatment planning.

- i. The child shall not be charged a cost for these telephone calls; and
- ii. The facility shall provide adequate privacy for these telephone calls and all other calls but may locate the telephone in an area where a staff member can observe the child's reactions;

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2. The facility shall permit reasonable access to the telephone by the child for telephone conversations with his or her parents. The facility may impose restrictions on these conversations if the following conditions exist:

- i. The cost of the telephone calls is prohibitive; or
- ii. The facility is complying with a court order which limits the child's contact with his or her parents;

3. When the facility imposes restrictions on a child's access to telephone conversations with his or her parents, as specified in (c)2 above, the facility shall:

- i. Explain the nature of any restrictions to the child; and
- ii. Document the rationale for imposing restrictions in the child's record;

4. The facility shall develop and maintain on file a written policy governing the use of the telephone by children when they communicate with friends. The facility may impose one or more of the following conditions:

- i. Restricting the time and duration of telephone calls;
- ii. Requiring the child to pay for telephone calls with friends;
- iii. Denying the child use of the telephone for infraction of house rules; and

iv. Requesting the child to identify telephone callers; and

5. The facility shall not use tapes or any other mechanical listening devices to monitor a child's telephone calls.

(d) The facility shall not restrict the amount of mail a child sends or receives, unless a court order stipulates such restriction.

1. The child shall receive a postage allowance and writing materials for corresponding with family, friends and other persons who have a positive impact on the child's treatment.

2. No staff member shall open the child's parcels or letters or read the child's letters unless the child is physically incapable of doing so, and then only in the presence of both the child and another staff member.

3. A staff member may ask a child to open parcels and letters in the staff member's presence along with at least one other staff member only if he or she suspects the contents to be contraband, as specified in N.J.A.C. 10:127-6.15.

i. If the child refuses to comply with the staff member's request, the facility shall store the parcel or letter in a secure place until the child complies or is discharged.

ii. The facility shall document the rationale for and the outcome of all incidents when a staff member asks a child to open mail in a staff member's presence.

10:127-6.7 Education

(a) Facilities located in New Jersey shall ensure that school-age children receive educational instruction to which they are entitled under provisions of Federal and State education laws and regulations.

(b) Facilities located in other states shall ensure that school-age children receive educational instruction to which they are entitled under provisions of education laws and regulations of the state in which they are located.

(c) Education shall be provided either in a public school or private educational institution in the community or in an approved on-grounds school operated by the facility.

(d) The facility shall ensure that any child who is legally not attending school is either gainfully employed or enrolled in a training program that teaches necessary life skills or methods of job acquisition.

(e) The facility shall provide or utilize on-grounds or community vocational education services appropriate to the age, skill level, interests and abilities of those children who require such services.

(f) Requirements for facilities operating on-grounds education programs are as follows:

1. The facility shall provide an education program that ensures instruction is given to each school-age child in all specific curriculum areas identified in the Individualized Education Plan, as required by Federal education law, or in the child's treatment plan; and

2. The facility shall inform the child's appropriate school district if its on-grounds education program cannot provide instruction in all specific curriculum areas, as specified in (f)1 above.

(g) Requirements for facilities using off-grounds education programs are as follows:

1. When the facility determines that the child is ready to attend a public or community school, the facility shall make efforts to place the child in that setting and document such efforts in the child's record; and

2. When a child attends school in the community, the facility shall maintain regular contact with the teachers and other appropriate personnel concerning the child's progress.

(h) Requirements for facilities providing vocational programs are as follows:

1. A facility providing a vocational program shall ensure that the vocational services for a child include the following information:

- i. Vocational evaluation;
- ii. Formulation of vocational goals;
- iii. Development of a vocational training plan; and
- iv. Provision of skills training, employment counseling, job development and placement services or referral to appropriate sources providing these services.

(i) A facility with an on-grounds education program(s) shall maintain on file copies of all approvals and accreditations of its program and physical facilities from the department of education of the state in which it is located.

(j) The child's education record shall include:

1. Information used in the identification, classification and instruction of the child prior to developing a course of study or training to meet the child's academic or vocational needs, including records from the school district of residence and from previously attended residential facilities;

2. Initial and revised Individualized Education Plans, when legally required for the child;

3. Results of educational testing and evaluations of the child;

4. Reports of the child's academic functioning, completed at regular intervals;

5. A vocational training plan for the child; and

6. If the child attends school in the community, quarterly academic progress reports obtained from the community school.

10:127-6.8 Recreation

(a) The facility shall plan or provide a balanced on-grounds and off-grounds recreation program. The recreation program shall include planned individual and group activities.

(b) The facility shall have a written schedule of daily planned recreational and leisure time activities.

1. The facility shall ensure that this schedule is developed with input from staff members and children.

2. The facility shall keep these schedules on file for 90 calendar days.

10:127-6.9 Religion

(a) If a facility's program has a particular religious orientation, the facility shall maintain on file in the facility a written description of its religious orientation and any religious practices or restrictions that are observed. Before the child's admission, the facility shall give this description to the child and the parents and discuss its religious orientation, if any.

(b) The facility shall ensure that each child is afforded the opportunity to participate freely in religious activities and/or services in accordance with his or her own faith or with that of his or her parents.

(c) The facility shall ensure that each child is permitted to attend religious activities and services in the community and the facility shall arrange for or directly provide transportation for any child who wishes to attend religious activities or services when deemed clinically appropriate.

(d) The facility shall not coerce or require children to participate in religious activities.

1. The facility shall not punish children who choose not to participate in religious activities.

2. The facility shall not give special rewards to children for participating in religious activities.

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(a) The facility shall ensure that:

1. Each child is provided with a standard household bed or crib, as age appropriate, in sanitary condition;

2. Each set of bunk beds:

i. Is limited to two in height;

ii. Has railings on the top bunk that are no more than 3½ inches from the top of the bed frame; and

iii. Has mattresses that are at least five inches from the top of the railing;

3. Each bed or crib is equipped with a firm, sanitary, fire retardant mattress and waterproof mattress cover;

4. Each child is provided with sanitary bed linens that are changed weekly, a blanket or other suitable covering that is cleaned or replaced, as necessary, and a pillow;

5. Two or more children do not share the same bed;

6. Children do not share the same bedroom with an adult, unless the adult is their mother and they are in placement in a facility that provides services to pregnant and parenting adolescents;

7. A child does not sleep on the same bed or crib that another child has occupied unless the bed linen is changed;

8. Children who are five years of age or older occupy a bedroom only with members of the same sex;

9. Each bedroom occupied by children has natural light and ventilation provided by one or more windows opening directly to the exterior;

10. An unfinished attic or basement is not used for sleeping purposes;

11. All rooms used as bedrooms are not used for any other purpose;

12. Each child is provided with a chest of drawers or some other permanent arrangement for storage of clothing and other personal belongings, including closet space or the equivalent;

13. Each child is permitted reasonable freedom to express his or her personal tastes in the decoration of his or her bedroom or bedroom area;

14. Each child has the opportunity for at least eight hours of uninterrupted sleep each night. Schedules for waking and retiring shall be adapted according to the ages, physical condition and characteristics of the children in each group;

15. The facility does not permit more than four children to occupy a designated bedroom space for sleeping. If partitions are used to designate a bedroom space, the facility shall ensure that the arrangement and height of partitions shall provide privacy for the occupants of the space;

16. Every bedroom is provided with a reading lamp or other means of artificial light for quiet activities; and

17. Every bedroom window is equipped with screens, curtains, blinds or shades.

10:127-6.11 Food and nutrition for children

(a) The facility shall ensure that each child is provided with three nutritious meals daily, either in the facility itself or in the community.

1. The facility shall make daily snacks available for children who desire them, unless there is a medical reason not to provide them.

2. The facility shall select, store, prepare and serve food in a sanitary and palatable manner.

3. The facility shall prepare and date menus and keep the menus on file at the facility for a minimum of 90 calendar days.

4. The facility shall provide place settings and eating utensils for children.

5. The facility shall serve meals in a manner that makes mealtime a pleasant social experience.

6. The facility shall not force-feed or otherwise coerce a child to eat, except by order of a physician.

(b) The facility shall ensure that the daily diet for each child includes a balance of foods from the four basic food groups.

1. The facility shall ensure that each meal contains a sufficient amount of food for each child.

2. The facility shall make available, as necessary, an alternate choice of food for each meal served for children on special diets

or children who because of religious beliefs, cannot eat particular foods.

3. The facility shall follow individualized diets and feeding schedules that are submitted to the facility by the child's physician or registered dietician.

10:127-6.12 Pets

(a) The facility shall ensure that pets kept by or located in the facility regardless of ownership, shall be:

1. Domesticated and non-aggressive;

2. Free from disease;

3. Vaccinated, if applicable, as prescribed by law or as recommended by a licensed veterinarian. The record of the vaccinations shall be maintained on file at the facility, along with the name and address of the licensed veterinarian providing care for the pet;

4. If sick, removed from the area occupied by children, until the pet has been examined by a licensed veterinarian;

5. Effectively controlled by leash, command or cage; and

6. Prohibited from toilet facilities for staff members and children.

(b) The facility shall ensure that animal waste is disposed of in a manner that prevents the material from becoming a community health or nuisance problem. Accepted methods include:

1. Burial;

2. Disposal in sealed plastic bags; and

3. Utilization of:

i. A municipally approved trash removal system; or

ii. A sewage system for feces.

(c) The facility shall ensure that all pet dishes, food and equipment used for pets are kept out of the facility's food preparation and food serving areas when food is being prepared or served.

(d) If a pet poses a health hazard to children, the facility shall take corrective action that is approved by the licensing agency.

(e) The facility shall ensure that pregnant adolescents are not permitted to clean a cat's litter box.

10:127-6.13 Restrictive behavior management practices

(a) Facilities that choose to utilize restrictive behavior management practices shall develop policies and procedures that assist children in gaining control of their behavior, protect the children from self-harm, protect other children or staff members, and prevent the destruction of property.

(b) The facility shall:

1. Obtain written approval from the Bureau for any restrictive behavior management practice that the facility plans to utilize prior to its implementation with children; and

2. Not utilize restrictive behavior management practices as a means of punishment, for the convenience of staff members, or as a substitute for a treatment program.

(c) Prior to the child's admission, the facility shall:

1. Explain to the parents, the child, and the Division's case manager or other placing agency any restrictive behavior management practice that is used, the circumstances under which it will be employed, and the possible risks involved; and

2. Obtain written consent for the use of all types of restrictive behavior management practices the facility uses from the child's parents.

(d) The facility shall ensure that the consent form is written in plain language and that either a translated version or an interpreter is available to explain it to non-English speaking or hearing impaired parents.

(e) Whenever the parents refuse to consent to a restrictive behavior management practice, revoke their consent for the practice, or cannot be located to give consent, the facility shall:

1. Refrain from utilizing the practice unless the child presents an imminent danger to self or others, and apply other, non-restrictive interventions until such consent is obtained; and

2. Request that the Division's case manager and the placing agency obtain the necessary consent, either through administrative action pursuant to an agreement between the parent, the Division and the other placing agency or through legal action, if necessary to protect the best interests of the child.

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(f) The facility shall maintain a copy of all signed consent forms in the child's records.

(g) At least 10 working days before each staffing or treatment planning meeting, the facility shall send a letter to the child's parents and to the Division's case manager and other placing agency, which shall:

1. Inform them of the frequency and duration of any restrictive behavior management practice that was used with the child;
2. Describe how the child responded to the restrictive behavior management practice; and
3. Invite them to the treatment planning meeting to discuss the child's program and treatment status. If they do not attend the treatment plan meeting, the facility shall send the parents a written summary of the treatment plan meeting and a copy of the child's treatment plan.

(h) The facility shall develop and maintain on file in the administrative office a policy indicating which restrictive behavior management practices the facility uses.

(i) Facilities that utilize physical restraint with children shall:

1. Ensure that physical restraint is used only to protect a child from self-harm, or to protect other children or staff members, or to prevent the destruction of property when the child fails to respond to non-restrictive behavior management interventions;
2. Ensure that staff members use only physical restraint techniques and holds, such as the basket hold or restraining the child in the prone position. These techniques and holds shall not be utilized if the child has:
 - i. Not received a medical examination that specifically documents that he or she will not be adversely affected; or
 - ii. A documented respiratory ailment such as asthma, unless the physician authorizes such techniques;
3. Ensure that a child is released from restraint as soon as he or she has gained control;
4. Document each physical restraint incident in an incident report that reflects the following:
 - i. The name of the child;
 - ii. Date and time of day the restraint occurred;
 - iii. Name of all staff members involved in the restraint;
 - iv. Precipitating factors that led to the restraint;
 - v. Other non-restraint interventions attempted;
 - vi. Time the restraint ended;
 - vii. Condition of the child upon release; and
 - viii. Medical review by the nurse or physician if injury to the child is suspected;
5. Ensure that all restraint incidents are:
 - i. Reviewed by a supervisory staff member within one working day after the incident; and
 - ii. Discussed with the staff member involved in the restraint when the restraint is deemed improper within one working day after the incident;
6. Ensure that staff members who are involved in the restraint of a child receive training in safe techniques for physical restraint; and
7. Prohibit staff members from utilizing the following practices during a physical restraint:
 - i. Pulling a child's hair;
 - ii. Pinching a child's skin;
 - iii. Twisting a child's arm or leg in such a manner that would cause the child pain;
 - iv. Kneeling or sitting on the chest or back of a child;
 - v. Placing a choke hold on a child;
 - vi. Bending back a child's fingers;
 - vii. Intentionally shoving a child into walls and objects; and
 - viii. Allowing other children to assist in the restraint.

(j) Facilities that utilize exclusion shall:

1. Inform staff members through written policy of the circumstances when exclusion may be utilized as a behavior management intervention, such as:
 - i. Disruptive behavior, including fighting, name calling and pushing;
 - ii. Increased agitation on the part of the child;

iii. Non-compliant behavior or failure to participate in the program; and

iv. Uncontrollable emotional outbursts such as crying, screaming and inappropriate laughter;

2. Ensure that the child being excluded is not engaging in suicidal behavior;
3. Prohibit more than one child from being excluded in a room or area at a time;
4. Ensure that at least one staff member is responsible to make visual contact with the child every 15 minutes and is within hearing distance of the child when the child is removed from the group;
5. Ensure that the facility does not utilize a closet, bathroom, unfinished basement, unfinished attic or locked room when excluding a child from the group;
6. Ensure that the exclusion of a child from the other children does not exceed 30 minutes and a child is not excluded from the group for more than a total of two hours in a 24 hour period, unless there are documented circumstances by a physician, in the child's treatment plan requiring longer exclusion time;
7. Document each exclusion of a child in an incident report that reflects the following:
 - i. The name of the child;
 - ii. Date and time of day the exclusion occurred;
 - iii. Name of all staff members observing the child;
 - iv. Precipitating factors that led to the exclusion;
 - v. Other interventions attempted;
 - vi. Time the exclusion ended; and
 - vii. Condition of the child upon release; and
8. Ensure that the child is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has gained control.

(k) Facilities that utilize mechanical restraint, in addition to taking the precautions listed for physical restraint in (i)1 through 7 above, shall:

1. Ensure that only leather restraints and soft handcuffs are utilized;
2. Discuss with the facility's staff physician or consulting physician the appropriateness of utilizing mechanical restraints with the child and secure the physician's initial approval before utilizing such restraint for the child;
3. Document in the child's treatment plan or record that other less restrictive practices have been considered and attempted before mechanical restraint was applied;
4. Ensure that staff utilizing mechanical restraints have received training in the administration of these restraints;
5. Instruct staff in the policies/procedures regarding the mechanical restraint, including the obligation to secure approval for each implementation of a mechanical restraint from the administrator and/or staff physician or consulting physician prior to implementing a mechanical restraint. Such approval shall be:
 - i. Documented in writing through signature by the administrator and/or staff physician or consulting physician; and
 - ii. Filed in the child's case record;
6. Ensure that the child is protected and handled in a manner which avoids injury when applying mechanical restraint;
7. Ensure that no more than one child is mechanically restrained in the same room or area at the same time;
8. Ensure that a staff member(s) remains at arm's length of the child and maintains visual contact at all times during the restraint or maintains visual contact utilizing a Bureau-approved television monitoring system;
9. Ensure that staff check the child's arms and legs every 15 minutes to prevent circulation problems;
10. Ensure that the child has access to toilet facilities;
11. Ensure that the child has access to all scheduled meals during the period restraints are being used;
12. Limit the use of mechanical restraint to no more than two consecutive hours and no more than four hours in a 24-hour period unless approval from a physician is obtained. The facility may request approval from the physician to exceed the time frame limitations for mechanical restraint when it appears that a child needs additional time to gain control of his or her behavior. A written copy of the

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physician's order to extend the time a child is placed in mechanical restraints shall be filed in the child's case record;

13. Have the child checked by a nurse or physician immediately afterward to ensure that the child has not suffered an injury. If a nurse or physician is not on grounds, the administrator on duty or staff member in charge shall immediately:

i. Contact the facility's on-call medical staff or the consulting physician; or

ii. Arrange a medical examination at the local hospital or clinic;

14. Explore other treatment options for a child whenever mechanical restraint proves ineffective or accelerates destructive/self-injurious behavior, including, but not limited to:

i. One-to-one staff supervision;

ii. Psychotropic medication, provided it is approved and prescribed by a physician; and/or

iii. Psychiatric hospitalization; and

15. Prohibit the use of the following types of mechanical restraints:

i. Straight jackets;

ii. Leg irons;

iii. Papoose boards;

iv. Ropes;

v. Metal handcuffs;

vi. Body wraps;

vii. Body tubes;

viii. Teflon handcuffs;

ix. Blanketing; and

x. Four and five point restraint.

(l) A facility that is accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) as a psychiatric hospital or facility and has a current contract with the Division may use four and five point restraint with a child. When the facility uses four or five point restraint, the facility shall comply with all the requirements for physical and mechanical restraint, with the exception of (k)15x above.

(m) A facility utilizing a behavior management room shall:

1. Ensure that the room:

i. Is unlocked at all times during its use;

ii. Is used for only one child at a time;

iii. Has floor space that provides a minimum of 70 square feet;

iv. Has a ceiling height of at least seven feet and six inches;

v. Has durable padded covering secured on the walls at least up to the six-foot level. The covering shall be made of a material that is fire retardant;

vi. Provides a minimum of 10 foot-candles of light in all areas of the room. All lighting fixtures shall have a protective covering to prevent tampering by a child;

vii. Has a door that is padded and equipped with a safety glass window to provide visibility of the room; and

viii. Has adequate ventilation that complies with local and state regulations;

2. Establish a written policy regarding the use of the behavior management room for children. This written policy shall specify:

i. Criteria for the use of this room, including those types of behavior that could result in the child's isolation;

ii. Those staff members who are authorized to place a child in the room;

iii. Procedures for ensuring the child's safety while confined in the room;

iv. Procedures for helping the child re-enter the group; and

v. Time frames governing a child's isolation in the room;

3. Ensure that no child remains in such a room for more than two consecutive hours or for more than four hours in a 24-hour period unless approval from a physician is obtained. The facility may request approval from the physician to exceed the time frame limitations for the use of the behavior management room when it appears that a child needs additional time to gain control of his or her behavior. A written copy of the physician's order to extend the time a child remains in the behavior management room shall be filed in the child's case record;

4. Ensure that objects such as belts, matches, pens or other potentially harmful objects are removed from the child prior to the child's placement in the behavior management room;

5. Ensure that there is no minimum length of time for placement when children are isolated in such a room;

6. Ensure that a staff member:

i. Maintains constant visual contact with any child considered to be at high risk if left unattended in such a room; and

ii. Visually observes a child not considered a high risk in such a room at least every 15 minutes to ensure the safety of the child;

7. Ensure that the child has access to toilet facilities;

8. Prohibit the use of a behavior management room for non-violent or non-assaultive offenses or behaviors or for practices to:

i. Prevent runaways;

ii. Seclude a child who is ill;

iii. Punish a child for stealing, cursing, or failing to cooperate with house rules;

iv. Facilitate supervision for the convenience of staff; and/or

v. Permit a child to eat his or her meals in such a room;

9. Maintain a log book detailing each use of the behavior management room. This log book shall contain the following:

i. The name of the child;

ii. The date and time of day that the child was placed in such a room;

iii. The signature of the supervising staff member authorizing placement;

iv. A description of the behavior precipitating the decision to place the child in such a room;

v. The time(s) the observing staff member checked on the child in such a room, including a description of the child's behavior and signature of the staff member responsible for observing the child;

vi. The time that the child was removed from such a room;

vii. The child's condition and appearance at the time of removal; and

viii. The child's behavior upon return to the group; and

10. Maintain a copy of the log book entry as identified in (m)9 above in the child's record.

(n) Facilities that are operated by the Division shall adhere to all the restrictive behavior management practices policies that are developed, implemented and promulgated by the Department and the Division.

10:127-6.14 Discipline and control

(a) The facility shall develop house rules to help the children develop self-control and conform to acceptable patterns of social behavior.

1. The facility shall put the house rules in writing.

2. The house rules shall include a rationale for such rules and delineate the consequences for infractions.

3. The facility shall explain its disciplinary practices individually with each child at the time the child is placed in the facility.

4. The rules shall be maintained on file in the facility and made available to parents, as specified in N.J.A.C. 10:127-3.3.

5. The house rules may be incorporated in the child's bill of rights, as specified in N.J.A.C. 10:127-3.2.

(b) The facility shall assign responsibility for the discipline, control, and supervision of children to staff members and shall not delegate that responsibility to other children.

(c) The facility shall not threaten discipline or administer discipline to a child for the misbehavior of another child or group of children.

(d) The facility shall prohibit the following types of punishment from being used on a child:

1. Any type or threat of physical hitting or the use of corporal punishment;

2. Forced physical exercise or forcing a child to take an uncomfortable position;

3. Subjection to verbal abuse, ridicule, humiliation, or other forms of degradation;

4. Deprivation of meals, sleep, mail, clothing appropriate to the season or time of day, or verbal communication;

5. Mechanical or chemical restraint;
6. Assignment of overly strenuous physical work;
7. Exclusion from any essential program or treatment service, such as education or clinical treatment;
8. Refusal of entry to the residence;
9. Temporary suspension and return of a child from the facility to a parent, relative, foster home, or shelter, unless approved by the Division or other placing agency; and
10. Seclusion in a locked room.

10:127-6.15 Search and seizure of weapons and contraband; substance abuse screenings

(a) Facilities may conduct searches for weapons or contraband, provided that they maintain on file in the facility written policies and procedures that are consistent with the requirements of this chapter.

1. The facility shall define contraband to include illegal drugs, unauthorized property, stolen property or items otherwise obtained illegally.

2. The facility shall post the policy in an area conspicuous to children, explain the policy and distribute copies of the written policy to children and their parents upon admission and when changes are made to the policy.

3. The facility shall specify the actions that it will take when weapons or contraband are found.

(b) The facility shall prohibit all staff members, consultants and volunteers from strip searching a child for any reason.

(c) The facility shall permit frisk searches (surface searches of outer clothing) of a child only when there is reasonable suspicion that the child is in possession of a weapon.

1. The facility shall prohibit staff members from reaching into a child's pockets unless the frisk search confirms the reasonable belief that the child is in possession of a weapon.

2. The facility shall not frisk search a child who is suspected of possessing illegal drugs or contraband other than a weapon.

3. The facility shall ensure that a frisk search is conducted:

i. In the presence of two staff members, one of whom has supervisory or administrative responsibilities in the facility; and

ii. Only by staff members of the same sex as the child. If same sex staff members are not available, staff members shall provide one-to-one supervision of the child, until the search can be properly conducted.

(d) When the facility has reasonable suspicion that a child is carrying illegal drugs or other contraband in a garment, pocket, purse, or other possession within the child's immediate control, the facility shall ensure that the staff member:

1. Asks the child voluntarily to empty any garment, pocket, purse or other possession;

2. Inspects all such items that are in plain view; and

3. If necessary, summons a law enforcement officer to conduct a lawful search of the possessions within the child's immediate control whenever the child refuses a voluntary search by the facility staff member.

(e) The facility may conduct periodic, unannounced searches of a child's room and other possessions not within a child's immediate possession or control if:

1. The facility has explained and documented this practice to the child and his or her parents, as specified in N.J.A.C. 10:127-3.2 and 3.6;

2. The search is conducted in the presence of two staff members, one of whom has supervisory or administrative responsibility; and

3. The facility allows the child an opportunity to be present during a search. If the child declines the opportunity, the staff members may conduct the search in the child's absence.

(f) When unannounced room searches occur, as specified in (e) above, the facility shall verify which child is responsible for any weapon or contraband brought into the facility before imposing a disciplinary action or sanction on the child.

(g) Before a facility conducts a blood or urine screening on a child to determine substance abuse, the facility shall ensure that:

1. Substance abuse screenings are conducted only under the following limited circumstances:

i. When screening is ordered by the court;

ii. When the facility is specifically designated as a drug treatment facility; or

iii. When ordered by a physician who has determined that such screening is necessary; and

2. Substance abuse screenings are conducted only if:

i. The facility has informed the child and parents, if available, beforehand about the screening;

ii. The facility uses a licensed facility to conduct the screening, including drawing the sample and completing the analysis;

iii. The facility ensures that the child has privacy when a urine sample is collected, unless the facility documents that the child has a history of falsifying samples. If the child has such a history, the facility shall request appropriate trained staff of the same sex as the child to witness or verify that the child is not falsifying samples; and

iv. The facility verifies the accuracy of all positive tests through a second screening; and

3. Substance abuse screenings are discontinued whenever previous screenings result in three consecutive negative readings after the initial positive reading was documented, unless a court order requires continued screenings.

(h) The facility shall maintain on file an incident report for every instance involving a frisk search of a child, a staff member's request for a child to empty a possession within the child's immediate control, a room search resulting in the discovery of weapons, illegal drugs or other contraband, and a blood or urine screening.

10:127-6.16 Firearms and weapons

(a) The facility shall not maintain any firearm, chemical or other weapon within or on the grounds of the facility.

(b) The facility shall prohibit any staff member or child to possess any firearm, chemical or other weapon within or on the grounds of the facility.

10:127-6.17 Aversive condition procedures

Any facility that utilizes aversive conditioning procedures with developmentally disabled children shall first obtain written approval from the Bureau prior to its implementation with children.

SUBCHAPTER 7. HEALTH REQUIREMENTS

10:127-7.1 Comprehensive health plan for children

(a) The facility shall prepare and implement a comprehensive health plan to ensure that each child's medical, dental, and other health needs are met adequately and promptly.

1. The facility shall identify a physician or health care organization who will assume responsibility for routine medical care of each child.

2. The facility shall arrange for emergency, routine and follow-up medical care for each child.

10:127-7.2 Health care and medical treatment for children

(a) Within 72 hours after admission, the facility shall ensure that each child receives a medical examination, as defined in (d) below, unless the child had received such a medical examination within 30 calendar days prior to his or her placement.

(b) When the facility suspects that a child is ill or carrying a contagious disease, the child shall be examined by a physician prior to admission.

(c) When the facility suspects that a child has been abused or neglected, the facility shall ensure that the child is examined by a physician immediately upon admission.

(d) The facility shall ensure that each child receives an annual comprehensive physical examination and shall maintain a copy of the results of this physical examination in the child's record.

1. The physical examination shall include, but not be limited to:

i. A measurement of height and weight;

ii. A determination of blood pressure;

iii. An objective vision screening which uses a Titmus or Snellen test, or equivalent;

iv. A hearing screening using an audiometer and, if indicated, tympanometry;

v. A hematocrit or Hemoglobin test, if indicated; and

vi. A urinalysis, if indicated.

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2. The facility may use vision and hearing screening tests completed at the child's school if these tests meet the requirements specified in (d)1iii and iv above.

3. The facility shall ensure that eye glasses, orthopedic apparatus or other equipment are available to each child who requires them.

4. The facility shall ensure that all children 13 years of age and under receive a Mantoux tuberculin skin test unless they have had tuberculosis, and ensure follow-up with the physician if test results are positive.

5. The facility shall ensure that all children are appropriately immunized.

(e) The facility shall ensure that each child receives a dental examination within three months following admission and at least semi-annually thereafter.

(f) The facility shall ensure that children between two and six years of age receive developmental evaluations by a physician, nurse or other appropriate health official.

10:127-7.3 General medical practices

(a) The facility shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to a child is explained to the child.

(b) When a serious accident or illness occurs to a child, the facility shall take the necessary emergency action and notify the child's parents and the Division's case manager or other placing agency immediately. The facility shall document these incidents in the child's record.

(c) When a child or staff member has a communicable disease, as specified in the table in (c)3 below, the facility shall:

1. Obtain a written statement from a licensed physician treating the child or staff member, confirming the diagnosis and indicating that there is no risk to the child or staff member, or to others before the child or staff member participates in group activities;

2. Isolate the child or staff member posing a risk to others; and

3. Contact the New Jersey State Department of Health, the local health department or other appropriate public health authority when the child or staff member has a reportable disease, as specified in the table below.

TABLE OF COMMUNICABLE DISEASES

<u>Respiratory illnesses</u>	<u>Gastro-intestinal illnesses</u>	<u>Contact illnesses</u>
Chicken pox	Giardia lamblia*	Impetigo
German measles*	Hepatitis A*	Lice
Hemophilus influenzae*	Salmonella*	Scabies
Measles*	Shigella*	
Meningococcus*		
Mumps*		
Strep throat		
Tuberculosis*		
Whooping cough*		

*Reporting diseases, as specified in N.J.A.C. 10:127-7.3(c)3.

10:127-7.4 Medication other than psychotropic medication

(a) The facility shall administer prescription medication to a child only when the medication is authorized by a physician.

(b) The facility shall limit the dispensing of non-prescription over-the-counter medication to the following types, which shall be dispensed in accordance with the recommended dosage, age or weight of the child, as indicated on the label:

1. Antihistamines or decongestants;
2. Acetaminophens (or other age-approved aspirin substitutes);
3. Cough suppressants; and
4. Topical ointments.

(c) The facility may permit the dispensing of non-prescription medication other than those listed in (b) above if the child's physician authorizes it in writing.

(d) The facility shall maintain a medication log book that contains the following information:

1. The name of the child receiving medication, whether prescription or non-prescription;
2. The type of medication, dosage, and intervals between dosages;
3. What to do if a dosage is missed;
4. The reason for the medication;
5. The date and time the medication was administered;
6. Possible side effects of the medication, if any; and
7. The signature and title of the staff member dispensing the medication.

(e) The facility shall encourage the self-administration of medication by properly trained and supervised children whenever their intellectual, emotional and physical capabilities make such practice appropriate and feasible. This shall be documented in each child's treatment plan.

(f) The facility shall ensure that the following procedures for storage of medication are followed:

1. The facility shall keep all prescription and non-prescription medication in a locked cabinet or container, or, as needed, in a locked box in a refrigerator. The facility shall ensure that the keys to the locked cabinets, containers and locked boxes are adequately safeguarded and maintained by staff members and are kept out of reach of children;

2. All outdated stocks and prescriptions no longer in use shall be disposed of safely as follows:

- i. Liquid medication shall be poured down the drain, the bottles rinsed out and then disposed of in the trash; and
- ii. Pills, tablets and capsules shall be flushed down the toilet before the bottle or packet is disposed of in the trash;

3. The telephone number of the regional poison control center shall be posted at all medication-dispensing stations and by each telephone; and

4. Staff members shall have access to medical supplies at all times.

(g) In situations where the facility determines that an adolescent is capable of self-administration of prescription birth control-related supplies, the facility may allow the adolescent to maintain such supplies amongst her personal possessions, so long as the facility:

1. Provides a locked cabinet or box for storage; and
2. Documents in the treatment plan the rationale and arrangements for the adolescent to maintain prescription birth control-related supplies.

10:127-7.5 Psychotropic medication

(a) The facility shall not administer medication to children as a punishment, for the convenience of staff members or as a substitute for a treatment program.

(b) The facility shall ensure that a pre-treatment clinical assessment, based on behaviors exhibited by the child and observed by staff members, is conducted by a licensed physician before psychotropic medication is prescribed. This pre-treatment clinical assessment shall include at least the following information:

1. A comprehensive drug history, including consideration of the use of all prescription and non-prescription drugs by the child as well as a history of cardiac, liver, renal, central nervous system or other diseases, a history of drug allergies and dietary information;
2. A laboratory work-up, including, but not limited to:

i. A complete blood count. If the medication prescribed requires routine follow-up blood work, this blood count test shall be administered prior to the child's beginning his or her medication regimen. If the medication prescribed does not require routine follow-up blood work, a new blood count test is not required as long as the child has had a blood count test within one year of admission, unless the physician determines otherwise;

ii. Urinalysis;

iii. Blood screening to include an assessment of liver and renal functions, if indicated; and

iv. Cardiogram (EKG) and electroencephalogram (EEG), as indicated, on children with previous histories of cardiac abnormalities or central nervous system disorders; and

3. A written description of:

- i. Non-pharmacological interventions that were considered or attempted to address the child's behavior;

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ii. The purpose of the medication, the specific behavior(s) of the child to be modified and ways in which progress towards the treatment objectives will be measured;

iii. The dosage; and

iv. How possible side effects will be monitored and reported to the physician who prescribed the medication.

(c) Within two weeks after admission, the facility shall ensure that all children already receiving psychotropic medication receive a clinical assessment by a physician, as specified in (b) above.

(d) The facility shall not be obligated to comply with (b) above and (e) below, for a pre-treatment clinical assessment and informed consent for psychotropic medication, other than long-acting drugs, if the treating physician certifies in the child's clinical record that the child presents a danger to self and/or others.

1. The initial decision to administer emergency medication shall be based on a personal examination of the child by a physician.

2. The initial administration of emergency medication may extend for a maximum period of 72 hours.

3. A physician may authorize the administration of medication for an additional 72 hours upon determination that the continuance of medication on an emergency basis is clinically necessary. This authorization may be given by telephone, provided that it is countersigned by the physician and certified as to the necessity in the child's clinical record within 24 hours. If this medication is then deemed necessary for the child's treatment while in the facility, the physician shall complete the pre-treatment clinical assessment as specified in (b) above.

4. The facility's staff members shall document on a separate reporting form that the psychotropic medication was administered in an emergency situation. The documentation shall identify possible side effects to be monitored as described in (b)3iv above.

(e) Before administering psychotropic medication, the facility shall obtain written informed consent from the child's parent(s) or legal guardian, and from all children 14 years of age and older consistent with their age and level of functioning unless the facility documents that the child lacks the capacity for informed consent. In cases where both a parent and legal guardian exist, the facility shall seek written informed consent from the legal guardian.

1. A physician, registered nurse or staff member trained in administering psychotropic medication shall obtain written informed consent.

2. The person requesting written informed consent shall ensure that parents, guardians and children are informed about:

i. The behavior or symptoms which the medication is intended to modify;

ii. The dosage;

iii. Any change in type of medication; and

iv. How possible side effects of the medication will be treated.

3. When a request for written informed consent is made by a staff member, the staff member shall inform the parent that a physician is available for consultation regarding the proposed medication.

4. The facility may obtain verbal informed consent by telephone from the child's parents when the facility, physician, registered nurse or staff member is unable to obtain written informed consent, provided that:

i. The facility documents the telephone call in the child's record; and

ii. The facility obtains the written informed consent from the child's parents or legal guardian within 24 hours of receiving the verbal informed consent.

5. If the facility cannot obtain written informed consent or verbal informed consent, the facility shall use certified mail, return receipt requested, and shall send the request to the parent's or legal guardian's last known address at least 10 calendar days before the proposed date for the commencement of treatment. The written notice shall specify:

i. The proposed date for beginning of treatment; and

ii. That a failure to respond by the proposed date for the beginning of treatment shall empower the director, after consultation with the Division's case manager or other placing agency, to grant consent for the medication.

6. The facility shall document all methods for requesting written consent in the child's record.

(f) When a parent, legal guardian or child refuses or revokes consent for medication, the following procedures shall apply:

1. The treating physician or his or her designee shall speak to the child or the parent or both to respond to the concerns about the medication. This person shall explain the child's condition, the reasons for prescribing the medication, the benefits and risks of taking the medication, and the advantages and disadvantages of alternative courses of action;

2. If the child or parent continues to refuse or revoke consent to medication and the physician or his or her designee still believes that medication is a necessary part of the child's treatment plan:

i. The director of the facility shall advise the child and the parent that the matter will be discussed at a meeting with the child's treatment team and shall invite the child and parent to attend such meeting;

ii. The director of the facility may suggest that the child and parent discuss the matter with a person of their own choosing, such as a relative, attorney, physician, or mental health clinician;

iii. The treatment team shall meet to discuss the treating physician's recommendations and the response of the child or parent; and

iv. The treatment team shall attempt to formulate a viable treatment plan that is acceptable to the child and parent;

3. If, after the treatment team meeting, the child or parent continues to refuse or revoke consent to medication and the treating physician still believes that medication is a necessary part of the child's treatment plan, the facility shall obtain an independent psychiatric review. The psychiatrist conducting this independent assessment shall review the child's clinical record, conduct a personal examination of the child, provide a written report for the child's treatment team, and, if the parent or child is refusing or has revoked consent to medication, speak with the parent or child, respectively; and

4. If the child or parent continues to refuse or revoke consent to medication, and the facility feels that the child cannot be adequately treated without the medication, the facility may initiate an emergency discharge, as specified in N.J.A.C. 10:127-6.2(b) and 10.5.

(g) The facility shall administer psychotropic drugs in the following manner:

1. Psychotropic medication shall be dispensed only by licensed pharmacists and prescriptions shall always be labeled to reflect the following information:

i. The name and address of the dispensing pharmacy;

ii. The full name of the pharmacist;

iii. The full name of the child;

iv. Instructions for use, including the dosage and frequency;

v. The prescription file number;

vi. The dispensing date;

vii. The prescribing physician's full name;

viii. The name and strength of the medication;

ix. The quantity dispensed; and

x. Any cautionary information appropriate to the particular medication;

2. The facility shall encourage the self-administration of medication by properly trained and supervised children whenever their intellectual, emotional, and physical capabilities make such practice appropriate and feasible. The child's capability for self-administration of psychotropic medication shall be documented in the child's treatment plan; and

3. The facility shall ensure that psychotropic medication is stored as specified in N.J.A.C. 10:127-7.4(f).

(h) The facility shall ensure that all children receiving psychotropic medication are monitored in the following manner:

1. Staff members directly involved with the child shall record daily progress towards treatment goals and objectives and observed side effects which are identified in the pre-treatment clinical assessment;

2. Staff members shall notify the prescribing physician immediately, when side effects are observed;

3. The facility shall ensure that:

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i. The physician or his or her designee reviews the child's behavior, well-being and status towards treatment goals and objectives, side effects and reason for continuing the medication every 30 days;
 ii. The review is documented in the child's medical record; and
 iii. The facility informs the child, parents, legal guardian, the Division's case manager or other placing agency in writing about the outcome of a negative review.

(i) The facility shall ensure that each staff member involved in administering psychotropic medication receives the following training:

1. Indications for drug use; and
2. Therapeutic effects and side effects.

(j) The facility shall record all information about a child's psychotropic medication, as specified in N.J.A.C. 10:127-7.4(d), and the facility shall ensure that the child's medication record is available to the physician for review when additional medication is prescribed.

10:127-7.6 Health education and physical care for children

(a) The facility shall ensure that children receive training in personal care, hygiene and grooming habits.

1. The facility shall discuss the physiological changes experienced during adolescence with children in the facility.

2. The facility shall instruct children about sexually responsible behavior including how to protect themselves from pregnancy and sexually transmitted diseases including AIDS.

3. The facility shall instruct all children about the health consequences of smoking tobacco products, smokeless tobacco, alcohol and drug abuse.

(b) The facility shall ensure that children are provided with the following:

1. Individual towels and washcloths;
2. Soap and toilet paper; and
3. Hygiene supplies that are age appropriate for their needs, such as toothpaste, mouthwash, deodorant, razors, shaving cream and feminine hygiene articles.

(c) For children unable to provide for their own personal care and hygiene, the facility shall bathe and groom them, and provide other personal hygiene services that are necessary to meet their needs.

(d) The facility may permit residents to maintain over-the-counter cosmetics, acne preparations and personal hygiene supplies among their personal possessions.

(e) The facility shall take measures to ensure that each child has an adequate personal supply of clean, well-fitting and attractive clothing appropriate to his or her age, gender, individual needs, community standards, and season.

1. The facility shall ensure that each child's clothing is kept clean and in good repair. The facility may require children 12 years of age and older to do their own laundry.

2. The facility shall not require children to wear any article of clothing that would explicitly identify them as a resident of the facility.

10:127-7.7 Health requirements for staff

(a) Before working for a facility each staff member who comes in contact with the children for the equivalent of eight hours a week or more shall submit a written statement from a licensed physician indicating that he or she is in good health and poses no health risk to persons at the facility. Such statement shall be based on a medical examination conducted within the six months immediately preceding such person's association with the facility.

(b) Within one year prior to or upon beginning work or having contact with the children for the equivalent of at least eight hours a week at the facility, each staff member shall take a Mantoux tuberculin skin test with five TU (tuberculin units) of PPD tuberculin. If the staff member has had a previous positive Mantoux tuberculin skin test the staff member shall have a chest x-ray taken in lieu of the Mantoux tuberculin skin test. The staff member shall submit to the facility written documentation of the results of the test or x-ray.

1. If the Mantoux tuberculin skin test result is insignificant (zero to nine millimeters (mm) of induration), no further testing shall be

required. The Bureau or facility may, at any time, require a staff member to retake the Mantoux tuberculin skin test, if there is a reason to believe or suspect that the staff member may have contracted tuberculosis or if the State Department of Health recommends retesting.

2. If the Mantoux tuberculin skin test result is significant (10 or more mm of induration), the individual shall have a chest x-ray taken. If the chest x-ray shows positive results, the facility shall require that the staff member obtain a written statement from a physician certifying that he or she poses no threat of tuberculosis contagion before allowing the staff member to come in contact with the children. The facility shall ensure that the staff member adheres to the recommended follow-up testing, if any, by the physician.

3. The facility shall prohibit any staff member who fails to submit satisfactory results from having contact with the children at the facility.

(c) The facility shall maintain on file the results of each staff member's:

1. Mantoux tuberculin skin test or chest x-ray when indicated; and
2. Physical examination.

(d) The facility shall exclude a staff member who appears to be physically, emotionally or mentally impaired or who appears to have a drug-induced or alcohol-induced condition that would endanger the health, safety and well-being of the children or other staff members. The facility shall document the action taken to exclude the staff member and maintain such documentation in the staff member's personnel record. The facility shall not permit the staff member to reassume duties until the condition is no longer present as specified in N.J.A.C. 10:127-5.1(a).

10:127-7.8 Environmental sanitation and staff hygiene

(a) Staff members shall use disposable rubber gloves, which shall be discarded after each use, when coming into contact with blood, vomit, urine, fecal matter or other body secretions.

(b) The facility shall ensure that areas in the facility, bedding, furniture, carpeting and clothing, that come into contact with blood, vomit, urine, fecal matter or other body secretions are disinfected with a commercially prepared disinfectant that indicates it kills bacteria, viruses and parasites. This solution shall be used in accordance with label instructions.

(c) The following equipment items or surfaces shall be washed and disinfected after an incident, as specified in (b) above:

1. Toilet seats;
2. Sinks and faucets;
3. Mops that were used in the clean-up;
4. Washcloths, towels and sponges that were used in the clean-up; and
5. Thermometers.

SUBCHAPTER 8. TRANSPORTATION REQUIREMENTS

10:127-8.1 General requirements

(a) The provisions of this subchapter shall apply to each facility that provides or arranges transportation for children:

1. To or from the facility or between other prearranged sites and the facility; or
2. In connection with an activity (such as a field trip) conducted by or under the auspices of the facility.

(b) Each facility as specified in (a) above shall also comply with applicable provisions of the New Jersey Division of Motor Vehicles law, pursuant to N.J.S.A. 39:1-1 et seq. and rules promulgated thereunder, as specified in N.J.A.C. 13.

(c) The facility may authorize staff members to utilize their own private passenger vehicles to transport children from the facility to and from scheduled field trips or to transport children from the facility to a hospital, clinic or office for medical treatment. However, staff members may be authorized to do so only if:

1. The vehicle has a capacity of eight or fewer persons;
2. The driver possesses a valid automobile driver's license issued by the New Jersey Division of Motor Vehicles, hereinafter referred

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to as the DMV, or a valid automobile driver's license issued by an approved out-of-State motor vehicle agency for the state in which the driver is a legal resident;

3. The vehicle has a valid motor vehicle inspection sticker issued by the DMV or by an approved out-of-State motor vehicle agency for the state in which the car is legally registered;

4. The vehicle owner possesses liability insurance at least at the minimum amounts required by the New Jersey State insurance law, pursuant to N.J.S.A. 17:28-1.1a or at least the minimum amounts required by a state other than New Jersey in which the car is legally registered;

5. The facility maintains transportation records on every vehicle utilized for the above, as specified in N.J.A.C. 10:127-8.4; and

6. The facility ensures that staff members apply the safety practices specified in (d) and (e) below.

(d) The facility shall ensure that all vehicles used to transport children:

1. Are maintained in clean and safe condition;
2. Have a maximum seating capacity that does not exceed the number of seat belts (unless the vehicle is not required by law to have seat belts);
3. Have seats and back rests securely fastened;
4. Have all seats that are facing sideways or backwards bolted down;
5. Have seats upholstered with springs or foam rubber;
6. Have an operable heater capable of maintaining a temperature of 50 degrees Fahrenheit; and
7. Are equipped with:
 - i. A triangular portable red reflector device;
 - ii. All season radial or snow tires from November 15 through April 1 (for New Jersey-based facilities only); and
 - iii. A removable, moisture-proof and dust-proof first-aid kit, which shall be located in the vehicle.

(e) The facility shall ensure that the following safety practices are followed:

1. A staff member is always present when an adolescent, child or infant is in the vehicle;
2. All passengers who are over one and one-half years of age are secured in a car seat or an operable seat belt while the vehicle is in motion;
3. All passengers who are one and one-half years of age or younger are secured in car seats (child passenger restraint systems) that meet Federal motor vehicle safety standards in accordance with provisions of the New Jersey Division of Motor Vehicles law, pursuant to N.J.S.A. 39:3-76.2a;
4. All adolescents, children and infants are loaded and unloaded from the curbside of the vehicle; and
5. Children are not permitted to ride in the back or beds of trucks.

(f) When transporting more than six children below six years of age, the facility shall ensure that one adult in addition to the driver remains in the vehicle.

(g) When transporting more than four infants without their adolescent mothers, the facility shall ensure that one adult in addition to the driver remains in the vehicle.

(h) The facility shall maintain transportation records, as specified in N.J.A.C. 10:127-8.4.

(i) If the facility utilizes a Type I School Bus, Type II School Bus or a Type II School Vehicle, the facility shall:

1. Meet all applicable rules of the DMV, New Jersey Department of Education and New Jersey Department of Human Services; and
2. Ensure that the drivers of such vehicles possess a valid Class B license for the New Jersey Type I School Bus, or possess a valid Class C license for the New Jersey Type II School Bus or an out-of-State equivalent license, as approved by the DMV.

(j) The facility shall limit travel for an adventure activity in program vehicles including cars, vans and wagon trains by:

1. Scheduling at least one full day of rest after every five days of travel;
2. Ensuring that no staff member drives for more than four hours without a 30-minute break; and
3. Prohibiting scheduled driving between 11:00 P.M. and 6:00 A.M., unless it is necessary to complete an emergency evacuation.

10:127-8.2 Vehicle insurance requirements

(a) The facility shall maintain vehicle liability insurance for bodily injury or death in minimum amounts of \$300,000 per person and \$500,000 per accident for every vehicle that is:

1. Owned or leased by the facility; and
2. Utilized to transport children residing in the facility.

(b) If the facility contracts for transportation services, the facility shall ensure that the contracted company maintains insurance coverage as identified in (a) above.

10:127-8.3 Additional requirements for transporting physically handicapped, non-ambulatory children

(a) Facilities providing or arranging for transportation services for physically handicapped children who are non-ambulatory shall have a vehicle that has a ramp device or hydraulic lift with a lift minimum pay load of 600 pounds. Any ramp device that is installed shall:

1. Have a non-skid surface;
2. Be securely stored and protected from the elements when not in use; and
3. Have at least three feet of length for each foot of incline.

(b) If wheelchairs are used, the facility shall ensure that:

1. All wheelchairs are securely fastened and face forward;
2. All wheelchair passengers are secured with a seat belt;
3. Arrangements for wheelchairs do not impede access to emergency and exit doors; and
4. Any aisle leading from a wheelchair position to the emergency or exit door has a minimum width of 30 inches.

10:127-8.4 Record requirements

(a) The facility shall ensure that each person who is authorized to transport children possesses a valid driver's license.

(b) The facility shall maintain on file the following:

1. A photostatic copy of the registration of each vehicle used to transport children;
2. A copy of the insurance policy for every vehicle owned, leased, contracted or utilized by the facility; and
3. The name and address of the lessor or contractor furnishing a vehicle to the facility, if applicable.

(c) The facility shall maintain transportation maintenance records for all vehicles used by the facility for the transportation of children, including repair and inspection records, and shall retain them for the lifetime of the vehicles.

(d) The facility shall develop and maintain on file a record of all trips where the facility's vehicles are used for transporting children that documents:

1. The date and time each staff member drove;
2. Incidents of the day; and
3. Names of the children who attended the trip.

SUBCHAPTER 9. ADVENTURE ACTIVITIES**10:127-9.1 General requirements**

(a) The requirements of this subchapter shall apply to any facility that provides or contracts for adventure activities that may include, but are not limited to:

1. Biking;
2. Canoeing, kayaking and tubing;
3. Caving;
4. Hiking;
5. Horseback riding;
6. Ropes initiatives and rock climbing;
7. Sailing and boating;
8. Snow skiing;
9. Solos;
10. Swimming;
11. Water skiing; and
12. Camping.

(b) All facilities whose program consists primarily of adventure activities shall maintain on file a written statement of purpose that shall identify the following:

1. The facility's philosophy, goals, and objectives;
2. Characteristics of the children to be served;

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3. Types of adventure activities that a child may participate in and other treatment services provided to the children, including those provided directly by the facility and those services that may be provided in cooperation with community agencies or outside individuals;

4. Procedures for implementing those services; and

5. Criteria for successful completion of the program.

(c) For facilities whose program consists primarily of adventure activities, the facility shall describe to the child and the parents prior to admission to the facility, the types of adventure activities in which the child will be asked to participate. This discussion shall include:

1. An explanation of the anticipated benefits of the activity;

2. A description of the potential risks of the activity, as well as an explanation of how the facility will take precautions to minimize risks; and

3. A statement that the facility will not force or coerce a child to participate in any adventure activity, as specified in (i) below.

(d) For facilities whose program does not consist primarily of adventure activities, the facility shall discuss with the child and his or her parents the information specified above before the child is scheduled to participate in the activity.

(e) The facility shall document in the child's record that a staff member discussed the information specified in (c) and (d) above.

(f) The facility shall maintain on file at the facility's administrative office a list of all children and staff members who participate in an adventure activity that occurs away from the grounds of the facility.

(g) The facility shall have a fully-stocked first aid kit that is activity-appropriate and available whenever an activity occurs off-grounds.

(h) The facility shall ensure that all children and staff members receive instruction about the value of the activity and necessary safety precautions, such as how to prevent dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants and animals, sun poisoning, snow blindness, or drowning.

(i) The facility shall not force or coerce a child to participate in any adventure activity, but may require a child to observe an adventure activity to assist the child in getting over his or her fears of a particular activity or to foster an interest in participating in a particular activity.

(j) The facility shall not engage in any activities requiring or involving firearms nor permit staff to have firearms.

(k) The facility shall prohibit airborne activities including, but not limited to, hang gliding and parachuting.

(l) The facility shall not permit children to use power tools and lawn mowers unless the children wear protective safety glasses and work shoes or boots, and are under the direct supervision of staff members.

(m) The facility shall not allow children or staff members to participate in manufacturer's tests of new adventure equipment.

(n) For all water and outdoor trips away from the grounds or campsites, the facility shall obtain and maintain on file in the shift log or at the administrative office the information from a weather report issued by the National Weather Service no earlier than six hours before the trip and modify or cancel the activity if there is a threat of a severe storm or similar environmental hazard.

(o) The facility shall also obtain and maintain on file in the shift log or at the administrative office the information from a report from the park service or other appropriate state or local agency that indicates that there is no life-threatening environmental hazard, such as fires, polluted water, threat of flash floods or avalanches.

(p) The facility shall not engage in water activities where the water is known to have hazardous wastes, such as waters that have been contaminated by toxins, sewage or chemicals.

(q) The facility shall ensure that all water in streams, ponds, lakes and rivers that is used for drinking, food preparation and dishwashing is first boiled, filtered or purified with iodine or tablets specifically designed to purify water.

(r) The facility shall ensure that all children receive instruction in the use of personal floatation devices (life jackets) prior to their participation in water activities.

10:127-9.2 Plans for emergency evacuation and search and rescue

(a) The facility shall develop and maintain on file at the administrative office a written plan detailing procedures for emergency evacuation from any site used for adventure activities that is in a remote area or that is away from ordinary means of communication. This plan shall include, but not be limited to, the following:

1. Guidelines on how to determine dangerous weather conditions, such as storms, and life-threatening environmental hazards, such as fires, polluted waters, flash floods or avalanches;

2. Guidelines on how to determine whether a victim can walk out on his or her own power;

3. Guidelines for evacuating all children and staff members; and

4. Name, address and telephone number of local rescue squads, law enforcement agencies and hospitals, and guidelines for contacting them.

(b) The facility shall develop and maintain on file at the administrative office a written plan detailing procedures for search and rescue for each adventure activity that takes place outside the facility's grounds. This plan shall include, but not be limited to, the following:

1. Guidelines on how to conduct a search to determine that a child is missing, including a time limit for ending the search and starting a search beyond the area being used for the adventure activity;

2. Procedures for completing a full description of the missing person;

3. Procedures detailing how to deploy staff and children to scout specific areas;

4. Procedures detailing how to deploy a rescue team that shall include a staff member to seek outside help;

5. A policy that indicates when to call law enforcement agencies and telephone numbers of local law enforcement officials; and

6. Procedures for reviewing the incident with the person(s) who conducted the search.

(c) For adventure activities occurring outside the facility's grounds, the facility shall ensure that each staff member supervising an adventure activity:

1. Reviews the plan detailing the procedures for emergency evacuation;

2. Reviews the plan detailing the procedures for search and rescue; and

3. Brings a copy of these plans on each adventure activity.

(d) The director of the facility or his or her designee shall document and maintain on file at the administrative office that all emergency evacuation and search and rescue missions were reviewed within five days of the incident, and issue a statement to staff members indicating approval or recommendations for improving these practices, if applicable.

(e) For adventure activities occurring outside the facility's grounds, the facility shall give at least one staff member money or credit cards to handle emergencies.

10:127-9.3 Reporting requirements

(a) The facility shall report all fatalities and all accidents requiring hospitalization or medical care by a physician to the Bureau as soon as staff have access to a telephone, as specified in N.J.A.C. 10:127-3.7(b).

(b) The facility shall provide written notification and maintain on file reports of all incidents and accidents requiring hospitalization or medical care by a physician, and incidents where an accident or fatality was avoided ("near miss"), within five working days of the incident.

1. This documentation shall specify:

i. The factors leading to the incident;

ii. The nature of the fatality, accident or "near miss";

iii. How staff members handled the incident; and

iv. Recommendations for avoiding such incidents in the future.

2. The director of the facility or his or her designee shall document in writing and maintain on file that he or she reviewed every incident and accident within five working days after the incident or accident occurred.

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3. The facility shall send a written report within 10 working days of the incident or accident to the Bureau and to the child's parents about what precautions have been taken to prevent a similar kind of incident or accident from occurring in the future.

(c) The facility shall submit a written description to the Bureau and permit an on-site inspection prior to its implementation of any of the following high risk adventure activities:

1. Caving;
2. Ropes initiatives and rock climbing; and
3. Solo camping.

(d) The facility shall submit a written description to the Bureau prior to the implementation of the following medium risk adventure activities:

1. Canoeing, kayaking and tubing;
2. Water skiing;
3. Snow skiing; and
4. Boating and sailing.

(e) The written descriptions required in (c) and (d) above shall include, but not be limited to, the following information:

1. The types of equipment that will be utilized;
2. The qualifications of the staff members who will be involved in implementing the adventure activity; and
3. The policies and procedures to ensure the safety of the children and staff members during the adventure activity.

10:127-9.4 Biking

(a) Prior to implementing a planned biking trip that is off the grounds of the facility and that is more than five miles in duration, the facility shall:

1. Obtain the necessary permits to ride on roads or highways from host states and local governments where applicable; and
2. Maintain on file at the administrative office copies of these permits.

(b) The facility shall prohibit all biking from taking place:

1. In inclement weather;
2. On roads with heavy traffic unless there is a wide shoulder;
3. After sunset and before sunrise; and
4. Off trails and in prohibited areas.

(c) The facility shall ensure that all persons engaged in biking:

1. Wear helmets that are approved by the American National Standards Institute (ANSI) or the Snell Memorial Fund;
2. Ride in a single file on the right side of the road;
3. Obey all traffic signs and signals;
4. Yield to traffic;
5. Are led by a staff member, with another staff member riding at the end of the group; and
6. Take a 30-minute break every two hours, or sooner when a child expresses a need for rest or when a child is injured or ill.

(d) The facility shall ensure that the following equipment is brought on a biking trip:

1. A road map;
2. A bike repair kit; and
3. A water bottle for each child and staff member, unless the itinerary provides access to potable water.

(e) The facility shall ensure that all bikes are locked at night to deter children from running away or having the bikes stolen.

(f) Before starting a trip and every day of the trip thereafter, the facility shall ensure that all bikes have:

1. Brakes that are in good working order;
2. Tires with treads and sufficient air;
3. Handle bars that are no more than 16 inches above the seat so that the biker can sit comfortably;
4. Pedals with treads that are a distance of 3½ inches or more from the front wheel or fender; and
5. Reflectors in the front, rear, pedals and spokes.

10:127-9.5 Canoeing, kayaking, and tubing

(a) The facility shall ensure that all children and those staff members who do not have a valid lifesaving or lifeguarding certificate:

1. Wear personal flotation devices (PFD) (life jackets) rated Class I, II, or III by the United States (U.S.) Coast Guard; and

2. Are instructed to never stand up in the canoe, kayak or tube, unless the children are in a confined area for staff supervised activities.

(b) The facility shall ensure that life jackets are not used for seating or bedding.

(c) The facility shall ensure that:

1. At least one staff member is present who has a valid lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or other appropriate authority when there are eight or fewer children;
2. At least two staff members are present who have a valid lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or other appropriate authority when there are nine or more children;
3. Children and staff members wear footwear that is secured to their feet, unless the activity occurs on a lake with a sandy bottom and no rocks; and
4. All children and staff members stay away from debris and any trees that have fallen across the river and carry the canoe, kayak or tube along the river bank past the debris or fallen tree, if necessary.

(d) The facility shall prohibit canoeing, kayaking, and tubing:

1. At night;
2. In the open ocean; and
3. During electrical storms.

(e) The facility shall ensure that the following equipment is brought along:

1. One spare life jacket for every 12 persons; and
2. Throw lines.

(f) For canoeing and kayaking, the facility shall ensure that:

1. Each canoe and kayak has flotation at either end;
2. Each canoe and kayak has an extra paddle;
3. All equipment is secured;
4. Spray covers, if used, release promptly; and
5. The water temperature is 55 degrees Fahrenheit or higher unless a wet suit is provided to each child and staff member.

(g) For canoe or kayak trips in water with rapids rated Class III on the International Scale of River Difficulty (hereinafter referred to as the ISR/D) developed by The American Canoe Association, the facility shall ensure that:

1. All children and staff members have completed at least three trips on water with rapids rated as Class I or II by the ISR/D; and
2. All children and staff members wear helmets that are secured under the chin.

(h) The facility shall not take children on water with rapids rated Class IV or higher on the ISR/D.

(i) For tubing, the facility shall prohibit trips when the water is:

1. Less than 55 degrees Fahrenheit; and/or
2. Rated above Class I on the ISR/D.

10:127-9.6 Caving

(a) The facility shall ensure that:

1. No child or staff member who is known to be claustrophobic is taken on a caving trip;
2. All children and staff members wear helmets that are secured under the chin at all times;
3. At least three-quarters of the children on the caving trip are 12 years of age or older;
4. Children wear gloves if crawling is required;
5. Children have had at least two caving expeditions in horizontal caves before going into a vertical cave;
6. Children do not climb in vertical caves by hand-over-hand ropes methods;
7. Children and staff members do not run or jump in the cave;
8. All debris and human waste from children and staff members are carried out of the cave;
9. Animals and plants are left unharmed; and
10. No marking or vandalism is done within the cave by children or staff members.

(b) The facility shall ensure that at least one staff member on the trip:

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1. Knows how to contact a local emergency rescue squad, such as the Cave Rescue Communications Network;
2. Is familiar with the terrain of the cave;
3. Carries a map of the cave, if available; and
4. Knows how to assist a child or staff member who becomes claustrophobic.

(c) For non-commercial caves, the facility shall obtain written permission to enter the cave from the owner or public authority and maintain this on file at the administrative office for two years from the date of the expedition.

(d) The facility shall ensure that the following equipment is brought along on all non-commercial caving expeditions:

1. A space blanket;
2. A whistle;
3. Three sources of light, one of which is either carbide, electric or a miner's headlamp;
4. Waterproof matches;
5. Potable water;
6. Climbing rope;
7. Emergency food;
8. Spare clothes; and
9. A first aid kit.

10:127-9.7 Hiking

(a) The requirements of this section shall apply to all walks or hiking expeditions in remote areas that are away from ordinary means of communication.

(b) The facility shall ensure that:

1. At least two staff members carry and know how to use a compass;
2. A first aid kit is brought along that includes treatment for snake, animal and insect bites, and treatment for contact with poisonous plants;
3. All children and staff members wear footwear appropriate for hiking;
4. No child or staff member carries a pack weighing more than 45 percent of his or her body weight; and
5. No child or staff member is allowed to destroy the environment.

(c) The facility shall ensure that each child and staff member has access to potable water.

10:127-9.8 Horseback riding

(a) The facility shall ensure that all staff members and children who go horseback riding wear shoes or boots that have heels, long trousers, and approved protective head gear that is secured under the chin.

(b) The facility shall ensure that:

1. The horse can be ridden and controlled by the rider according to his or her level of experience;
2. Two or more persons do not ride a horse at the same time;
3. The time a horse spends in ring riding is limited to a total of six hours a day, with no more than three hours of riding without at least a 15-minute break; and
4. The time a horse spends in trail riding is limited to a total of eight hours a day, with no more than four hours of riding without at least a 15-minute break.

(c) The facility shall ensure that horses it owns are:

1. Checked daily, including the mouth;
2. Checked daily for cracked feet and reshod as necessary;
3. Fed at least once a day or according to a specified feeding schedule; and
4. Given water at least once a day or according to a specified watering schedule.

(d) The facility shall retain on file at the barn housing the horses or at the administrative office documentation of compliance with the requirements specified in (c) above.

10:127-9.9 Ropes initiatives and rock climbing

(a) The facility shall ensure that staff members:

1. State the objectives of the ropes course or climbing trip to the children;
2. Emphasize the importance of safety procedures of each initiative to the children before starting the activity;

3. Allow each child to decide whether or not to participate in a ropes course;
4. Inspect the ropes before each group of children uses them; and
5. Demonstrate effective observation ("spotting") and how one is secured by a rope ("belayed").

(b) The facility shall prohibit:

1. Smoking near the ropes;
2. The wearing of jewelry, loose clothing and hair, and eyeglasses that are not secured that may be hazardous to participants or spotters;
3. Unsafe practices including, but not limited to, solo climbing, hanging upside down, throwing people or over-straining; and
4. The activity known as the "electric fence," in which a rope is attached to trees or poles and suspended four feet from the ground in a circle, and children standing inside the rope are expected to get out without touching the rope or passing under the rope.

(c) The facility shall ensure that persons on high ropes or rock climbing activities:

1. Are individually secured with an approved rope, or "belayed"; and
2. Wear helmets that are fastened under the chin.

(d) The facility shall document and maintain on file at the site of the ropes course or at the administrative office that all belay ropes are:

1. Approved by the Union of International Alpine Association (UIAA);
2. Visually inspected by staff members before use and discarded if the rope appears frayed or damaged; and
3. Logged for use and retired at four years from the date of purchase or after the rope has sustained the number of falls that the manufacturer's label indicates that the rope can sustain. The facility shall develop and implement a system for measuring the rope's usable life.

(e) The facility shall ensure that all carbiners that are used to secure belay ropes are constructed of steel or a metal of equal strength and hardness, and have a locking gate.

10:127-9.10 Sailing and boating

(a) The facility shall ensure that all sailing vessels and motor boats used by children and staff comply with all applicable Federal, state and local laws.

(b) The facility shall develop and have on file at the administrative office a plan for each boating activity specifying:

1. A description of the boat and engine, if applicable;
2. The names of all persons aboard;
3. The survival equipment on board;
4. The itinerary; and
5. The phone number of the closest Coast Guard station.

(c) The facility shall ensure that at least one staff member has completed a boating course offered by the U.S. Coast Guard Auxiliary, U.S. Power Squad, American Red Cross, or the equivalent.

(d) The facility shall ensure that the following non-commercial boats have a current decal indicating a satisfactory rating on a courtesy inspection by the U.S. Coast Guard Auxiliary;

1. For motor boats, 12 feet to 65 feet; and
2. For sailboats, 16 feet to 65 feet.

(e) For sailboats and motor boats less than 16 feet, the facility shall ensure that there is a throw line and a personal flotation device (PFD) rated Class I, Class II or III by the U.S. Coast Guard on board for every passenger.

(f) The facility shall not take Division supervised children sailing and boating outside U.S. coastal waters, unless permission is obtained from the Division.

(g) The facility shall ensure that all marine heads (toilets) are certified by the U.S. Coast Guard of a type authorized for the area where the boating will occur.

10:127-9.11 Snow skiing

(a) The facility shall not permit skiing in areas known to have avalanches or in temperatures below zero degrees Fahrenheit.

(b) The facility shall ensure that staff members:

1. Are familiar with the terrain; and

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2. Carry a ski repair kit when skiing in remote areas.

(c) The facility shall ensure that all children and staff members use ski equipment that is appropriate for each person's height, weight and ability and that bindings are secure.

(d) The facility shall ensure that all children and staff members wear appropriate clothing, gloves and eye protection.

10:127-9.12 Solos (solitary activities)

(a) The facility shall ensure that children freely consent to do a solo, defined as a camping experience where a child is living away from direct supervision of staff members, and shall not coerce or force the children to do a solo.

(b) The facility shall:

1. Limit solos to a maximum of 72 hours;
2. Ensure that children know the boundaries of the solo activity; and
3. Advise children they are prohibited from making fires and from rock climbing.

(c) The facility shall ensure that the children receive the following equipment:

1. A whistle to signal for help;
2. Shelter such as a tent or tarpaulin;
3. Three liters of water a day;
4. Food sufficient for three meals a day;
5. A flashlight; and
6. At least one change of clothes appropriate for the weather.

(d) The facility shall ensure that staff members:

1. Communicate with the child at least twice a day by whistle, radio or other means to check on his or her safety and document all contacts in the shift log; and
2. Are available to provide face-to-face contact and care immediately if a child requests attention from staff members.

(e) The facility shall not allow children to do a solo in areas with bodies of water deeper than four feet or in areas having rivers or streams with a strong water current.

10:127-9.13 Swimming

(a) A facility using off-grounds swimming facilities that are not supervised public recreational bathing facilities shall ensure that at least one staff member has a valid lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or out-of-State health department or other appropriate authority when up to eight children are present, and two staff members have a valid lifesaving or lifeguarding certificate when nine or more children are present.

1. Whenever nine or more children are swimming, the facility shall ensure that at least one lifeguard remains out of the water and is located in a position where he or she can observe all swimmers.

2. No staff member shall assume lifeguarding responsibility for more than three hours without a break.

(b) The facility shall prohibit swimming:

1. In swift and rough water;
2. At night time;
3. Under docks; and
4. When the water temperature is less than 55 degrees Fahrenheit.

(c) The facility shall test each child's swimming ability. If a child cannot swim 100 feet, tread water for three minutes and swim under water for 10 feet, the facility shall ensure that the child wears a life jacket whenever he or she is in water over four and one-half feet deep or less if the water is over the child's head, unless under direct supervision for swimming instruction. The facility shall ensure that the life jacket:

1. Indicates a Class I, Class II, or Class III personal flotation device (PFD) rating by the U.S. Coast Guard; and
2. Is never used as a cushion for sitting or kneeling at any time.

(d) The facility shall provide staff members with the following equipment:

1. Whistle; and
2. Ring buoy with rope.

10:127-9.14 Water skiing

(a) The facility shall ensure that:

1. No water skiing occurs after sunset or before sunrise;

2. No water skiing occurs in water that has debris;

3. The water skier wears a personal flotation device (PFD) rated Class II or III by the U.S. Coast Guard;

4. A staff member or responsible child other than the boat driver sits in the boat and acts as an observer of the water skier;

5. There is one staff member for every six additional children on the dock or on land; and

6. The motor boat used for water skiing meets all of the regulations as specified in N.J.A.C. 10:127-9.10.

10:127-9.15 Camping

(a) The facility shall obtain and maintain on file at the administrative office all permits, certificates or licenses that are required by the host state and local governments when using a campsite.

(b) The facility shall ensure that all campsites it utilizes are located in areas that are well-drained and free of observable seepage.

(c) The facility shall ensure that all tents, teepees and canvas on covered wagons are:

1. Made of fire retardant material; and
2. Made of waterproof material that have seams that are coated to resist water.

(d) The facility shall ensure that cabins, tents that are designed for two or more children, teepees and covered wagons when used for sleeping provide:

1. At least 20 square feet per person (for teepees, usable space is measured from the four foot level from the ground and does not include space taken up by any inside liners);
2. At least 30 inches between beds and sleeping bags;
3. At least six feet between heads of sleepers; and
4. Cross ventilation.

(e) The facility may follow the manufacturer's tent capacity instead of the requirements identified in (d) above when children and staff utilize a tent(s) for three days or less.

(f) The facility shall prohibit smoking of tobacco products and cooking in all tents, teepees and covered wagons.

(g) The facility shall ensure that male and female children do not sleep in the same quarters.

(h) If the facility uses sleeping bags instead of beds or bed linens, the facility shall ensure that sleeping bags are:

1. Flame resistant;
2. When in use, aired at least every five days and cleaned at least once a month and more often if necessary;
3. Sufficient for the temperatures where the sleeping bags will be used, as indicated by the manufacturer's label; and
4. Placed on a mat or padding when the air temperature at night is below 35 degrees Fahrenheit.

(i) If the facility uses bunk beds, the facility shall ensure that bunk beds:

1. Have railings on top bunks that are no more than 3½ inches from the top of the bed frame;
2. Have mattresses that are at least five inches from the top of the railing; and
3. Are limited to two in height.

(j) If the facility uses latrines instead of toilets, the facility shall ensure that all latrines:

1. Provide for privacy;
2. Are dug at least six feet deep; and
3. Are at least 100 feet from the campsite and bodies of water.

(k) The facility using latrines shall ensure that there is one latrine for every 10 persons.

(l) Facilities using cabins, tents or teepees for over seven continuous days shall ensure that:

1. There is one shower or bathtub for every 10 children and staff members;
2. The children have access to bathing facilities every day during normal waking hours; and
3. The children have privacy when bathing.

(m) Facilities that camp overnight for seven or fewer continuous days shall ensure that children have access to bathing facilities or are provided with other means of maintaining personal hygiene. These may include, but are not limited to, wet towels, dry shampoo and using showers in schools or in other public facilities.

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(n) Whenever regular plumbing facilities are not available for bathing or washing, the facility shall:

1. Ensure that all washing is done with biodegradable non-detergent soap; and
2. Prohibit all washing and bathing in lakes, rivers and streams.

10:127-9.16 Requirements for wagon trains

(a) The facility shall ensure that the canvas and wagon wheels are in good repair.

(b) If horses are used, the facility shall ensure that the requirements regarding the care of horses, as specified in N.J.A.C. 10:127-9.8, are met.

(c) If animals other than horses are used, the facility shall:

1. Limit travel to 10 hours a day;
2. Water the animals at least every four hours;
3. Develop and maintain on file a feed plan; and
4. Check the animals daily for broken hooves and bones.

10:127-9.17 Health and sanitary practices

(a) Before a child participates in a scheduled adventure activity, the facility shall ensure that the child has had a health examination performed by a licensed physician that documents:

1. That the child can perform each type of adventure activity that he or she will be asked to do;
2. Receipt of a tetanus shot or booster shot as appropriate;
3. Notation of asthma, allergies or dietary needs; and
4. Notation of whether the child is on medication that would require the child to avoid using sun screen and/or to take other special precautions.

(b) Within 30 days of a child's forthcoming participation in an adventure activity, the facility shall document in writing and maintain on file in the child's record that the child's current health status, as determined by a physician or nurse in consultation with a physician, allows the child to engage in the specified adventure activity.

(c) The facility shall develop and give to each staff member a written policy for treating:

1. Snake, animal and insect bites; and
2. Ingestion of or contact with poisonous plants.

(d) The facility shall ensure that all perishable food is refrigerated at a temperature of 45 degrees Fahrenheit or lower.

(e) The facility shall ensure that all non-disposable utensils used for eating and preparing food are:

1. Not used by another person before rewashing;
2. Washed and rinsed in water that is at least 180 degrees Fahrenheit or water that has been sanitized chemically; and
3. Free of cracks.

(f) The facility shall ensure that all water in streams and lakes that is used for drinking, food preparation and dishwashing is boiled, filtered or purified with iodine or tablets specifically designed to purify water.

(g) The facility shall corral or tie the animals, other than household pets, in an area located at least 50 feet from any areas where food is prepared, cooked or served.

(h) The facility shall:

1. Use fly repellants as necessary;
2. Remove manure daily to a distance of at least 100 feet from the campsite, cooking and dining areas; and
3. Dispose of animal wastes through burial in a sanitary manner.

10:127-9.18 Qualifications for staff supervising adventure activities

(a) The facility shall comply with the applicable rules specifying criminal disclosure, academic credentials, and years of experience for the director, social service staff, and direct child care staff as specified in N.J.A.C. 10:127-5.1, 5.2 and 5.3.

(b) For all ropes initiatives, rock climbing and water activities, except swimming at supervised public recreational bathing facilities, the facility shall ensure that:

1. The adventure activity program is certified by an organization with recognized expertise in the applicable activity; and/or
2. At least one staff member is certified to conduct the adventure activity.

(c) For land activities other than ropes initiatives and rock climbing, the facility shall ensure that at least one staff member:

1. Is certified to conduct the adventure activity; or
2. Has had at least one year of experience and demonstrated skill in the adventure activity for which he or she will be supervising children.

(d) The facility shall ensure that for each adventure activity there is at least one staff member present who is currently certified in first aid and cardiopulmonary resuscitation (CPR), as defined by a recognized health organization (such as the American Red Cross).

(e) The facility shall ensure that for each adventure activity there are at least two staff members present who are currently certified in first aid and CPR when there are nine or more children present.

10:127-9.19 Staff to child ratio requirements

(a) When children are engaged in an adventure activity, the facility shall ensure that:

1. There is at least one staff member present when there are eight or fewer children engaged in an adventure activity as specified in N.J.A.C. 10:127-9.5(c)1 and 9.18(d).

2. There are at least two staff members present when nine or more children are engaged in an adventure activity as specified in N.J.A.C. 10:127-9.5(c)2 and 9.18(e); and

3. If more than 12 children are involved, there is one staff member for every additional six children.

(b) For purposes of determining whether a required staff ratio is met, only those staff members who are providing direct care and supervision of the children shall be counted. These staff may be regular staff members or adventure staff members.

10:127-9.20 Special requirements for communication and visiting

(a) The requirements in this section shall apply only to facilities providing or contracting for adventure activities that:

1. Are located in areas that are remote or away from ordinary means of communication; or

2. Use travel, including, but not limited to, backpacking, sailing or a wagon train.

(b) The facility shall permit family members, the Division's case manager or other placing agency to visit the child where he or she is currently living and shall provide comfortable inside space when the weather prohibits outside visitation.

1. The facility shall provide privacy for all visits between the child and the Division's case manager or other placing agency.

2. The facility shall provide privacy for family visits unless the facility documents in the child's record that the child would be at risk during a private family visit.

(c) The facility shall develop and maintain on file, in the administrative office, plans and procedures to ensure that each child:

1. Can receive an emergency message from his or her family and from the Division's case manager or other placing agency within 24 hours of the family member or the Division's case manager or other placing agency contacting the facility's administrative office;

2. Is given necessary postage to send mail to family members, the Division's case manager or other placing agency; and

3. Can receive mail from his or her family and the Division's case manager or other placing agency on a weekly basis.

(d) The facility shall permit each child to make private telephone calls to the Division's case manager or other placing agency, upon reasonable request.

(e) The facility shall permit each child to make a telephone call at the facility's expense to a family member at least every other week.

1. The facility may impose a time limit of 15 minutes on telephone calls made by children to family members.

2. The facility may require children to telephone family members at off-peak times.

3. The facility shall not use electronic devices to monitor children's telephone calls to family members, but may observe their reaction during the telephone call.

4. The facility shall maintain documentation that children were permitted to make telephone calls at the facility's expense to family members. Such documentation may include, but is not limited to, copies of telephone bills or notes in logs.

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(f) The facility shall not prohibit a child from receiving messages or mail or from making bi-weekly telephone calls as a consequence for misbehavior.

(g) The facility shall explain its policies and procedures to all families and children upon admission and give parents a written explanation of the policy for visiting and communication. This explanation shall include the procedures for sending emergency messages and mail.

SUBCHAPTER 10. SERVICES FOR PREGNANT AND PARENTING ADOLESCENTS

10:127-10.1 General requirements

(a) Any facility that provides services to pregnant adolescents and adolescent parents caring for their children shall meet all requirements of this subchapter and all applicable requirements of N.J.A.C. 10:127-1 through 9.

(b) The facility shall provide services that include, but are not limited to, the following:

1. Services regarding paternal involvement;
2. Services to the adolescent's family;
3. Parenting education;
4. Infant stimulation;
5. Health education and physical care of the adolescent mothers and infants;
6. Nutrition; and
7. Life skills development.

(c) The facility shall provide the following indoor space:

1. A private place where adolescents can store their belongings and those of their infants' and shall provide the adolescents access to this place at all times;
2. Sufficient space to accommodate tables and chairs for all adolescents and on-duty child care staff to eat meals together;
3. Adequate space for the implementation of treatment services including individual counseling sessions, parent training sessions, family counseling sessions and case management planning meetings; and
4. The following additional floor space:

- i. At least 70 square feet for the first occupant of a bedroom and 50 additional square feet for each additional occupant. The facility shall not allow more than four occupants, including adolescents and/or infants, to sleep in the same bedroom; and
- ii. For each adolescent and infant, at least 30 square feet of common living space, defined as those areas that adolescents and infants can use for socializing or recreation during waking hours. The dining area shall not be included in determining compliance with this requirement, unless the dining area is accessible to adolescents and infants outside of meal time.

(d) The facility shall maintain all indoor areas in a safe and sanitary manner by ensuring that:

1. There are no poisonous plants;
2. Any corrosive agents, insecticides, bleaches, detergents, polishes, any products under pressure in an aerosol spray can, and any toxic substances are stored in locked cabinets or enclosed in areas not accessible to infants;
3. All electrical outlets accessible to infants have protective covers;
4. All fluorescent tubes and incandescent light bulbs have protective covers or shields;
5. All windows and other glass surfaces that are not made of safety glass and that are located within three feet above the floor shall have protective guards unless the facility does not provide services to ambulatory infants or toddlers;
6. Staff has access to any bedrooms that the adolescents are allowed to lock;
7. Non-permanent safety barriers (safety gates) are installed to prevent infants from falling down stairs, ramps, balconies, porches or elevated play areas;
8. Materials and furniture for indoor and outdoor use are of sturdy and safe construction, easy to clean and free of hazards that may be injurious to adolescents and infants;
9. Infants are kept away from hot stoves, irons and ironing boards, knives, glassware and other equipment that may cause injury; and

10. Poisons, insect traps, and rodent traps are kept out of the reach of infants.

(e) The facility shall maintain all outdoor areas in a safe and sanitary manner by ensuring that:

1. Non-permanent safety barriers (safety gates) are installed to block steps used by infants, unless the steps are blocked by a door;
2. Snow is removed from sidewalks and from the walkways and paths leading to the entrances and exits of the facility:
 - i. Within 24 hours of cessation of snowfall; or
 - ii. According to local ordinance; and
3. All drains and wells have protective coverings.

(f) The facility shall provide a crib for each infant under 18 months of age but may allow infants to sleep in a playpen or on a mat at least one inch thick on the floor for naps during the daytime.

(g) The facility shall provide a crib or bed for each infant 18 months of age or older.

(h) The facility shall ensure that:

1. Crib and playpen slats are no more than 2 3/8 inches apart;
2. Crib, bed and playpen mattresses are fire retardant;
3. The top rails of the crib or playpen are at least 19 inches above the mattress;
4. Any locks or latches on the dropside of a crib are safe from accidental release;
5. The mattress used in all cribs and playpens fits snugly;
6. Each infant has sheets, blankets and other coverings for his or her exclusive use, which are:
 - i. Immediately replaced when wet, soiled or damaged; and
 - ii. Laundered at least once a week;
7. Cribs and playpens are free of hazards including, but not limited to, use of mobiles (for infants six months of age or older) and excessive toys; and
8. Beds or cribs not used solely for a specific infant shall have linens and blankets replaced with clean linens and blankets before each use.
 - (i) The facility shall provide beds for all adolescents.
 - (j) The facility shall prohibit the use of bunk beds for pregnant adolescents, adolescent mothers and infants.

10:127-10.2 Staff and staff ratio requirements

(a) The facility shall only employ staff members who are at least 21 years of age.

(b) Facilities may use student interns and volunteers as specified in N.J.A.C. 10:127-5.5 to support the activities of regular paid staff members. However, student interns and volunteers below the age of 21 years shall not be permitted to provide activities or transportation by themselves.

(c) Facilities that serve three or more pregnant or parenting adolescents shall have at least one staff person who is certified in first aid and CPR, as defined by a recognized health organization (such as the American Red Cross) in the facility during periods of operation.

(d) Facilities serving three or more adolescents shall have a minimum of two staff on duty at all times. Once this minimum is met, the following staff ratios shall be used to determine staff ratio requirements for the actual number of adolescents and infants present in the facility:

Adolescents and/or Infants Present in the Facility	Staff Ratio Requirement
Waking Hours—Infants only	1 staff: 4 infants
Waking Hours—Adolescents only	1 staff: 6 adolescents
Waking Hours—Adolescents and their infants	1 staff: 6 residents
Sleeping Hours—Adolescents with or without infants	*1 staff: 6 residents

*At least one staff member shall be awake.

(e) A facility may permit an adolescent to care for another adolescent's infant if the following conditions are met:

1. The adolescent who is assuming the care of another adolescent's infant cares for no more than one other infant in addition to her own at any one time;
2. The adolescents discuss the expectations of the caregiver, including duration of child care, infant's nutritional and toileting needs,

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and whether the mother will make arrangements for compensation; and

3. The facility documents approval of the arrangement, including how these arrangements will protect the health and well-being of the infants.

10:127-10.3 Staff development and training

(a) Upon employment, the facility shall document in each staff member's personnel record that each staff member received instruction in:

1. The facility's statement of purpose; and
2. Protocols for administering medication.

(b) The facility shall develop, document, and maintain on file a training plan to ensure that the director, social service worker(s) and child care staff receive a total of at least 24 hours of training each year that includes at least one hour of training in each of the following topics:

1. Recognizing and reporting child abuse and neglect;
2. Evacuating the facility;
3. Infant and adolescent growth and development;
4. Discipline of adolescents and infants;
5. Infant care and stimulation;
6. Drug and alcohol abuse;
7. Human sexuality and AIDS prevention; and
8. Depression and suicide prevention.

(c) The facility's training plan may include in-depth discussions at staff meetings, attendance at workshops, conferences or relevant college courses.

(d) The facility may train staff in evacuating the facility, infant care and development, infant discipline, drug and alcohol abuse, and human sexuality and AIDS prevention by including staff in instructional programs attended by the adolescents.

10:127-10.4 Case management requirements

(a) The facility shall develop, implement and maintain on file a written case management plan for each adolescent and her infant.

(b) The facility shall form a case management planning team that is responsible for the development of a case management plan for each adolescent and infant. The team shall consist of each of the following:

1. Staff members representing the clinical and social work components;
2. Staff members representing the child care component;
3. Staff members representing the administration of the facility, if necessary;
4. Representatives from the adolescent's responsible school district and/or current school district, if necessary;
5. A representative from the Division or other placing agency;
6. The adolescent's family, if appropriate; and
7. The infant's father or paternal relatives, if appropriate.

(c) The facility shall document in the adolescent's and infant's record that the Division's case manager or other placing agency representative, the adolescent's therapist, parents or legal guardian, and the responsible and/or current school district, if applicable, were invited to participate as members of the case management planning team and in all subsequent revisions of the plan.

(d) The facility shall develop the initial case management plan within 30 calendar days following an adolescent's and/or her infant's admission and shall review or revise the plan at least every three months thereafter.

(e) The case management plan shall include the following information:

1. The name of the adolescent, and infant, if applicable;
2. The date of admission of the adolescent, and infant, if applicable;
3. The date when the plan is developed or revised;
4. The names and titles of all persons attending the development and review meeting;
5. The adolescent's plan for and receipt of medical and dental care;
6. The infant's plan for and receipt of medical care, and dental care if the infant is three years of age or older;

7. Documentation that a referral to the Supplemental Feeding Program for Women, Infant and Children (WIC) was made and that any necessary follow up was done, or documentation that the adolescent or infant was ineligible for WIC;

8. The adolescent's social, familial, emotional and behavioral strengths and weaknesses;

9. An assessment of the infant's father's interest in the child, including a notation of whether the infant's paternity has been legally established;

10. An assessment of the adolescent's parenting capabilities including, but not limited to, the adolescent's ability to feed and play with her infant, provide for her infant's grooming, provide medical care, and use child care responsibly, if applicable;

11. An assessment of the adolescent's academic progress, including a report of attendance and grades obtained within 30 calendar days of the case planning meeting;

12. An assessment of the health and development of the infant, including available developmental assessments from health examinations;

13. Specific treatment goal(s) and objectives in each program area and a projected time frame for completing each goal and objective;

14. The name of the person responsible for the implementation of each treatment goal and objective;

15. Techniques to be used to achieve each treatment goal and objective;

16. Criteria to be used to determine whether each treatment goal is achieved;

17. Notation of progress made from any previous plan;

18. Efforts to achieve timely discharge, including but not limited to services needed by parents or other persons to whom the adolescent will be discharged; and

19. Documentation of how the adolescent is being prepared for self-sufficiency. This documentation shall include, but not be limited to instruction in:

i. Food preparation, including participation in preparing at least one meal a week and training in food shopping at least once a month;

ii. Budgeting and money management, including, but not limited to, discussion of standard deductions from a paycheck, costs for housing and transportation and how to open and use a savings and checking account; and

iii. Career planning and job training, including, but not limited to, discussion of entry level requirements for job openings in the community and assistance in obtaining the qualifications for these positions.

(f) The facility shall send to the Division's case manager or other placing agency a copy of the case management plan and any revisions to it within 30 calendar days after the planning meeting and retain a copy of the correspondence in the adolescent's and infant's record.

(g) The facility shall explain to the adolescent, her parents, and all persons responsible, the adolescent's and infant's case management plan and any revisions to it. If the facility does not explain the adolescent's and infant's case management plan to the adolescent's parents, the facility shall document in the adolescent's case record the reasons that the plan was not explained to the parents.

(h) The facility shall provide and monitor all services specified in the case management plan and document the rationale for any deviations from the most recent case management plan in the adolescent's and infant's record.

(i) When an adolescent mother expresses interest in surrendering her infant for adoption, the facility shall:

1. Explain to the adolescent mother the implications and process of adoption;

2. Notify the Division's case manager or other placing agency;

3. Notify the adolescent's parent or legal guardian, if applicable; and

4. Provide the adolescent with information in order to contact legal counsel if she so chooses.

10:127-10.5 Discharge planning requirements

(a) For discharges that can be anticipated at least 30 calendar days ahead of time, the facility shall develop a plan with the

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Division's case manager or other placing agency at least 30 calendar days before the adolescent's or infant's discharge. The plan shall specify the following information:

1. The date of admission;
2. The anticipated date of discharge;
3. Details of the events and circumstances leading to the decision to discharge;
4. The name and address of the individual or agency to whom the adolescent or infant will be discharged and the rationale for planning a discharge to that individual or agency;
5. An assessment of the adolescent's continuing needs, including, but not limited to, consideration of health care, behavior management and educational or vocational training; and
6. An assessment of the infant's continuing needs, including, but not limited to, consideration of health and child care and referral to the Supplemental Feeding Program for Women, Infants and Children (WIC).

(b) For discharges that were not anticipated at least 30 calendar days ahead of time, the facility shall send the Division's case manager or other placing agency a written plan at least 10 working days prior to the adolescent's or the infant's discharge. This plan shall specify the following information:

1. The date of admission;
2. Details of the events and circumstances leading to the discharge;
3. Efforts made to locate a runaway, if applicable;
4. An assessment of the adolescent's continuing needs, including but not limited to health care, behavior management and educational and vocational training;
5. An assessment of the infant's health and child care needs, if applicable; and
6. Recommendations for providing follow-up services in the adolescent's or infant's new environment, including consideration of whether the adolescent or infant would be eligible for WIC.

(c) For emergency discharges that result in the immediate placement of the adolescent or infant in a facility such as a detention center, hospital, psychiatric facility or any other placement outside the facility, the facility shall notify the Division's case manager or other placing agency by the next working day by telephone. The facility shall send a written discharge plan within 15 days after the adolescent's or infant's discharge. This plan shall specify the information outlined in (b)1 through 6 above.

10:127-10.6 Services regarding paternal involvement

(a) The facility shall explain to the adolescent mother:

1. The benefits of establishing paternity for her infant and her options for establishing paternity;
2. How to establish paternity of the infant, including:
 - i. Clarification that naming a father on her infant's birth certificate does not establish paternity unless she is or was married to the infant's father; and
 - ii. Information about the procedures for establishing paternity;
3. How to deal with future questions her infant may have about his or her father;
4. How to manage visitation arrangements between her infant and the infant's father; and
5. That establishing paternity is not a condition for remaining in the facility.

(b) The facility shall discuss the topics specified in (a) above in individual or group meetings with adolescent mothers and assist the adolescent in establishing paternity if she so requests. These individual or group meetings shall be held:

- i. Weekly for facilities that discharge the adolescents soon after they deliver; and
- ii. At least monthly for facilities that continue to provide services to the adolescents and their infants after delivery.

(c) When the infant's father is known and the adolescent mother agrees, the facility shall attempt at least two in-person contacts with him within two months of the adolescent's admission to the facility to discuss his interest in his child.

1. If the father does not respond to initial contacts made by the facility, the facility shall send a certified letter to all known addresses

where the father may be residing indicating the facility's interest in discussing his involvement with his child.

2. The facility shall not be obligated to comply with (c)1 above if it documents that the father's involvement would place the adolescent or infant at physical or emotional risk.

(d) The facility shall allow the fathers of infants residing in the facility to attend parenting classes provided by the facility.

10:127-10.7 Services to the adolescent's family

(a) The facility shall attempt two in-person contacts with the adolescent's parents, or other adult relatives that are responsible for the adolescent if the parents are not available, within two months of the adolescent's admission to discuss the case management plan.

1. If the adolescent's parents or other responsible adult relatives do not respond to the initial contacts, the facility shall send a certified letter to all known addresses where they may be residing indicating the facility's interest in discussing their involvement with their daughter and grandchild.

2. The facility shall not be obligated to comply with (a)1 above if it documents that the family's involvement would place the adolescent or infant at physical or emotional risk.

10:127-10.8 Parenting education

(a) The facility shall have a written curriculum or guidelines for providing parenting education that shall include, but not be limited to, the following topics:

1. Infant and child development including alternatives to punishment and options for toilet training;
2. Age-appropriate stimulation, games and other recreational activities for children;
3. Providing for child care;
4. Health and nutritional care including an explanation of the Supplemental Feeding Program for Women, Infants and Children (WIC);
5. Relationships with the adolescent mother's family;
6. Dealing with feelings about the adolescent's relationship with the infant's father; and
7. Options for placing the infant in a separate foster care placement or for adoption.

(b) The facility shall provide parenting education on a group or individual basis to each adolescent.

(c) The facility shall provide each adolescent at least one hour of parenting education each week until the facility documents that the adolescent has mastered skills or resolved issues specified in (a) above.

(d) The facility shall involve the adolescent in shopping for her infant's clothes and other necessities.

(e) The facility shall provide information to the adolescent on preventing child abuse and neglect, including, but not limited to:

1. Discussion of mandatory reporting;
2. How to identify and report abuse and neglect; and
3. Resources to help parents avoid abusing or neglecting their children.

10:127-10.9 Infant stimulation

(a) The facility shall ensure that all infants under three months of age are held and spoken to, and placed in a position to observe group activity when they are awake during daytime hours.

(b) The facility shall ensure that infants up to six months of age are held by their mother or staff members throughout all bottle feedings and that older infants are held if they are incapable of holding a bottle on their own.

(c) The facility shall ensure that all infants have toys that are accessible to them in their bedrooms.

(d) The facility shall ensure that when adolescent mothers are in school or working, their infants are cared for, either in the facility, in a licensed child care center or in a licensed or registered family day care or group day care home.

(e) Facilities that provide services to adolescent mothers and infants between three and 18 months of age shall ensure that the adolescent mothers engage in at least four of the following activities with their infants for at least a total of 45 minutes each day:

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1. Sensory activities: crib mobiles, teething toys, busy boxes, baby mirrors, rattles, melody chimes, squeeze toys, or other comparable supplies or equipment;

2. Language activities: picture books, toy telephones, records, hand puppets, stuffed animals, soft washable dolls, photographs, or other comparable supplies or equipment;

3. Manipulative activities: squeeze and grip toys, boxes, sorting and stacking toys, three or four-piece wooden inlay puzzles, puzzle blocks, simple threading toys, mobile pull toys, balls, or other comparable supplies or equipment;

4. Building activities: soft lightweight blocks, toy cars, trains or boats, figures of animals and people, stacking rings or cups, nesting toys, or other comparable supplies or equipment;

5. Large muscle activities: low climbers, slides, riding or rocking toys, foam or soft plastic balls, gym mats, play tunnels, or other comparable supplies or equipment; or

6. Music activities: rhythm instruments, record player and records, toys equipped with musical tones, musical mobiles, busy boxes, drums, xylophones, pianos, or other comparable supplies or equipment.

(f) Facilities that provide services to adolescent mothers and infants 18 months of age and older shall ensure that adolescent mothers engage in at least four of the following activities with their child for at least a total of 45 minutes each day:

1. Language activities: reading a book, playing with flannel boards, pictures for discussion, materials for recognition, identification or classification, puppets, audio-visual equipment, or other comparable supplies or equipment;

2. Science and math activities: plants and gardening equipment, aquarium with fish or other appropriate live animals, water table and supplies, sand table and supplies, cooking supplies, weather chart, thermometer, counting equipment, or other comparable supplies or equipment;

3. Manipulative activities: puzzles, pegs and pegboards, lacing boards, table top building toys, stencils, dominoes, pounding bench, lotto games, or other comparable supplies or equipment;

4. Large muscle activities: rocking boat, wheel toys, climbers, slides, balance beam, barrels, large cartons, parachute, balls and beanbags, outdoor play equipment, gym mats, or other comparable supplies or equipment;

5. Building activities: unit blocks (minimum of four sizes), transportation toys, farm animals, play people, work bench and tools, table top building toys, building logs, or other comparable supplies or equipment;

6. Art activities: crayons, tempera paint, large brushes and newsprint, finger paint and finger paint paper, construction paper in assorted colors, paste or glue, blunt scissors, collage materials, non-toxic felt tip markers, easels, clay or playdough, or other comparable supplies or equipment; or

7. Music activities: record player and records, piano, organ, guitar, rhythm sticks, drums, cymbals, bells, tape recorder, or other comparable supplies or equipment.

(g) The facility shall ensure that television watching is not used as a substitute for mother-child interaction.

10:27-10.10 Infant toys and equipment

(a) The facility shall only use infant and play equipment that is sturdy and of safe construction, non-toxic and free of hazards.

(b) The facility shall have a choker tube to ensure that all parts of all toys used by infants under three years of age are large enough so they cannot be swallowed by the infants.

(c) The Bureau may also require the facility to take other necessary precautions to promote toy and equipment safety in keeping with recommendations of the United States Consumer Product Safety Commission.

10:127-10.11 Recreation

(a) In addition to the requirements specified in N.J.A.C. 10:127-6.8, the facility shall encourage each adolescent to use her leisure time productively by documenting in the adolescent's case management plan the facility's efforts to:

1. Inform the adolescent of appropriate activities for herself and her infant in the community;

2. Teach the adolescent how to manage time and money, and to be able to participate in recreational activities; and

3. Teach the adolescent how to use public transportation so she and her infant can go to activities in the community.

(b) The facility shall organize monthly outings or planned group activities within the facility for adolescents and their infants.

10:127-10.12 Money and allowance

(a) The facility shall provide opportunities for all adolescents to earn an allowance, unless the adolescent is receiving AFDC benefits.

(b) The facility shall not require an adolescent to assume responsibility for expenses for her care or that of her infant, except for amounts needed to pay for damage done to the facility by the adolescent or her infant.

1. When an adolescent damages the building or the facility's property, the facility shall identify who damaged the building or property in an incident report before requiring the adolescent to pay restitution.

2. When an infant damages the building or the facility's property, the facility shall identify who damaged the property and that the damage resulted from a lack of supervision by the adolescent mother, before requiring the adolescent mother to pay restitution.

3. The restitution payments shall not exceed 50 percent of an adolescent's weekly income from allowance and earnings.

4. Adolescents who are working or have a savings account shall have the option to make a lump sum payment for damages.

5. The facility may offer the adolescent the option of performing additional chores in lieu of restitution payments.

10:127-10.13 Visiting and communication

(a) The facility shall ensure that the adolescents and infants are allowed to have regular contact with family members, including the infant's father.

1. The facility may designate hours for family visits provided that there are at least three opportunities for families to visit each week.

2. The facility may limit family members' visits to designated places within the facility provided that family members visiting with the infant have access to equipment and toys that can foster communication with the infant.

(b) The facility shall develop a visiting policy and explain the visiting policy to the adolescent and her parent(s) at intake. The visiting policy shall specify:

1. How visiting may be arranged;

2. That family visits shall not be denied for an adolescent's infraction of rules, but may be denied as part of a case management plan after consultation with the Division's case manager or other placing agency;

3. That family members who are under the influence of drugs or alcohol shall not be allowed to transport the adolescent or her infant;

4. That the adolescent and infant may visit with representatives from the Division or other placing agency upon request and that these visits shall not be denied for any reason;

5. The hours when an adolescent may visit with friends and whether the adolescent's visits with friends may be curtailed for infraction of the rules;

6. That the facility may overrule an adolescent's arrangements for leaving her infant with persons living outside the home; and

7. That family members, including the infant's father, shall not be denied visitation unless the facility documents how they pose a risk to the infant or adolescent.

10:127-10.14 Behavior management

(a) Staff members shall follow all the requirements as specified in N.J.A.C. 10:127-6.14.

(b) The facility shall assign responsibility for the use of restrictive behavior management practices and the discipline, control, and supervision of adolescents to staff members and not delegate that responsibility to other adolescents.

(c) The facility shall prohibit adolescents from using the practices and punishments specified in N.J.A.C. 10:127-6.14 on their own infants or on another infant for whom they are caring.

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(d) The facility shall ensure that no staff member or adolescent mother disciplines an infant for refusing to eat or sleep, or for crying or soiling.

10:127-10.15 Comprehensive health plan for pregnant adolescents

(a) The facility shall ensure that all pregnant adolescents receive comprehensive prenatal care including, but not limited to:

1. Monthly visits to an obstetrician or certified nurse mid-wife during the first 28 weeks of gestation;
2. Biweekly visits to an obstetrician or certified nurse mid-wife from the 29th to 36th week of gestation;
3. Weekly visits to an obstetrician or certified nurse mid-wife from the 36th week of gestation until delivery;
4. Child birth classes provided by a registered nurse or child birth educator; and
5. A post partum visit within six weeks of delivery.

(b) The facility shall ensure that pregnant adolescents make up missed medical appointments.

(c) The facility shall refer all pregnant adolescents to the Supplemental Feeding Program for Women, Infants and Children (WIC) and make necessary follow-up, or document that the pregnant adolescent was ineligible for WIC.

(d) The facility shall ensure that arrangements for the birth of the infant are made by the end of the first trimester. If the adolescent enters the facility after the first trimester, the facility shall ensure that arrangements for delivery are made by the second prenatal visit.

1. The facility shall ensure that a system is established to provide background medical information on the pregnant adolescent to the hospital identified for delivery or at the birthing center identified for delivery.

2. The facility shall document that delivery arrangements have been made by recording the name and address of the selected hospital or birth center in:

- i. The adolescent's record; or
- ii. As part of the administrative record.

(e) The facility shall ensure that a staff member or volunteer accompanies the adolescent to the hospital or birthing center when she is ready to deliver and that the staff member or volunteer remains with the adolescent until health care personnel are assigned to her.

(f) The facility shall arrange for pregnant adolescents to receive a dental examination within three months of admission and every six months thereafter.

10:127-10.16 Comprehensive health plan for infants

(a) The facility shall ensure that infants are referred to the Supplemental Feeding Program for Women, Infants and Children (WIC) and take necessary follow-up, or document that the infant was ineligible for WIC.

(b) Unless contraindicated by the physician, the facility shall ensure that adolescent mothers adhere to the following schedule in obtaining health care for infants:

1. At age one month, the infant receives:
 - i. A physical examination including height, weight, temperature check, and measurement of head and chest circumference; and
 - ii. A check for PKU, if indicated;
2. Between two and two and one-half months of age, the infant receives:
 - i. A physical examination, as specified in (b)1i above; and
 - ii. Immunization for diphtheria, tetanus, pertussis (DPT) and Trivalent Oral Polio Vaccine (TOPV);
3. Between three and one-half and four months, the infant receives a physical examination, and immunizations as specified in (b)2 above;
4. Between five and six months, the infant receives:
 - i. A physical examination, as specified in (b)1i above;
 - ii. Immunization for DPT; and
 - iii. A developmental assessment;
5. Between eight and nine months, the infant receives:
 - i. A physical examination, as specified in (b)1i above;
 - ii. A hemoglobin test; and
 - iii. A sickle cell screening, if indicated;

6. Between 11 and 12 months, the infant receives:
 - i. A physical examination, as specified in (b)1i above.
 - ii. A developmental assessment; and
 - iii. A tuberculin test;
7. At 15 months, the infant receives:
 - i. A physical examination, as specified in (b)1i above;
 - ii. Immunizations for rubella and measles; and
 - iii. At 15 or 16 months, immunization for mumps;
8. At 18 months, the infant receives:
 - i. A physical examination, as specified in (b)1i above;
 - ii. A DPT booster;
 - iii. A TOPV booster; and
 - iv. Immunization for hemophilus influenza Type B;
9. At 24 months and annually thereafter (until age five), the infant receives:
 - i. A physical examination, as specified in (b)1i above;
 - ii. A developmental assessment;
 - iii. A hemoglobin test;
 - iv. Urinalysis, and a tuberculin test if indicated; and
10. At 36 months and semi-annually thereafter, a dental examination.

(b) The facility shall ensure that the adolescent mother obtains a hemophilus influenza Type B (meningitis) immunization for her child when the child is two years of age, or at the earliest date possible thereafter.

(c) The facility shall ensure that the adolescent mother has her child's sight and hearing tested when she takes a child over three and one-half years of age for a medical examination. This testing shall be repeated for children ages four and five years old who remain in the facility.

(d) The facility shall ensure that a child who is five years old receives a DTP booster and a TOPV booster when he or she remains in the facility.

10:127-10.17 Comprehensive health care for adolescent mothers who are not pregnant

(a) The facility shall ensure that all adolescent mothers who are not pregnant and who have not had a health examination within one year prior to admission, receive a comprehensive health examination within 72 hours after admission, unless she has received such a medical examination within 30 days prior to her placement. This comprehensive health examination shall include, but not be limited to, an assessment of:

1. Height and weight;
2. Blood count;
3. Urinalysis;
4. Vision;
5. Hearing; and
6. Gynecological exam.

(b) The facility shall arrange for follow-up medical care recommended as part of the comprehensive health examination.

(c) The facility shall ensure that adolescent mothers receive a dental examination within three months of admission and every six months thereafter.

10:127-10.18 Care of sick infants

(a) When an infant at the facility has an illness or symptom of illness including but not limited to those specified below, the facility shall ensure that the adolescent mother or a staff member contacts a licensed physician:

1. Severe pain or discomfort;
2. Acute diarrhea, characterized as twice the child's usual frequency of bowel movements with a change to a looser consistency within a period of 24 hours;
3. Two or more episodes of acute vomiting within a period of 24 hours;
4. Elevated oral temperature of 101.5 degrees Fahrenheit or over, or axillary temperature of 100.5 degrees Fahrenheit or over in conjunction with behavior changes.
5. Sore throat or severe coughing;
6. Yellow eyes or jaundiced skin;
7. Red eyes with discharge;

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- 8. Infected, untreated skin patches;
- 9. Difficult or rapid breathing;
- 10. Skin rashes, excluding diaper rash, lasting more than one day;
- 11. Weeping or bleeding skin lesions that have not been treated by a physician or nurse;
- 12. Swollen joints;
- 13. Visibly enlarged lymph nodes;
- 14. Stiff neck; or
- 15. Blood in urine.

(b) The facility shall follow the physician's recommendation whether to permit the infant who is ill to have contact with other infants.

10:127-10.19 General medical practices

(a) The facility shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to an adolescent is explained to the adolescent.

1. The facility shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to an infant is explained to the adolescent mother.

2. The facility shall document all of these explanations in the adolescent's record.

(b) When serious accidents or illnesses occur to an infant, the facility shall take necessary emergency action and notify the adolescent, the adolescent's parent(s), if applicable, the Division's Case manager or other placing agency and the Bureau immediately.

(c) When serious accidents or illnesses occur to an adolescent, the facility shall take necessary action and notify the adolescent's parent(s) if she is under 18 years of age, the Division's case manager or other placing agency and the Bureau immediately.

10:127-10.20 Medication

(a) The facility shall ensure that adolescents use only prescription and non-prescription medication that is authorized by a physician.

1. The facility shall permit adolescents to administer medication to their infants and themselves, unless a physician, psychiatrist or psychologist advises otherwise; in such cases, the facility shall document the reasons in the adolescent's record.

2. The facility shall ensure that adolescents follow the advice of the infant's physician for administering medication to their infants.

3. The facility shall supervise the adolescent's administration of all medication she gives to her infant and may require the adolescent to record the information specified in (b) below.

(b) The facility shall maintain a medication log book that contains the following information:

- 1. The name of the adolescent or infant receiving medication, whether prescription or non-prescription;
- 2. The type of medication, dosage, and intervals between dosages;
- 3. What to do if a dosage is missed;
- 4. The reason for the medication;
- 5. The date and time the medication was administered;
- 6. Possible side effects of the medication, if any; and
- 7. The signature and title of staff member or adolescent dispensing medication.

(c) The facility shall ensure that the following procedures for storage are followed:

- 1. Facilities shall keep prescription and non-prescription drugs in a locked cabinet, or, as needed, a locked container in a refrigerator that is inaccessible to infants;
- 2. External drugs and internal drugs shall be stored in separate locked shelves;
- 3. All outdated stocks and prescriptions no longer in use shall be disposed of safely, as specified in N.J.A.C. 10:127-7.4;
- 4. The telephone number of the regional poison control center shall be posted at all medication-dispensing stations and by each telephone; and
- 5. Medical supplies shall be stored in an area accessible to staff members at all times.

(d) In situations where the facility determines that an adolescent is capable of self-administration of prescription birth control-related

supplies, the facility may allow the adolescent to maintain prescription birth control-related supplies among her personal possessions, provided that the facility:

- 1. Provides a locked cabinet or box for storage; and
- 2. Documents the rationale and arrangements for the adolescent to maintain prescription birth control-related supplies.

10:127-10.21 Environmental sanitation requirements for disinfecting

(a) The facility shall first wash with soap and water and then disinfect those items specified below with a solution that shall either be:

1. A commercially prepared disinfectant that indicates it kills bacteria, viruses and parasites. This solution shall be used in accordance with label instructions; or

2. A self-made solution consisting of ¼ cup of household bleach to each gallon of water (one tablespoon per quart), which shall be prepared daily and placed in a labeled, sealed container. This self-made solution shall not be utilized with those items specified in (d)2 below.

(b) The facility shall ensure that the following equipment, items or surfaces are washed and disinfected after each use:

- 1. Toilet training chairs that have first been emptied into a toilet, unless each infant has his or her own toilet training chair;
- 2. Sinks and faucets used for handwashing, if the sink is also used for rinsing a toilet training chair;
- 3. Diapering surfaces, used by more than one infant;
- 4. Toys mouthed by infants before being given to another infant;
- 5. Mops used for cleaning; and
- 6. Oral and rectal thermometers.

(c) The facility shall wash and disinfect the following items at least daily:

- 1. Toilets and toilet seats used by more than one infant;
- 2. Diaper pails and lids used by more than one infant;
- 3. Drinking fountains;
- 4. Water table and water play equipment;
- 5. Play tables; and
- 6. Smooth surfaced non-porous floors in areas used by infants.

(d) The facility shall wash and disinfect the following items not using a self-made solution as specified in (a)2 above, at least weekly, and before use by another infant.

- 1. Cribs, cots, mats, playpens or other sleeping equipment approved by the Bureau; and
- 2. Sheets, blankets or other coverings.

(e) The facility shall wash and disinfect tables used by the infant for eating before each meal.

(f) Facilities that maintain outside sandboxes or play areas containing sand shall ensure that:

- 1. Only asbestos-free sand is used; and
- 2. The sand is maintained in a safe and sanitary manner.

10:127-10.22 Personal hygiene requirements

(a) The facility shall ensure that adolescents and staff members wash their hands with soap and running water immediately:

- 1. Before preparing or serving food;
- 2. After diapering a child;
- 3. After toileting;
- 4. After assisting a child in toileting;
- 5. After caring for a child who appears to be sick;
- 6. After handling animals or their equipment or after coming in contact with an animal's body secretions; and
- 7. After coming into contact with blood, fecal matter, urine, vomit, saliva, nasal secretions or other body fluids or secretions.

(b) The facility shall ensure that adolescents or staff members:

- 1. Change each infant's diaper when wet or soiled; and
- 2. Wash and dry each infant's bottom during each diaper change with an individual disposable wash cloth, paper towel or disposable diaper wipes.

(c) The facility shall ensure that soiled diapers are placed in a closed container that is lined with a leakproof or impervious lining.

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1. Disposable diapers shall be removed from the facility daily and placed in a closed container that is outside the building and used for refuse collection.

2. Non-disposable diapers shall be stored and laundered separately for each child except when the diapers are laundered by a commercial laundry service.

10:127-10.23 Health education and physical care for adolescents and infants

(a) The facility shall ensure that adolescents receive training in personal care, hygiene, and grooming habits.

1. The facility shall discuss the physiological changes experienced during adolescent pregnancy and childbearing with adolescents in the facility.

2. The facility shall instruct adolescents about sexually responsible behavior, including how to protect themselves from pregnancy and sexually transmitted diseases including AIDS.

3. The facility shall instruct all adolescents about the health consequences of cigarette smoking and alcohol and drug use.

(b) The facility shall ensure that each adolescent bathes and grooms her infant daily, and provides other personal hygiene services that are necessary to meet the infant's needs.

1. The facility shall give each adolescent and infant individual towels and washcloths.

2. The facility shall ensure that soap and toilet paper are available for the adolescents and infants at all times.

(c) The facility shall ensure that each adolescent and infant has a personal supply of adequate, clean, well-fitting, and attractive clothing appropriate to his or her age, gender, individual needs, community standards, and season.

1. The facility shall ensure that each adolescent's and infant's clothing is kept clean and in good repair. The facility may require adolescents to do their own laundry and that of their infant.

2. The facility shall not require adolescents or infants to wear any article of clothing that would identify them as a resident of the facility.

3. The facility shall supply adolescents with necessary personal hygiene items.

10:127-10.24 Food and nutrition for infants

(a) In addition to the requirements specified in N.J.A.C. 10:127-6.11, the facility shall ensure that each adolescent mother obtains and follows a written plan developed with the infant's health care provider regarding the feeding schedule, specific formula, nutritional needs and introduction of new food for each infant.

1. The facility shall maintain on file the feeding schedule of each infant residing in the facility in the infant's record.

2. The facility shall ensure that the adolescent makes the feeding schedule available to all of the infant's caregivers.

10:127-10.25 Life skills development

(a) The facility shall ensure that the adolescent mothers receive instruction and experience in the following:

1. Meal planning and meal preparation;
2. Food shopping;
3. Locating affordable housing;
4. Securing appropriate medical and dental services;
5. Utilization of public transportation;
6. Home safety guidelines, including but not limited to:

i. Notifying the local public service or utility company when gas leaks are suspected;

ii. Keeping the child away from a hot stove;

iii. The dangers of open windows when infants are present;

iv. The appropriate methods to rid the home of pests;

v. Fire prevention;

vi. Contacting the appropriate community agency when an emergency occurs;

7. Banking; and

8. Applying for public assistance.

(b) The facility shall document in the adolescent mother's record that she has received the training specified in (a) above.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF DEVELOPMENT FOR SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES

Development of Small Businesses and Women and Minority Businesses

Proposed Readoption: N.J.A.C. 12A:9

Authorized By: Barbara McConnell, Commissioner, Department of Commerce and Economic Development.

Authority: N.J.S.A. 52:27H-6F, P.L. 1987, c.55, specifically section 9.

Proposal Number: PRN 1993-250.

Submit comments by May 19, 1993 to:

Charles Jones, Director

SWMB Division

Department of Commerce and Economic Development

20 West State Street

CN 822

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978) and a gubernatorial waiver (see 25 N.J.R. 1335(a)), N.J.A.C. 12A:9, Development of Small Businesses and Women and Minority Businesses, expires on May 30, 1993. The Department of Commerce and Economic Development has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt these rules without change.

The rules were originally adopted effective March 7, 1988 (see 20 N.J.R. 534(a)), and have not been amended since. The objective of the rules was then and continues to be the implementation of the Division of Development for Small Businesses, and Women and Minority Businesses Act, N.J.S.A. 52:27H-21.7 et seq. The purpose of the Act and these rules is to provide consolidated State services to small businesses and women and minority businesses.

The rules include provisions regarding:

The scope of the Division's role in the Department of Commerce and Economic Development—N.J.A.C. 12A:9-1.1; words and terms used in the rules—N.J.A.C. 12A:9-1.2; the nature of the Division's services—N.J.A.C. 12A:9-1.3; a loan referral and packaging program—N.J.A.C. 12A:9-1.4; a listing of qualified professionals to provide services to small, women, and minority businesses—N.J.A.C. 12A:9-1.5; Division internship programs with institutions of higher education—N.J.A.C. 12A:9-1.6; market research and analysis projects—N.J.A.C. 12A:9-1.7; advertising and marketing assistance—N.J.A.C. 12A:9-1.8; provision of training and information to eligible businesses on bidding for government contracts—N.J.A.C. 12A:9-1.9; the Division's liaison role with other departments and agencies of State, Federal, and local government—N.J.A.C. 12A:9-1.10; assistance in obtaining legal counsel for eligible businesses—N.J.A.C. 12A:9-1.11; financial analysis and accounting assistance—N.J.A.C. 12A:9-1.12; assistance for eligible businesses in obtaining insurance—N.J.A.C. 12A:9-1.13; assistance for eligible businesses in arranging contracts with franchisees—N.J.A.C. 12A:9-1.14; assistance in arranging for loan referral and packaging programs—N.J.A.C. 12A:9-1.15; assistance in negotiating license agreements—N.J.A.C. 12A:9-1.16; assistance for eligible businesses in procuring bonding—N.J.A.C. 12A:9-1.17; referrals to private consultants, institutions and other providers of services at the request of eligible businesses—N.J.A.C. 12A:9-1.18; assistance in finding sources of financing from government sources—N.J.A.C. 12A:9-1.19; information about employee training and development programs—N.J.A.C. 12A:9-1.20; centralization of information for eligible businesses in their dealings with Federal, State and local governments—N.J.A.C. 12A:9-1.21; educational programs—N.J.A.C. 12A:9-1.22; additional requirements addressing Uniform Certification by

PROPOSALS

Interested Persons see Inside Front Cover

COMMERCE AND ECONOMIC DEVELOPMENT

the Division—N.J.A.C. 12A:9-1.23; and roles of the Small Business, Minority Business and Women Business Advisory Councils as they relate to the Division—N.J.A.C. 12A:9-1.24.

Social Impact

The readoption of N.J.A.C. 12A:9 will provide for the continued effective implementation of the Division of Development for Small Businesses and Women and Minority Businesses Act. Under Section 1 of the Act, "it is the public policy of this State to provide a source of technical assistance and financial assistance in order to encourage the establishment and growth of small business and businesses owned by minorities and women." The readoption of these rules will continue to facilitate achievement of this objective by defining the scope of services specified in the Act.

Economic Impact

The readoption of these rules will impact the State's economy by offering continued assistance for small, women, and minority owned businesses. Ninety-eight percent of New Jersey companies employ fewer than 100 workers and more than half of New Jersey workers are employed by small businesses. The national census reports that seven out of every 10 jobs are created by small businesses. The continuation of these services are vital to the growth and stability of New Jersey's economy.

Regulatory Flexibility Statement

Since the readopted rules specify services to be provided by the Division to small businesses and women and minority businesses, the impact on small business will continue to be positive. No reporting, recordkeeping or other compliance requirements are imposed on small businesses, as that term is defined in the Regulatory Flexibility Act,

N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:9.

(a)

**DIVISION OF DEVELOPMENT FOR SMALL
BUSINESSES AND WOMEN AND MINORITY
BUSINESSES**

**Notice of Extension of Comment Period
Certification of Women-Owned and Minority-Owned
Businesses**

**Proposed Readoption with Amendments: N.J.A.C.
12A:11**

Take notice that the Department of Commerce and Economic Development is extending until April 29, 1993 the comment period for the proposed readoption with amendments of N.J.A.C. 12A:11, published in the March 15, 1993 New Jersey Register at 25 N.J.R. 1056(a).

Submit comments by April 29, 1993 to:

Hank Diaz, Administrator
Department of Commerce and Economic Development
Division of Small Businesses and Women and
Minority Businesses
Office of Certification
20 West State Street
Trenton, New Jersey 08625

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NOTES

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Change

New Home Warranty

Definition of State New Home Warranty Security Plan

N.J.A.C. 5:25-1.3

Take notice that the Department of Community Affairs has requested, and the Office of Administrative Law has agreed to permit, an administrative change to the definition of State New Home Warranty Security Plan at N.J.A.C. 5:25-1.3. The definition refers to the warranty program operator as the Division of Housing and Urban Renewal, rather than as the Division of Housing and Development. By this notice, published pursuant to N.J.A.C. 1:30-2.7, the Division reference is corrected.

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

5:25-1.3 Definitions

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

...
 "State New Home Warranty Security Plan" or "State Plan" means the combination of dispute settlement procedure, New Home Warranty Security Fund, and any other elements of the program operated by the Division of Housing and [Urban Renewal] Development intended to give effect to the Act and these regulations.
 ...

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

ENVIRONMENTAL REGULATION—LAND USE REGULATION PROGRAM

Freshwater Wetlands Protection Act Rules

Hearings and Appeal on Letters of Interpretation

Adopted Amendments: N.J.A.C. 7:7A-1.4 and 2.7

Adopted New Rule: N.J.A.C. 7:7A-8.10

Proposed: March 16, 1992, at 24 N.J.R. 912(b).

Adopted: March 16, 1993, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: March 16, 1993 as R.1993 d.159, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:9B-1 et seq. (P.L. 1987, c.156)

DEPE Docket Number: 06-92-02.

Effective Date: April 19, 1993.

Expiration Date: March 16, 1997.

Summary of Hearing Officer Recommendations and Agency Response:

On March 16, 1992, the Department of Environmental Protection and Energy (Department) proposed amendments and new rules at N.J.A.C. 7:7A. The Department held a public hearing concerning the amendments and new rules on April 3, 1992 in Trenton, New Jersey. The Department accepted written comments through April 15, 1992.

Robert A. Tudor, the Department's Land Use Regulation Program Administrator, served as the hearing officer at the public hearing held on April 3, 1992. Administrator Tudor recommended that the Department adopt the rules with the changes described in the response to the

specific comments as stated in the Summary of Public Comments and Agency Responses below. The Department agrees with the recommendation.

Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

Robert Santalocci
 Office of Legal Affairs
 Department of Environmental Protection and Energy
 401 East State Street
 CN 402
 Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The list of commenters on the March 16, 1992 rule proposal follows:

Name—Affiliation
 Adeline, Arnold
 Bonette, Andrea M.
 Briant, Robert A.—Utility and Transportation Contractors Association of New Jersey
 Byers, Michele S.—New Jersey Conservation Foundation
 Caymon, William J.
 Fair, Abigail—Association of New Jersey Environmental Commissions (ANJEC)
 Fisher, David B.—Ernst, Ernst, Lissenden
 Gripenburg, Henry J.—Haworth Env. Commission
 Hopkins, Douglas D.—Environmental Defense Fund
 Horn, Jeffrey A.—NAIOP, The Association for Commercial Real Estate
 Jennings, Kerry—Lacey Twp. Env. Commission
 Kane, Richard—New Jersey Audubon Society
 Karen, Robert H.—New Jersey Builders Association (NJBA)
 Kibler, Lynden U.—Middletown Twp. Env. Commission
 Lundin, Clifford R.
 Malcolm, Daniel C.—Hazlet Twp. Env. Commission
 Niese, Bronda
 Ogden, Maureen—Assemblywoman, 21st District
 Pantel, Glenn S.—Shanley & Fisher, Counselors at Law
 Ryan, James A.—Lake Musconetcong Regional Planning Board
 Silver, Susan Remis—Department of the Public Advocate, Division of Public Interest Advocacy
 Stewart, Robert W.—Lopatcong Twp. Conservation Commission
 Squires, Richard E.—Atlantic County Dept. of Law
 Tubman, Lloyd H.—Greenbaum, Rowe, Smith, Ravin & Davis
 Walnut, A. Jerome—Ocean County Environmental Agency
 Wendel, Elise—Montgomery Twp. Environmental Commission
 Wood, Edward

The following is a summary of public comments and agency responses. In some cases where public comments dealt with the same substantive issue the Department has listed these comments in sequence and provided one narrative response to deal with the issue.

N.J.A.C. 7:7A-1.4 Definitions

(1) COMMENT: We support the definition of "advanced stages of construction" and believe that it is in keeping with the purpose of an exemption, which is to be fair to those who have committed resources to their projects (New Jersey Audubon Society, ANJEC, Adeline Arnold, New Jersey Conservation Foundation, Andrea M. Bonette, Department of the Public Advocate).

RESPONSE: The Department acknowledges this comment in support of the adopted rule amendment.

(2) COMMENT: The proposed term and definition of "advanced stages of construction" as it relates to N.J.A.C. 7:7A-2.7(i) should be changed to "stages of construction" and include site clearing, grading, surveying and other related activities. The exemption should incorporate this language. To reach this level of development is very costly and time consuming and to require additional permits and or waivers to be obtained will significantly increase the cost of the project. This added cost is substantial, and it is surprising to our organization that there is no reference to this increased cost of builders and consumers in the Department's Economic Impact Statement. The DEPE should consider the realities of the current real estate economy that has prevented many

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projects approved prior to July 1, 1988, from being completed or achieving "advanced stages of construction." Distressed projects may have lost the financing necessary to proceed to this stage. Implementation of this definition for the purpose of defining a loss of exemptions will cause financial institutions to balk at providing financing at the risk that construction will not reach the Department's arbitrary critical point in time to meet the test of "advanced stages of construction." In addition to jeopardizing financing, this will further deplete the value of such properties (NAIOP, Utility and Transportation Contractors Association of New Jersey, NJBA).

(3) COMMENT: The present rule proposal which would completely terminate exemptions for projects not in "advanced stages of construction" on the date of delegation, is completely contrary to N.J.S.A. 13:9B-4(d). Subsection (d) clearly anticipates that exemptions would survive delegation of Corps jurisdiction, then provides for application to the "appropriate regulatory agency" for the renewal of expired 404 permits. The alternative N.J.S.A. 13:9B-4(d)(1), (2), or (3) exemption intent is clear. Qualifying projects shall be governed, following the effective date of the state law, solely by the provisions of the federal statute as administered by the Department. The legislation imposed no such termination date or status of construction exception. Further, EPA's delegation regulations do not require transition areas and there is no Freshwater Wetlands Protection Act basis for the proposed sunset rule (Greenbaum, Rowe, Smith).

(4) COMMENT: Exemptions should not be declared void if the projects had received all required approvals from the federal government, that is 404 permits. There is no justification for the July 1, 1988 cut off date for Federal permits (NJBA).

(5) COMMENT: The Department's proposal to arbitrarily terminate exemptions based upon assumption of the ACOE 404 program is completely without merit or statutory support. The statute is clear and the intent of the legislature was that those projects identified as meeting the terms of the exemption language in the law should be exempt. The legislature knew that it was requiring the Department to secure assumption of the Federal Wetlands program, and made no qualifications with respect to the length of exemptions specified in the Act. Furthermore, the Appellate Division of the Superior Court of New Jersey found that the Department is without statutory basis for limiting the length of exemptions. The Department should instead recognize those exemptions provided by the statute as long as: (1) the project is built in accordance with the preliminary approval; and/or (2) that if any wetlands disturbance was necessary, and an Army Corp of Engineer Nationwide Permit required, that the wetlands related fill or alteration has taken place (or has been contracted for) in accordance with the approved plans. Developers of large projects should not be penalized simply due to the fact that the construction of their projects takes longer. Adopting this proposal will spell economic disaster for developers and will result in hundreds of projects being foreclosed by lenders resulting in additional financial chaos for the banking industry. (Ernst, Ernst, Lissenden).

RESPONSE: The Department does not agree that this is an "arbitrary critical point in time" and therefore will not amend the rule as suggested. It has been almost five years since the Freshwater Wetlands Protection Act became effective and almost six years since it was signed into law. The public has been aware since the adoption of the first set of administrative rules in May of 1988 that it was the Department's position that all exemptions (except for those based on Individual Army Corps of Engineers Permits) would be void upon assumption of the 404 program. Moreover, the New Jersey Builders Association's challenge to this provision was rejected by the Appellate Division of the Superior Court of New Jersey in a decision dated September 7, 1989 (*In re Freshwater Wetlands Rules*, 238 N.J. Super. 516 (App. Div. 1989)).

Many developers survey and clear a site for future speculation and then do not touch the site for many years. Further, simply clearing a site does not make redesign of a site prohibitive since no structures have been constructed. In addition, the wetlands and transition areas on the site may not have been extensively altered and may regenerate if left undisturbed if construction has not reached the stages of construction outlined in the rule proposal. Therefore, the Department has chosen these standards because they will evidence an actual commitment to finish the construction activities, as well as a stage of development where the wetland and transition area values and functions will have already been lost.

The Department also does not agree that there is no statutory basis for the voiding of exemptions upon assumption. The Legislature recognized the potential need to eliminate exemptions in order to secure

assumption by including the caveat at N.J.S.A. 13:9B-4 which states, "[T]he following are exempt from the requirement of a freshwater wetlands permit and transition area requirements unless the United States Environmental Protection Agency's regulations providing for the delegation to the state of the federal wetlands program conducted pursuant to the Federal Act require a permit for any of these activities, in which case the department shall require a permit for those activities so identified by that agency." The rules governing assumption of the Federal permitting authority, 40 CFR Part 233, do not provide for the "delegation" of a federal program but instead allow the EPA to determine whether a State's program is as stringent as the 404 program and then allow the State to implement its own program in place of the Federal 404 program. Therefore, after assumption the Department will follow the "State program," which will consist of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. (Act) and the rules and regulations adopted pursuant to the Act and which will replace the Federal 404 program in assumable State waters.

Since there is no provision in the Federal program for exempting projects which received preliminary site plan or subdivision approvals before July 1, 1988, and since the Federal assumption rules require the Department's exemption rules to be at least as stringent as the Federal rules, the Department cannot allow these exemptions to be effective after assumption.

The Department will not void exemptions based upon Individual Army Corps permits since the State's Individual permitting process is almost identical to that of the Federal 404 program. Moreover, Nationwide permits issued before July 1, 1988 will not provide a basis for exemption upon assumption because those permits expired on January 12, 1993, and are therefore already no longer valid. However, Nationwide permits issued after July 1, 1988, the effective date of the Act, do not provide a basis of exemption from the Act pursuant to N.J.S.A. 13:9B-4(d)3(4)(3).

In addition, the Permit Extension Act (N.J.S.A. 40:55D-66.7 et seq.) provides an extension until December 31, 1994 of exemptions from the transition area requirements for areas adjacent to intermediate resource value wetlands. The Department estimates that this Act will affect 85 percent of all wetland transition area exemptions. This Act was passed to provide relief to developers whose projects have been delayed due to the current economic situation. However, the Legislature chose not to extend exemptions from the wetlands permitting requirements, open water permitting requirements, or the transition area waiver requirements for exceptional resource value wetlands.

(6) COMMENT: Does the Department mean that all of the phases of the project (that may take five or more years to complete) have to be in an "advanced stage of construction" in order to continue their project exemption? Has the Department assessed the likely impact that the proposed policy will have on the State's already troubled banking industry (NJBA)?

RESPONSE: Only those sections of the project which are located in areas regulated by the Act must be in advanced stages of construction in order to go forward without permits pursuant to the Act. Phases of the project which are not in "advanced stages of construction" will be required to comply with the Act if they involve regulated areas. No permits, whether State or Federal, are routinely given in perpetuity. Loss of exemption upon assumption is analogous to anticipated expiration of a permit. Therefore, the banking industry has undoubtedly had to deal with much higher levels of "uncertainty" than those the commenter anticipates as a result of the Department's rule. In addition, N.J.S.A. 40:55D-66.7 et seq., the Permit Extension Act, provides an extension of exemptions from transition area requirements for intermediate resource value transition areas until December 31, 1994. Since approximately 85 percent of the wetlands in the State are of intermediate resource value, this extension of exemptions for transition areas should provide significant relief to those remaining projects left unbuilt.

(7) COMMENT: We are concerned that under the Department's definition of "project" any planned accessory structure associated with an exempt project if the construction has been delayed by more than one year will be excluded from the exemption (NJBA).

RESPONSE: Based on the comments received the Department has decided not to adopt the definition of "project" proposed at N.J.A.C. 7:7A-1.4. In order to better reflect the commenter's concerns, the Department is instead proposing a modified definition of "project." This proposal can be found elsewhere in this issue of the New Jersey Register. The Department has been advised by the Attorney General's Office that the proposed definition of "project" is as specific as the Freshwater

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Wetlands Protection Act allows. To address the above specific concern that a planned accessory structure will be excluded from the exemption based on a one year delay in construction, the proposed definition clarifies that there is a rebuttable presumption that a delay of over one year indicates that an accessory structure is a later addition requiring a permit and is not part of the original project. The provision is intended to assure that an exemption is not claimed for a structure which was not part of the originally approved "project" but was conceived of at a later date.

(8) COMMENT: The definition of "project" should be amended at paragraph 1 to include the following language: "... including off-site improvements which are referenced on the site plans and/or in the approval resolution and which are mandated of the developer by the municipality to accommodate the needs of the project. Where the resolution does not specifically reference a set of site plans by title and date, transmittal correspondence referencing the site plans, or similar documentation may be submitted at the request of the Department" (NAIOP).

RESPONSE: As stated in the response to Comment (7), the Department has not adopted the definition of "project." The Department does not believe it is necessary to incorporate the suggested change. The proposed definition of "project," for site plans clearly states under subheading 1 that all improvements depicted on the plans are exempt. Under subheading 2 of the proposed definition, the Department will review all available documentation to determine if a "project" exists and if it does what scope of improvements are associated with it. Not all offsite improvements required by a builder at the municipal level are directly associated with the "project" in question and may have independent utility. The Department will make this determination on a case by case basis when evaluating the documentation submitted with the exemption application.

(9) COMMENT: The Department should modify the first example of the definition of "project" as follows: "i. where a project was to be developed in three sections, but an application for preliminary approval was submitted and approved for only one section, only the development plan for that section is exempt. . . ." (Ernst, Ernst, Lissenden).

RESPONSE: As stated in the response to Comment (7), the Department has not adopted the definition of "project." The proposed definition of "project" includes a slightly modified version of the clarification suggested by the commenter. This section states: "where a project was to be developed in three sections, but a complete application for preliminary approval was submitted, accepted and subsequently approved for only one section, only the development plan for that section is exempt . . ." The Department believes that this modified language is clearer than the commenter's suggested language.

(10) COMMENT: Regarding subdivisions, the "proposed economic development" is an acceptable term for defining the exempt project. "Project" should include future development on lots created by the exempt subdivision. Whether the subdivision was created for "speculation" should not be an issue. Multi-lot office and industrial subdivisions can take many years to build out, depending on market conditions (NAIOP).

RESPONSE: As stated in the response to Comment (7) the Department has not adopted the definition of "project." The proposed definition of "project" does not include the suggested language. It was the clear intent of this Act to provide exemptions for projects that were well along in the planning, development and municipal approval process. The simple subdivision of a parcel into lots for future speculation and development clearly does not in and of itself constitute an "economic development" upon which significant resources have been expended.

(11) COMMENT: In reviewing the validity of a commercial subdivision proposed for exemption, the Department should examine the plans and reports submitted (for example, EIS, traffic reports) to determine the extent of development anticipated for the tract. Usually such projects are given a name (XYZ Corporate Park) that identifies the subdivision as a unified project and establishes its purpose. The relative size of lots should not be a determining factor as to what is included in the exemption. It is not uncommon to delineate one or two large lots in a commercial subdivision and reserve them for build-to-suit clients or corporate headquarters-caliber buildings (NAIOP).

RESPONSE: As stated in the response to Comment (7), the Department has not adopted the definition of "project." For the purposes of further clarification the proposed definition of "project" includes these additional types of documentation which the Department will review to determine the existence of a "project." However, the commenter should

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be aware that the mere naming of a subdivision with an associated potential future purpose will not be sufficient in and of itself to qualify the subdivision for an exemption from the Act. Additionally, the size of the lots does provide useful information in determining the extent of the economic development at the time of the subdivision application because the size of the lots often determines whether all lots were the focus of the subdivision and planned economic development or whether there were remaining lots for future development.

(12) COMMENT: In the proposed example at N.J.A.C. 7:7A-1.4 "project" example iii, the scenario involving subdivision approval for a commercial project where, "only the development on the land in Township A is exempt," seems to clarify that development within exempt subdivisions is also exempt. To further clarify this point, an addition should be made to paragraph 2 under the project definition as follows: "The exemption will apply to future construction on the lots created by an exempt subdivision, as well as to the subdivision improvements shown on the approved preliminary plan." (NAIOP).

RESPONSE: As stated in the response to Comment (7) the Department has not adopted the definition of "project." The proposed definition of "project" will not include the suggested language. The proposed definition of "project" clearly states "the development on the land in Township A is exempt." As previously stated in response to Comment (7), not all future construction is exempt unless the Department finds that the construction as a part of the proposed economic development at the time of application for subdivision.

(13) COMMENT: The example at example iii contained in the definition of "project" concerning a subdivision straddling a municipal boundary should be deleted upon adoption. This deletion should be made since it is obvious that the Department is trying to dispose of the "Masucci" case by "example" through rulemaking while the case is being adjudicated. If it is adopted it should be given prospective effect only, and should not be applicable to pending cases like Mr. Masucci. It should be noted that the municipal boundary line should have no impact on the decision reached in example iii (unless it also coincidentally happens to be the lot line specified in the deed by which the developer acquired the property) because the specific language of the proposed definition is not, in any way, tied to a municipal boundary line. In short, a municipal boundary line is not a lot line under the Municipal Land Use Law. Therefore, the rules should be amended upon adoption to reflect that a "project" situated on a single lot, created before July 1, 1988, and transacted by a municipality boundary line, should be exempt from the Act (Shanley & Fisher).

RESPONSE: As stated in the response to Comment (7), the Department has not adopted the definition of "project." The Department was not trying to "dispose" of the "Masucci case" through rulemaking, but was following the standard procedure of providing clarification in a new rule proposal of its pre-existing interpretation of the statute. Since the "Masucci case" is now in litigation, the Department will adhere to the final disposition of that litigation.

The following comments were received objecting to the definition of "project" and to the application of the definition to the exemption provisions of the rules pertaining to subdivisions.

(14) COMMENT: The proposed definition of "project" as it applies to subdivision exemptions is vague and inconsistent with the plain language of the Act. The term used to define "project," "proposed economic development" is not defined. The definition erroneously focuses on the property that is subdivided rather than the project which was the underlying reason that a subdivision was sought. The regulations do not define "residential development" or provide any guidance on when a "residential development" constitutes a "project." Rather than focusing on whether land has been subdivided or not, the better question to ask is whether the developer's subdivision plans are so well developed that he or she does not need to provide the municipal authorities with any additional information on what will be built on the subdivided land and need only apply for a building permit for construction. It stretches the limits of reason to define a project on which subdivision is sought to mean any land that has been subdivided. In addition, the proposed definition of "project" contradicts the legislative history of the exemption provisions. In particular one of the earlier versions of the law actually used the word "property" rather than "project." See the December 8, 1986 version of the Act. However, the legislature specifically changed the word to "project." See Proposed Amendments of December 12, 1986, ACR for A-2342 and A-2499. In conclusion the Department should adopt only one definition of "project," consistent with the definition proposed for site plan exemptions (Department of the Public Advocate, EDF).

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(15) COMMENT: The Department should adopt a single definition for subdivision and site plans and it should be: "project" means a specific land use proposal, documented on plans prepared for municipal or state review, which includes buildings, structures, pavement, or other improvements specifically depicted on the site plans referenced in the resolution approving the site plan or subdivision" (Andrea M. Bonette, ANJEC, Bronda Niese, EDF).

(16) COMMENT: Alternatively, if the Department insists on adopting two separate definitions of the term "project," the definition should use the term "economic development." It should be defined to explicitly state that "preliminary subdivision approval exemptions may only be available to ongoing development projects . . . (on which there has been) the expenditure of significant funds, planning and time." Extending exemptions to projects that do not meet this test would conflict with the plain language of the Act as well as with the legislative intent. In addition, the definition of "project" should be amended as follows: a) delete the remainder of the paragraph that begins with "2. For an exemption . . ." after the end of the first sentence; b) delete the paragraph immediately following this paragraph; and c) delete the four proposed examples which follow (EDF).

(17) COMMENT: Specifically, we object to the proposed portion of the definition of project that states "although project is not limited to specific structures, it is limited to development on portions of a tract of land that are the focus of the qualifying subdivision application or approval." To the contrary, we believe that a "project" does not exist at all except with reference to specific structures. For if a project is not far enough along to include specific plans for the structures that constitute the project, it is difficult to see how the "project" can meet the threshold test of "expenditure of significant funds, planning and time." A property owner's intent to subdivide a parcel of property and to one day construct unspecified structures on a portion of that parcel is not a "project;" it is an intent to develop a project. We disagree that the purpose of the exemption is to protect that degree of investment in planning and development that the preliminary subdivision application normally represents. A subdivision application does not normally represent any particular degree of investment in planning and development. Therefore, a subdivision alone simply does not indicate the existence of a project for the purposes of eligibility under N.J.A.C. 7:7A-2.7(d) (EDF).

(18) COMMENT: The proposed definitions of "project" are so confusing that planning boards and developers will be battling in courts on each project. The end result will be excessive protection in some cases with deterring of useful development and in other cases great destruction of wetlands and other environmentally sensitive areas. This confusion could easily be eliminated by adopting a simple definition which does not need courts and lawyers to interpret in each case (Middletown Township Environmental Commission).

(19) COMMENT: The definition of "project" for exempt subdivisions and site plans should be the same and should be, "project" means a specific land use proposal, documented on plans prepared for municipal or state review, which includes buildings, structures, pavement, or other improvements, specifically depicted on plans being submitted for or receiving preliminary approval (Lopatcong Township Conservation Commission, Haworth Environmental Commission, ANJEC, Montgomery Township Environmental Commission, Ocean County Environmental Agency, Hazlet Township Environmental Commission, Middletown Township Environmental Commission, Lake Musconetcong Regional Planning Board, Andrea M. Bonette).

(20) COMMENT: It seems that the exemption of a "project for which preliminary subdivision was granted or sought" is a thinly veiled attempt to defeat the purpose of the Act in question. "Economic development" is indeed a praiseworthy endeavor but blanket exemptions to the provisions of the Wetlands Protection Act are a violation of the intent of the legislation and puts the profits of the few ahead of the welfare of this and future generations. There is plenty of land in this State suitable for development without the filling of wetlands or building in floodplains. The problems generated by such construction are amply demonstrated by the Passaic River Basin's perennial flood problems. The idea that short term economic gain is worth the problems of long term environmental problems can no longer be tolerated at any level of government (Edward Wood).

(21) COMMENT: We believe that one common definition of "project," which is clear, concise and written in "simple English" should be used (Lacey Township Environmental Commission, New Jersey Conservation Foundation).

(22) COMMENT: The rule should be amended upon adoption to clarify the difference in the approval process between residential subdivisions and commercial/industrial subdivisions (New Jersey Conservation Foundation).

(23) COMMENT: I am somewhat concerned with the presence of two different meanings of the term "project" as it relates to subdivision and site plans. The proposed site plan definition seems much more specific than the proposal for subdivisions. Perhaps, a uniform definition could be development, that is, similar to the one proposed by ANJEC or the definition applicable to subdivisions refined, so as to require the specificity of the definition proposed to be applicable for site plans (Clifford R. Lundin).

(24) COMMENT: I am concerned with the lack of specificity contained in the proposed definition related to subdivisions. As a local and regional planning board member, I have seen many subdivisions for purposes other than development. Is this what the Department is attempting to define in its "economic" language? Any exemption based upon a previously approved subdivision should clearly be limited so as to include only specifically shown improvements or to those land areas shown within the building envelope (not the mere zoning front, rear, and sideline requirements) (Clifford R. Lundin).

(25) COMMENT: There should be one definition of "project," and it should be, "project means the buildings, pavements and other infrastructure shown on site plans or applications for municipal approval." If there is not a plan, there is not a project. The other alternative would be to define the term "economic development" (New Jersey Audubon Society).

(26) COMMENT: The definition of "project" contained in proposed N.J.A.C. 7:7A-1.4 for subdivisions remains vague in that a definition is not provided for "economic development." This must be clarified for the regulation to have meaning and not be subject to additional litigation (Clifford R. Lundin).

(27) COMMENT: The definition for "project" in the case of the application for or the grant of preliminary site plan approvals should also apply to "project" in the case of an application for or the grant of preliminary subdivision approval. As the Summary included in the public hearing notification says, "the proposed amendments define 'project' generally as all land use activities documented on approved site plans." A phrase like "economic development," undefined, may not be an invitation to potential litigants, but it sounds like one (Adeline Arnold).

(28) COMMENT: The proposed rule amendments for the definition of "project" as it pertains to subdivision exemptions do not carry forth the spirit of the law as it was intended. "Project" was never intended to mean "property." The proposed definition for "project" remains unclear and instead the Department substituted the phrase "economic development." The Freshwater Wetlands Protection Act exempts "projects for which (a) preliminary site plan or subdivision applications have received preliminary approvals from the local authorities." This provision was intended to recognize the difference in the approval process between residential projects, which require only subdivision approval prior to construction, and commercial/industrial subdivisions which require both a subdivision and site plan approval prior to construction. Therefore, the definition of "project" should reflect this difference, as follows:

"Project" for the purposes of N.J.A.C. 7:7A-2.7(d) only means:

1. For the subdivision of land for residential development, where the subdivision approval is the last stage of municipal review before the owner/applicant may apply for a building permit for construction, the "project" is the development of the subdivision consistent with approved zoning requirements; or

2. For the subdivision of land for commercial or industrial development, where site plan approvals are required prior to construction and were not submitted for approval prior to June 8, 1987, or received prior to July 1, 1988, "project" means a specific land use proposal, documented on plans prepared for municipal review under the Municipal Land Use Law, P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) which includes the use and configuration of all buildings, pavements, roadways, storage areas, and structures, and the extent of all activities associated with the proposal; or

3. For those land proposals requiring and receiving site plan approval, the project is all buildings, structures, pavements and other improvements specifically depicted on the site plans referenced on the resolution approving the site plan. (Assemblywoman Ogden).

RESPONSE: As stated in the response to Comment (7), the Department has not adopted the definition of "project." The proposed defini-

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tion of "project" reflects the difference between subdivisions which do not require subsequent site plan approval, and "projects" such as subdivisions that do require site plan approval prior to construction. Under the proposed definition, for subdivisions where subsequent site plan approval is not required, the "project" is the development of the subdivision consistent with the lot coverage, use and density restrictions of the zoning ordinance in effect at the time of the subdivision approval. In addition, the proposed definition of "project" clarifies that the mere subdivision of a tract for speculation and future development in and of itself will not qualify the tract for exemption from the Act.

The proposed definition will not exempt property. Instead the proposed definition of "project" will result in the granting of exemptions only with respect to those areas of a subdivided tract where there is sufficient evidence of an economic development at the time of application. However, the Department is constrained by the plain language of the Act and the Attorney General's interpretation of that language. Based upon the Attorney General's Formal Opinion 3 and Formal Opinion 3 (reprise), the Department has concluded that it does not have the discretion to limit commercial and industrial subdivision "projects" to those improvements depicted on the approved subdivision plans, and has therefore declined to modify the proposed definition of "project" to include only one definition of "project" based upon the improvements depicted on the approved plans. Instead the Department has been advised by the Attorney General's office to examine all other available documentation in addition to the subdivision plans to determine the extent of economic development proposed at the time of subdivision application and to determine which part of the subdivided parcel was the focus of that economic development. The Department will consider all relevant information including the significance of the resources that the applicant has expended to reach this stage in the municipal approval process.

(29) COMMENT: We note that where an entire parcel is subdivided into five conforming residential lots, the five lots are exempt (see example ii), but that in the case of a bequest (example iv) the subdivision is not exempt. We would submit that a subdivision is not exempt unless there are buildings and infrastructure shown on a plan. The case of the bequest shows that a subdivision is not a project (New Jersey Audubon Society).

RESPONSE: As stated in the response to Comment (7), the Department has not adopted the definition of "project." The proposed definition of "project" reflects the difference between subdivisions which do not require subsequent site plan approval, and "projects" for subdivisions that do require site plan approval prior to construction. However, as stated in the response to Comment (28), the Department is constrained by the plain language of the Act and by the Attorney General's interpretation of that language, and must exempt a "project" if subdivision approval was granted for the "project." Example d. has not been modified since a subdivision to bequeath lots at some point in the future does not represent an economic development and would not qualify as an exempt "project."

N.J.A.C. 7:7A-2.7 Activities exempted from permit requirements**N.J.A.C. 7:7A-2.7(d)1 Exemptions based on municipal approvals**

(30) COMMENT: We fully support the proposed amendment of N.J.A.C. 7:7A-2.7(d)1 and 2. The additional language provides much needed clarification of the exemptions based on municipal approvals or applications for staff implementation and for the public (ANJEC).

(31) COMMENT: EDF strongly supports the proposed changes to N.J.A.C. 7:7A-2.7(d)1 and 2 which clarify that "sketch plat approval, classification determination, minor subdivision approval, minor site plan approval, or any other types of approvals referred to in the Municipal Land Use Law (for example, building permits, variances or conditional use approval)," or applications therefore, are not alone sufficient to trigger availability of exemptions under N.J.A.C. 7:7A-2.7(d) (Environmental Defense Fund, Department of the Public Advocate).

RESPONSE: The Department acknowledges these comments in support of the adopted rule amendment. However, in view of the recent decision of the Appellate Division of the Superior Court of New Jersey in *Morich and Fish v. NJDEPE* (Dkt. No. A-5080-90T2, September 15, 1992), in which the court held that a "project" which had received final minor subdivision approval would qualify for an exemption, the Department has deleted the language concerning minors site plans and subdivisions at N.J.A.C. 7:7A-2.7(d)1 and 2 upon adoption. In the future the Department will consider applications for "project" exemptions

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based upon minor site plan or subdivision applications submitted prior to June 8, 1987 or having received approval prior to July 1, 1988.

(32) COMMENT: The proposed provision at N.J.A.C. 7:7A-2.7(d)2 to limit the acceptability to only those applications that were "complete" as of June 8, 1987 clearly goes beyond the provisions of the Act and should be deleted (NJBA).

RESPONSE: The Legislature intended to provide relief for those persons with projects well advanced in the planning and development process. By clearly identifying a specific point in the municipal review process, the Department has followed the intent of the Act and has provided for fair and predictable treatment of those applicants who truly expended significant time and resources on their project and truly submitted a complete and reviewable project by the requisite date.

(33) COMMENT: We support the proposed clarification at N.J.A.C. 7:7A-2.7(d)2 that all applications must have been in proper form, accompanied by all necessary plans, data and information, and fully complete prior to June 8, 1987 (Department of the Public Advocate).

RESPONSE: The Department acknowledges this comment in support of the adopted rules.

(34) COMMENT: We object to the Department's attempt to use a strict semantic approach to limit exemptions to only major subdivisions. This attempt to eliminate existing exemptions appears contrary to the Freshwater Wetlands Protection Act. The definition of "major" versus "minor" varies from municipality to municipality. Municipalities usually consider a subdivision "minor" based solely upon the number of lots created. Consequently, the proposed change will not have uniform impacts throughout the State. The proposed change would have a significant negative economic impact on landowners who have invested considerable time and money on projects that have progressed under an existing exemptions based upon a minor subdivision approval. This provision fails to recognize the right of persons who own or possess projects exempted by the Act and is not consistent with Legislative intent (NAIOP, NJBA, Ernst, Ernst, Lissenden).

(35) COMMENT: The Department should reconsider minor subdivisions and minor site plans to be included in the exempt project category. Minor subdivisions and minor site plans are reviewed through the approval process in a manner that upon the granting of such, the plans have received both preliminary and final approval. The Department already exempts projects that have received preliminary and final approval, therefore, minor subdivisions and minor site plans should be included in this exemption (Utility and Transportation Contractors Association of New Jersey).

RESPONSE: In view of the recent decision of the Appellate Division of the Superior Court of New Jersey in *Morich and Fish v. NJDEPE*, (Dkt. No. A-5080-90T2, September 15, 1992), the Department has deleted the language concerning minor site plans or subdivisions at N.J.A.C. 7:7A-2.7(d)1 and 2. In the future the Department will consider applications for "project" exemptions based upon minor site plan or subdivision applications submitted prior to June 8, 1987 or having received approval prior to July 1, 1988.

(36) COMMENT: The proposed amendments discriminate against public projects by affording a grandfathering for private developers which is unavailable for public projects because municipalities do not issue site plan or subdivision approvals of superior entities. This discrimination is contrary to the spirit and intent of the Act. It exposes public projects to unauthorized DEPE duplicative, contrary and capricious action, and results in increased expenses (Atlantic County Dept. of Law).

RESPONSE: The Department has followed the plain language of the Act and lacks the authority to expand the exemption provisions of the Act to those approvals clearly not included within those provisions.

N.J.A.C. 7:7A-2.7(i)1 Continuation of specific improvements in "advanced stages of construction" as of the date of assumption

(37) COMMENT: There is no statutory basis for the rule proposal that would terminate exemptions for projects other than those in "advanced stages of construction" upon delegation of Corps of Engineers 404 jurisdiction to the Department. N.J.S.A. 13:9B-4 establishes categories of activities and projects that are exempt from wetlands permit and transition area requirements except to the extent that EPA may require a **wetlands permit** as condition of delegation. N.J.S.A. 13:9B-4 contemplates delegation of Corps jurisdiction and provides that "projects" exempted by virtue of qualifying preliminary site plan or subdivision application approvals, or by Corps of Engineer permits, prior to the Act's effective date shall thereafter be governed only by the Federal Act and, specifically, "shall not be subject to any additional or

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inconsistent substantive requirements of this Act." This subsection also states that the "appropriate regulatory agency" may not require a transition area in connection with renewal of a Federal 404 permit and further prohibits imposition of transition areas on projects not subject to Corps jurisdiction. By definition, this latter category is exempted solely by virtue of site plan or subdivision approval. The proposed rule's attempt to terminate the statutory exemptions and to impose wetland standards more stringent than the existing Federal 404 program was absolutely rejected by the New Jersey Supreme Court in its invalidation of the Department's prior attempt to impose a five year sunset date on exemptions. We recommend that the rule be amended upon adoption to delete all references to "waivers" and should reference only regulated activities in "delegable water" (that is, certain freshwater wetlands and State open waters). Exempt projects should not be the subject of transition area requirements once the State assumes the 404 program (NAIOP, NJBA).

RESPONSE: On September 7, 1989, in *In re Freshwater Wetlands Rules*, (Dkt. No. A-132-88T5), the Appellate Division rejected nine of the 10 challenges to the Freshwater Wetlands Protection Act rules, including a challenge to a rule terminating exemptions upon assumption. Thus the Department disagrees that there is no basis for this provision. Moreover, as stated in the response to Comment (5), the State wetlands program must be as stringent as the Federal program and must comply with all the requirements of the Federal regulations to meet assumption requirements. Thus, as of the date of assumption, the Federal 404 program will essentially be suspended and the only authority and jurisdiction in assumable waters will be the State wetlands program. The State program is broader in scope than the Federal 404 program because the Legislature passed the Freshwater Wetlands Protection Act to provide greater protection for wetlands than was provided in the Federal Clean Water Act. The Federal regulations governing assumption specifically state that nothing in the transfer regulations preclude a state from adopting or enforcing requirements which are more stringent or from operating a program with greater scope than the Federal 404 program.

Although the Department has not amended the rule as suggested for these reasons, the Department acknowledges that under the Permit Extension Act, N.J.S.A. 40:55D-66.7 et seq., exemptions from transition area requirements for those areas adjacent to intermediate resource value wetlands will be extended until December 31, 1994. This Act should extend approximately 85 percent of all such exemptions. In passing the Permit Extension Act, the Legislature specifically chose not to extend exemptions from wetland permit requirements, State open water permit requirements or transition area waiver requirements for wetlands of exceptional resource value. The Department therefore believes that its position reflects the Legislature's recently expressed intent respecting the extension of exemptions from wetlands permit requirements and exemptions from transition area requirements.

(38) COMMENT: The rule should be amended to state that a valid 404 permit as of the date of assumption is sufficient evidence that the applicant has addressed regulated activities in delegable waters on the project site regardless of the stage of construction and should be allowed to complete the construction without Department approvals (NAIOP).

RESPONSE: The rule will not be amended upon adoption as suggested. The Department will accept valid Individual Army Corps of Engineers Section 404 permits issued before July 1, 1988 as a basis to allow applicants to complete initiated construction activities. However, all Nationwide permits that established a basis for exemption from the Act (those issued in 1986) expired on January 12, 1993 and are therefore no longer valid, while the Nationwide permits issued in November of 1992 do not constitute a basis for exemption from the Act under N.J.S.A. 13:9B-4(d)3.

(39) COMMENT: The language "prior to the date of assumption" in this section does not provide any realistic or dependable implementation schedule for the regulated public. Although we recognize that specific date is unknown the Department expects assumption to take place in the Spring of 1993. Therefore, we recommend that either the Department select a date in the future, such as July 1, 1993, or amend the rules to reflect a grace period (say 90 days) after the date of assumption to comply with the rules. Otherwise the time frames indicated in the proposed rules are uncertain and not predictable for proper project planning and financing (NAIOP).

RESPONSE: The Department cannot set an arbitrary date for the implementation of this provision. However, the assumption process does contain firm time frames. Once the EPA accepts the State's application as complete, there is a 120 day review period. Acceptance of the State's application by EPA necessitates a public notice in the Federal Register,

as well as in newspapers throughout the State. Therefore, the public will be provided with notice at a minimum of 120 days prior to assumption. Unless this time frame is extended by mutual agreement, a decision must be made within that time frame or the State's program is automatically approved.

(40) COMMENT: The rule should be amended to clearly state when an applicant should submit information to document "advanced stages of construction." Specifically they should include a 90 day period after the date of assumption in which to submit the required information (NAIOP).

RESPONSE: So long as the applicant possesses the proper documentation to demonstrate advanced stages of construction, the Department will not limit the time period in which such documentation can be submitted.

(41) COMMENT: The Department is requiring that certain documents be submitted to validate "advanced stages of construction." The proposed language "the applicant shall submit one or more of the following proofs" leaves the applicant with uncertainty as to what the Department wants. It is possible that the applicant will send one of these proofs and then have the Department ask for all the other information. The Department should be more specific in the proof submission in this section. The phrase "one or more of the following," will lead to confusion, extended review periods and additional information requests by the Department (NAIOP).

RESPONSE: The Department has amended the language at N.J.A.C. 7:7A-2.7(i)1 to clarify that any of the applicable listed proofs available should be submitted as documentation.

N.J.A.C. 7:7A-8.10 Hearings and appeals

(42) COMMENT: Proposed language N.J.A.C. 7:7A-8.10 adds another layer to the bureaucratic process and is inconsistent with the original Freshwater Wetlands Protection Act as it relates to "letters of interpretation (LOI)." Granting third parties an adjudicatory hearing to object to a LOI is most unfair to the applicant and will add delays, expenses and uncertainties to projects that will ultimately result in higher costs to consumers. If an applicant is to survive the newly proposed hearing, the Department should additionally propose that the Commissioner will affirm, reject or modify the decision of the adjudicatory hearing within a set time frame. New Jersey's businesses and consumers cannot afford to pay for the additional unnecessary costs and delays that will be created by these two additional steps to the process. We urge the Department to delete this language from the proposed regulations (Utility and Transportation Contractors Association of New Jersey).

RESPONSE: The Department has not deleted this provision of the rule upon adoption. All processes that occur within the Department are open to public scrutiny, comment and concern. It is entirely appropriate to entertain requests for appeals of LOIs from third parties. Moreover, after the Commissioner reviews the facts, he will make a decision as to whether or not the matter will be heard by the Office of Administrative Law as a contested case. Therefore, not all appeal requests will proceed through a hearing process. The time within which the Commissioner can affirm, reject or modify the Office of Administrative Law's initial decision is established by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(43) COMMENT: I support the provision for hearings and appeals of decisions on letters of interpretation since it should meet the goal of saving prospective applicants time, money and their good nature (Adeline Arnold).

RESPONSE: The Department acknowledges this comment in support of the adopted rule amendment.

(44) COMMENT: We strongly support the proposed language at N.J.A.C. 7:7A-8.10 which provides for hearings and appeals of letter of interpretation decisions. Letters of interpretation are critical, especially those involving wetlands classifications. This section gives the public the opportunity to correct classifications when applicants fail to identify trout production or threatened and endangered species habitat. Absence of this provision for appeal would reward applicants for inadequate site investigations (ANJEC, New Jersey Conservation Foundation).

RESPONSE: The Department acknowledges this comment in support of the adopted rule amendment.

(45) COMMENT: We support the proposed new rule at N.J.A.C. 7:7A-8.10 which provides the opportunity for an adjudicatory hearing to contest a decision on a letter of interpretation. It is consistent with State law to provide such a hearing and appeal opportunity for third parties who wish to contest such significant administrative decisions, as the issuance of these letters (Environmental Defense Fund).

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RESPONSE: The Department acknowledges this comment in support of the adopted rule amendment.

(46) COMMENT: We recommend that the hearing and appeal regulations be expanded to cover freshwater wetlands resource classification disputes. Since the transition areas that surround a wetlands differ significantly depending on whether the freshwater wetlands is considered to have "exceptional" or "intermediate" value, and no transition area is required for "ordinary" wetlands, the classification of a wetlands is a significant concern to developers and interested third parties (Department of the Public Advocate, Environmental Defense Fund).

RESPONSE: The Department considers the resource classification to be a part of the Letter of Interpretation. Therefore, this provision as proposed and adopted allows requests for hearing and appeal on the resource classification issue.

(47) COMMENT: The rule allowing an applicant or "other affected party" to request an adjudicatory hearing should define "affected party" broadly to provide environmental organizations and other interested third parties with the right to request an adjudicatory hearing when they disagree with the DEPE's letter of interpretation or classification of a particular freshwater wetlands (Department of the Public Advocate, Environmental Defense Fund).

RESPONSE: The definition of other affected party will not be done in the context of this rule. Rather, a rule specifically addressing third party appeals is being prepared through the Commissioner's office to address all issues related to third party appeals. Until such time as Commissioner's rule is adopted the Department will continue to evaluate third party requests based on established precedent.

(48) COMMENT: The proposed rule states that upon receipt of a written hearing request, the Commissioner "may" refer the matter to the Office of Administrative Law. The rule should clarify the grounds under which an applicant or other affected party is entitled to have an administrative hearing and the criteria the DEPE will use to determine if a particular request for an administrative hearing should be referred to the Office of Administrative Law (Department of the Public Advocate, Environmental Defense Fund).

RESPONSE: As stated above, the Commissioner's office is preparing a rule to address all aspects of third party appeals including the grounds under which an applicant or other affected party will be granted a hearing.

(49) COMMENT: We strongly object to an intermediate, quasi-appeal process that provides no time framework within which a third party must contest an LOI decision and no period within which the Department must act upon a concern raised by an applicant or by another affected party (NAIOP, NJBA).

RESPONSE: The rule at N.J.A.C. 7:7A-8.10(d) has been modified to clarify the time frames for appeals. The adopted rule at N.J.A.C. 7:7A-8.10(d) requires that a written request for appeal be submitted within 30 days of the Department's decision or the date on which the decision is published in the DEPE Bulletin, whichever is later. Pursuant to N.J.A.C. 1:1-4.1, the Commissioner has 30 days in which to act on a hearing request.

(50) COMMENT: The rule at N.J.A.C. 7:7A-8.10(b) should be amended upon adoption to make this requirement optional and the requirement for compliance with subsection (b) should be deleted from N.J.A.C. 7:7A-8.10(a) and (c). Subsection (d) should provide that internal attempts to resolve LOI disputes may continue, whether or not a formal adjudicatory hearing has been requested (NAIOP).

RESPONSE: The rule has not been amended upon adoption as suggested. The Department does not agree that the resolution of a disputed LOI should be an optional process. It has been the Department's experience that the best way to resolve a disputed letter of interpretation is in the field with the applicant's consultant and the Department's representative. Presence or absence of hydric soils, and the evidence, or lack of evidence, of hydrology on a site, are highly technical matters that are best resolved by professionals experienced in the wetlands delineation field. Therefore, the Department believes that it is advantageous and more efficient for those involved in the dispute to exhaust the internal process before an applicant or other affected party makes a request for a hearing. In addition, the rule as adopted does allow the internal attempts to resolve an LOI to continue whether or not a formal adjudicatory hearing has been requested.

(51) COMMENT: The rule should be amended upon adoption to clarify that the applicant will be able to rely upon the LOI determination during the hearing procedure. If this is not done it will significantly delay the LOI process. The Act clearly states this process will take 30 days

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and that the applicant may rely on the Department's determination for a period of five years (NJBA).

RESPONSE: The rule at N.J.A.C. 7:7A-8.10(c) has not been amended upon adoption as suggested. The Department believes that the LOI process should be open to public scrutiny, comment and concern. Furthermore, if the applicant or affected party is concerned with the impact on a project pending appeal of an LOI, they have the option under standard Department procedures to request a stay or other relief from the Commissioner. In addition, the Act at N.J.S.A. 13:9A-8 states that the Department shall issue an LOI within 30 days unless a site inspection is conducted, in which case the issuance shall be extended an additional 45 days. Since the Department always makes a site inspection before issuing an LOI, the time frame is 75 days. Finally the Act simply states that the applicant may rely on the LOI and does not stipulate any mandatory time period. The Department adopted the five year reliance deadline as a reasonable regulatory time frame in the Administrative Code.

(52) COMMENT: The Department should consider an alternative approach to the existing LOI review process by extending the review time period for 90 to 120 days for those sites that are determined by the Department during the normal LOI review process to have "potential" for exceptional resource value wetlands, but exhibit intermediate resource value wetlands based on current Department information. The applicant should be notified of this situation in writing to allow the applicant to respond to the concerns of the Department and provide additional information as required. This alternative process will eliminate the current one year conditional LOI problem and provide a more certain time frame and procedure for problem wetland resource value classification sites, while allowing all other non-problem sites to receive a final LOI letter without conditions within acceptable time frames (NAIOP).

RESPONSE: This comment is beyond the scope of the March 16, 1992 proposal. However, in the near future the Department will propose a rule amendment which will deal with the resource classification system within the context of the LOI procedure.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*: deletions from proposal indicated in brackets with asterisks *[thus]*):

7:7A-1.4 Definitions

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

...

"Advanced stages of construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine whether a project or part of a project is in "advanced stages of construction," the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, possession of a valid building permit (where legally applicable), evidence of a valid ACOE permit for those activities regulated under the 404 program, and evidence documenting completion of construction activities before the date of assumption. This evidence may include, but is not limited to, the following: documentation that the local construction official has completed the inspection listed at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Advanced stages of construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

...

*["Project" means the following:

1. For an exemption under N.J.A.C. 7:7A-2.7(d) based on the application for or the grant of preliminary site plan approval, "project" means all buildings, structures, pavements, and other improvements specifically depicted on the site plans referenced in the resolution approving the site plan.

2. For an exemption under N.J.A.C. 7:7A-2.7(d) based on the application for or the grant of preliminary subdivision approval, "project" means the proposed economic development for which

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preliminary subdivision was granted or sought. Although "project" is not limited to specific structures, it is limited to development on portions of a tract of land that are the focus of the qualifying subdivision application or approval. Thus, development on other lands, such as development on the remainder of a larger tract or on a contiguous property in common ownership, are not included within a "project." The "project" exempted on the basis of a preliminary subdivision application or approval, therefore, means the economic development, whether commercial, industrial or residential, intended to be constructed on that portion of a tract of land that is the focus of the qualifying approval.

In order to determine which portion of a tract was the focus of the subdivision approval or application, the Department may examine the resolution granting approval and any documentation submitted with the application, including, but not limited to, drainage, engineering, utility, landscaping, soil and environmental plans and reports as well as the subdivision plan.

The following are examples of how the Department will determine the "project" exempted on the basis of the application for or grant of preliminary subdivision approval:

i. Where a project was to be developed in three sections but a final and accepted application for preliminary approval was submitted for only one section, only the development planned for that section is exempt and the development envisioned for section 2 and 3 is not exempt. This is not altered by the fact that some depiction of that future development on the remainder of the parcel might be required by a local planning board in concept or sketch form.

ii. Where an entire parcel is subdivided into five conforming residential lots, the residential development planned on all five lots is exempt. However, where the focus of the subdivision application and approval is on less than the entire tract of land, which lesser portion is divided into five single family house lots, and the remainder of the tract is left as a bulk parcel for further subdivision or other planning board approval, only development on the five lots is exempt. It is irrelevant that the configuration of the remainder lot has been changed by the subdivision or that the remainder lot has been renumbered.

iii. As a further example, if the land to be divided for a commercial industrial park straddled two townships and the developer received approval to subdivide the land in township A and sold the unsubdivided portion in township B to another developer, only the development on the land in township A could be considered the subject of township A's subdivision approval. Therefore, only the development on the land in township A is exempt. It is irrelevant that the original developer had, from the start, contemplated a commercial industrial park for the property in both townships or that the office building contemplated on the land in township B did not require further subdivision.

iv. A final example relates to the situation where land is divided for the sole purpose of bequeathing it sometime in the future to one's children to be developed as they wish. In this example, no economic development was contemplated when the application was made or approval granted. After the land passes to the children and one of them decides to build, that development is not exempt. The purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents. Where the subdivision is merely a division of land and no investment was made in planning or development, there can be no exempted project.

For all development determined to be exempt by the Department, it should be noted that once the development is constructed, the exempted "project" has been built. If, for example, the owner of a commercial building decides afterwards that it is necessary to construct an addition, and goes back to the municipal authority for a new or amended site plan or subdivision approval, the exemption has been "used up" and the addition is subject to the permitting requirements of the Act. Similarly, for residential approvals, once the houses and any accessory structures planned along with the house (for example, detached garages, barns, storage sheds, pools) are constructed, the exemption has been exhausted and any later additions or structural improvements are subject to the permitting

requirements of the Act. Note that if there is an interruption of construction on an accessory structure claimed to have been planned along with the house for more than one year, that structure will be considered a later addition and will require a permit. See also N.J.A.C. 7:7A-2.7(e)1 and 2 for changes that void exemptions for projects still in the local approval process.]*

7:7A-2.7 Activities exempted from permit requirement

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

(d) Subject to the limitations of this section, the following are exempt from the requirements of the Act until the State assumes the Federal 404 program. These activities may need Federal 404 permits and/or a WQC:

1. Projects *[(as defined in N.J.A.C. 7:7A-1.4)]* for which preliminary site plan or subdivision applications have received formal preliminary approvals from local authorities pursuant to the "Municipal Land Use Law," N.J.S.A. 40:55D-1 et seq., prior to July 1, 1988 provided those approvals remain valid under the Municipal Land Use Law. This excludes approvals which were given prior to the August 1, 1976 effective date of the Municipal Land Use Law. To qualify for an exemption under this paragraph, a project must have received preliminary approval (as defined in N.J.S.A. 40:55D-6) of a *[major]* subdivision or site plan. Sketch plat approval, a classification determination, *[minor subdivision approval, minor site plan approval]* or any other types of approvals referred to in the Municipal Land Use Law (for example, building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this paragraph;

2. Projects *[(as defined in N.J.A.C. 7:7A-1.4)]* for which preliminary site plan or subdivision applications *[(as the term is used)]* ***as defined*** in N.J.S.A. 40:55D-1 et seq.) have been submitted to the local authorities prior to June 8, 1987 and subsequently approved. If a project meets all criteria under this subsection to qualify for an exemption, except that the project has not yet received municipal approval, the Department will issue a letter certifying that the qualifying application was filed prior to June 8, 1987 and the project will receive an exemption upon receipt of preliminary approval from the municipality. To qualify for an exemption under this paragraph, an application for preliminary approval must have been in proper form, must have been accompanied by all plans, data and information called for by the local land use ordinance and by statute for either a *[major]* subdivision or site plan, as the case may be, and thus must have been in fact complete prior to June 8, 1987. An application for sketch plat approval, classification determination, *[minor subdivision approval, minor site plan approval,]* or any of the other types of approvals referred to in the Municipal Land Use Law (for example, building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this paragraph;

3. (No change.)

(e)-(h) (No change.)

(i) If the USEPA's regulations providing for the delegation to the State of the Federal wetlands program conducted pursuant to section 404 of the Federal Act require a permit for any of the activities exempted by this section, the Department shall require a permit for those activities so identified by the USEPA upon assumption of the Federal program. The exemptions in (d)1 and 2 and (f) above shall be void as of the date of assumption by the Department of the Federal 404 program unless all requisite permits or concurrences with Federal permits were received from the United States Army Corps of Engineers prior to July 1, 1988 and remain valid, in which case the exemption will still be valid. Upon expiration of a permit issued pursuant to the Federal Act any application for renewal shall be made to the appropriate regulatory agency. The Department shall not require the establishment of a transition area as a condition of any renewal of a permit issued pursuant to the Federal Act prior to July 1, 1988.

1. The Department will not require a permit or waiver pursuant to the Act to allow the completion of individual buildings, structures or other improvements, which are already in "advanced stages of construction," as defined in N.J.A.C. 7:7A-1.4, prior to the date of

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assumption. In addition to the completion of buildings, structures or other improvements, the Department will allow the completion of their appurtenant improvements. An applicant seeking to complete improvements which are in "advanced stages of construction" prior to the date of assumption shall submit the following documentation to the Department: a valid building permit (where legally applicable), and/or a valid ACOE permit for those activities regulated under the 404 program. In addition, the applicant shall submit *[one or more]* ***any*** of the following proofs ***if available and applicable***: documentation that the local construction official has completed the inspection listed at N.J.A.C. 5:23-2.18(b)1i(2) or (b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; billing receipts documenting the completion of the above construction activities; or any other evidence documenting construction activities prior to the date of assumption.

7:7A-8.10 Hearings and appeal

(a) An applicant or other affected party may request an adjudicatory hearing to contest a decision on a letter of interpretation pursuant to this subchapter, by complying with the procedures set forth in (b), (c) and (d) below.

(b) Before requesting an adjudicatory hearing, the applicant or other affected party shall make a good faith effort to resolve any dispute arising during the letter of interpretation process with the project review officer.

(c) If the good faith efforts provided in (b) above do not resolve the dispute, the applicant or other affected party may submit a request for an adjudicatory hearing to the Department in writing at the following address:

Office of Legal Affairs
Attention: Adjudicatory Hearing Request
Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625-0402

(d) The applicant or other affected party shall submit the written request under (c) above within 30 days of the Department's decision ***or the date on which the decision is published in the DEPE Bulletin, whichever is later***. Failure to submit the written request within the allotted time shall operate as a waiver of any right to an adjudicatory hearing.

1. Upon receipt of such a request, the Commissioner may refer the matter to the Office of Administrative Law, which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall affirm, reject, or modify the decision.

3. The Commissioner's action shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review as provided in the Rules of Court.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

**Policies and Procedures Pertaining Strictly to
Community Colleges
Auditing and Accounting Standards for County
Colleges
Noncredit Courses**

Adopted Amendment: N.J.A.C. 9:4-3.12

Proposed: January 19, 1993 at 25 N.J.R. 227(a).

Adopted: March 19, 1993 by Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.

Filed: March 26, 1993 as R.1993 d.172, **without change**.

Authority: N.J.S.A. 18A:64A-7.

Effective Date: April 19, 1993.

Expiration Date: September 26, 1996.

Summary of Public Comments and Agency Responses:

No public comments received.

Full text of the adoption follows.

9:4-3.12 Noncredit courses

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

(g) To be eligible for State funding, noncredit courses as defined in this section shall be in compliance with the Board of Higher Education tuition ceiling currently in effect.

1. Colleges may, as allowed for credit courses, institute course and/or laboratory fees where appropriate, as long as these fees are clearly differentiated from tuition in promotional material and invoices rendered to a student. Documentation of course, laboratory and other fees charged to all clients must be maintained by the college for audit purposes. Course, laboratory and other fees are not eligible for reimbursement under this section.

2. Colleges requesting State FTE support may charge course development fees. Such fees may be charged once for the development of a given course. Costs for the refinement of a course previously developed and for which fees have been charged are also allowable. All course development costs must be fully documented as actual course development costs. Colleges must forward to the Department semi-annual reports reflecting the course, clients, developmental costs and a minimal breakdown of those costs.

3. Tuition for training courses must be based upon the seats contractually reserved by the contracting agency. In no case, however, shall the State Full-Time Equivalent (FTE) support exceed the number of students actually attending a given course as determined pursuant to N.J.A.C. 9:4-3.14.

(h)-(j) (No change.)

(k) The equivalent credit-hour calculation for a noncredit course shall be based upon only those students who are formally registered and in attendance at the institutional session to be selected by the college for the equivalent credit-hour count. For noncredit courses with non-specified sessions, funding shall be based on a weekly student attendance. In order to qualify for attendance during any particular week, a student must attend a majority of the scheduled or available class sessions within a week.

(l) (No change.)

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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual

Redoption with Amendment: N.J.A.C. 10:69A

Proposed: December 21, 1992 at 24 N.J.R. 4479(a).
 Adopted: March 26, 1993 by William Waldman, Acting Commissioner, Department of Human Services.
 Filed: March 26, 1993 as R.1993 d.175, **without change**.

Authority: N.J.S.A. 30:4D-20 and 24.

Effective Date: March 26, 1993, Redoption;
 April 19, 1993, Amendment.

Expiration Date: March 26, 1998.

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. 10:69A.

Full text of the adopted amendment follows.

10:69A-5.2 Authorized agent

(a) In those instances where the applicant is incompetent or incapable of filing an eligibility application on his or her own behalf, the Division shall accept any one of the following listed in the order of priority, as an authorized agent for the purpose of initiating such application:

- 1.-4. (No change.)

(b)

DIVISION OF FAMILY DEVELOPMENT

Service Programs for Aged, Blind, or Disabled Supplemental Security Income Payment Levels

Adopted Amendment: N.J.A.C. 10:83-1.11

Proposed: February 1, 1993 at 25 N.J.R. 434(a).
 Adopted: March 19, 1993 by William Waldman, Acting Commissioner, Department of Human Services.
 Filed: March 22, 1993 as R.1993 d.166, **without change**.

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Effective Date: April 19, 1993.

Expiration Date: November 2, 1997.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:83-1.11 New Jersey Supplemental Security Income payment levels

(a) Pursuant to Section 1618(a) of the Social Security Act, the Department has elected to "pass-through" to eligible Supplemental Security Income (SSI) recipients, and to incorporate herein by reference, the full amount of any Federal cost-of-living adjustment (COLA) to Social Security payments. Notice of such COLAs shall be published in the New Jersey Register as a notice of administrative change to the payment levels set forth in (b) below, effective on the date specified in the notice.

(b) New Jersey Supplemental Security Income payment levels are as follows:

Living Arrangement Categories	Payment Level 1/19/93
Eligible Couple	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	\$80/652.00*
Residential Health Care Facilities and certain residential facilities for children and adults	\$1149.36
Living Alone or with Others	\$677.36
Living in Household of Another, Receiving Support and Maintenance	\$527.76
Eligible Individual	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	\$40/434.00*
Residential Health Care Facilities and certain residential facilities for children and adults	\$584.05
Living Alone or with Others	\$465.25
Living with Ineligible Spouse (No other individuals in household)	\$677.36
Living in Household of Another, Receiving Support and Maintenance	\$333.65

*The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

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(c)

DIVISION OF ADMINISTRATION

Public Advocate Reimbursement Disputes

Adopted New Rules: N.J.A.C. 11:1-33

Proposed: August 3, 1992 at 24 N.J.R. 2706(a).
 Adopted: March 26, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.
 Filed: March 29, 1993 as R.1993 d.179, **with substantive and technical changes not requiring additional public notice and comments** (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(c); *State Farm Mutual Automobile Insurance Company v. Department of Public Advocate, et al.* 188 N.J. 336 (1990).

Effective Date: April 19, 1993.

Expiration Date: January 31, 1996.

Summary of Public Comments and Agency Responses:

Six public comments were received from insurance companies (Aetna Casualty and Surety Company, Selective Insurance Company and State Farm Insurance Companies), an insurance trade association (American Insurance Association), a health service corporation (Blue Cross and Blue Shield of New Jersey, Inc.) and a rating organization (Insurance Services Office, Inc.).

COMMENT: Two commenters objected to N.J.A.C. 11:1-33.3(a). This provision requires insurers, rating organizations and nonprofit service plans that wish to challenge or dispute a Public Advocate's Statement to file a petition with the Commissioner, within 30 days of receiving the Public Advocate's Statement. The first commenter stated that the Department does not have the authority to restrict the rights of an insurer to any time limitation shorter than what would otherwise be applicable in a civil court. The commenter suggested that the Department amend this section in accordance with the civil procedure rules for limitations on actions.

A second commenter stated that the 30 day limitation does not provide insurers with enough time to comply with these requirements. The commenter stated that it is not always possible to review all expenditures

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attributed to a particular matter within 30 days. The commenter stated that this is especially true when the Public Advocate does not forward its statements to the company's representatives. Additionally, the commenter argues that the 30 day limitation required by *State Farm Mutual Automobile Insurance Company v. Department of Public Advocate, et al.*, 118 N.J. 336 (1990) ("*State Farm*") or N.J.S.A. 52:27E-19c does not apply to insurers but rather to businesses, industries and utilities referenced in N.J.S.A. 52:27E-19a. The commenter suggested that the Department amend the time limitation to 45 days.

The second commenter further stated that the time to challenge the Public Advocate's statement should not commence until receipt of a final statement at the conclusion of the proceeding. The commenter believes that this would provide it with a fair opportunity to challenge the statement upon a more developed record, especially in lengthy, contested proceedings where it is difficult to evaluate the reasonableness of one month's expenditures at a "snapshot" glance. This also would avoid the necessity of an insurer submitting separate petitions for each bill received, which is neither expeditious or economical. The commenter suggested amending N.J.A.C. 11:1-33.3(a) to provide that: "... within 30 days of receiving the Public Advocate's Final Statement at the conclusion of the proceeding, file a petition with the Commissioner ...".

RESPONSE: The 30-day time limitation for filing a petition with the Commissioner was not only mandated by the Supreme Court in *State Farm*, 118 N.J. at 358, but is necessitated by the requirement of N.J.S.A. 52:27E-19c that all statements of compensation or expenses be paid within 30 days of receipt of such statement. It would be anomalous to permit the filing of a petition objecting to charges, and the concomitant withholding of payment, to occur 15 days after the statutory deadline for payment. The 30-day limitation of N.J.A.C. 11:1-33.3(a) harmonizes the deadline for objections to payment with the statutory deadline for payment.

The Department disagrees with the comment that the filing deadline should be extended until all proceedings are concluded. Such proceedings are often extended, particularly when the insurer appeals the Commissioner's decision. The opportunity to challenge the Statement at that time could be used to excuse prompt payment of monies justly owed to the Public Advocate. For the same reasons, the Department believes that the six year statute of limitations in civil actions per N.J.S.A. 2A:14-1 is likewise neither applicable nor practical. The Department believes that the deadline by which an insurer must file a petition to challenge or dispute the Public Advocate's Statement of charges must be the statutory deadline for payment of such statement. Thus, if an insurer intends to challenge or dispute a Public Advocate's Statement of charges, the insurer must do so within 30 days of receiving the Statement as provided in the rule.

COMMENT: One commenter stated that N.J.S.A. 52:27E-19b provides that whenever the Public Advocate represents the public interest in a rate proceeding, the director shall send the insurer "a statement of the compensation and expenses of counsel, experts and assistants employed by the division in such proceedings, together with an appropriate allocation . . . of its fair share thereof." The commenter stated that, currently, the Public Advocate does not submit a statement of its expenses at the conclusion of a proceeding; instead, it submits periodic invoices as "Final Agency Determinations" during the pendency of the proceedings. Thus, during the course of a proceeding, a company may receive numerous requests for reimbursement ranging from a few hundred dollars to thousands and thousands of dollars. The commenter believes that the Public Advocate should be directed to submit a final statement at the end of the proceeding.

A second commenter stated that, despite the fact that these statements are rendered during a contested proceeding, the Public Advocate does not provide copies of the statements to the company's attorneys and/or representatives. The commenter believes that the Public Advocate should be directed to provide copies of its statements to the insurer's attorneys and/or representatives.

RESPONSE: The Public Advocate's internal procedures are beyond the scope of these rules. The commenter may wish to communicate his concerns to the Public Advocate in an effort to assist the Public Advocate in improving its procedures in order to reduce the chances for disputes and errors in billing and to reduce costs to both parties.

N.J.S.A. 52:27E-19b requires the Public Advocate to send an insurer "a statement of the compensation and expenses of counsel, experts and assistants employed by the division in such proceedings . . .". It is up to the insurer to see that its attorneys and/or representatives receive copies.

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COMMENT: Two commenters expressed concern with N.J.A.C. 11:1-33.3(b)2. This provision permits the Public Advocate to file a response no later than 30 days after receipt of the petition. Additionally, this provision provides that, in the absence of any response by the Public Advocate, the Commissioner shall deem that the Public Advocate confirms the original Public Advocate's Statement. One commenter suggested that the Department amend the provision to provide: "In the absence of a timely response, etc."

A second commenter stated that N.J.A.C. 11:1-33.3(b)2 is neither an appropriate, nor efficient, means of resolving fee disputes. The commenter stated that the Public Advocate must be required to actively respond to petitions challenging fee billings in the same manner as in a civil or administrative proceeding. The commenter believes that the Public Advocate's failure to respond should be deemed as an acceptance by the Public Advocate of the insurer's position on the disputed fees, similar to a default, though an answer period of 30 to 45 days could be substituted.

RESPONSE: The Department agrees with the first commenter and has amended this provision to provide that in the absence of a timely response by the Public Advocate the Commissioner shall deem that the Public Advocate confirms the original Public Advocate's Statement as sent.

The Department disagrees with the second commenter. Requiring an answer in every case would increase the Public Advocate's costs, which must ultimately be borne by the insurer. The purpose of this provision is to provide the Public Advocate with the opportunity to review the disputed statement and make adjustments to the bill, if appropriate. Upon review the Public Advocate may find that the Statement is entirely accurate and decide not to make an adjustment. When the Public Advocate decides not to make an adjustment in their bill or otherwise respond, its actions shall be deemed to confirm the original Public Advocate's Statement and the matter shall proceed forward in accordance with the provisions of this subchapter.

COMMENT: Two commenters objected to N.J.A.C. 11:1-33.3(c). This provision provides that the Commissioner shall, within 60 days of receipt of the petition, determine whether the petition satisfies the content requirements of N.J.A.C. 11:1-33.4 and whether the matter is a contested case.

One commenter stated that the holding in *State Farm* entitles insurers to a hearing with regard to fee disputes. The commenter stated that the Department's proposed rules deny insurers that right. The commenter suggested that the Department amend this subsection to remove the Commissioner's discretionary authority to make the determination that a petition by an insurer is a "contested case" subject to transfer to the Office of Administrative Law ("OAL"). The commenter believes that the Commissioner's role should be relegated to accepting the insurer's petition and, when the insurer has supplied the requisite information, transfer the case to the OAL.

A second commenter suggested that the proposal be modified as follows:

(c) The Commissioner shall, within 60 days of receipt of the petition, determine whether the petition satisfies the requirements of N.J.A.C. 11:1-33.4.

1. If the Commissioner finds that the petition meets the requirements of N.J.A.C. 11:1-33.4, he shall refer the matter to the Office of Administrative Law for a hearing as a contested case to be conducted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. If the Commissioner finds that the petition does not meet the requirements of N.J.A.C. 11:1-33.4, he shall notify the petitioner and direct that the outstanding information be provided within 10 days, or the petition will be dismissed without prejudice.

RESPONSE: The Department disagrees with both commenters. The Department must find that the matter constitutes "a contested case" in order for the Office of Administrative Law ("OAL") to acquire jurisdiction. N.J.A.C. 1:1-3.2. The practical purpose of this rule is to provide an opportunity to review the petition and response, if any, during which the parties and the Department have the chance to resolve the matter without a hearing. An immediate, automatic transfer to OAL may add substantial costs to all parties involved.

To clarify the rule's intent, however, N.J.A.C. 11:1-33.3(c)2 has been deleted upon adoption as unnecessary. This is not a substantial change in that the Commissioner must make the findings set forth in N.J.A.C. 11:1-33.3(c); the language at paragraph (c)2 is surplusage.

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COMMENT: One commenter objected to N.J.A.C. 11:1-33.3(c). The commenter stated that the Supreme Court in *State Farm* designated the Commissioner to hear insurer objections to Public Advocate bills in the first instance prior to judicial review of the bills. The commenter stated that the objective of this process is to have the OAL create a factual record and initial decision as the basis for the Commissioner's final decision, with later judicial review of the Commissioner's decision. Such procedure follow the Supreme Court's holding that:

... the reviewability of the charges of the Public Advocate ... is ultimately a judicial function. To aid the court's review in future cases, the Department of Insurance shall conduct the necessary factual inquiry, referring contested cases to the Office of Administrative Law for development of the factual predicate. [*State Farm, supra*, 118 N.J. at 358; emphasis supplied by the commenter.]

Additionally, the commenter stated that proposed N.J.A.C. 11:1-33.3(c)2 and 3 attempt to authorize the Commissioner to prohibit exactly the factual review the Supreme Court mandated in the language above. The commenter further stated that paragraph (c) empowers the Commissioner to determine whether a case is contested, and subsection (c)2 empowers him to preempt a referral to OAL if he finds "there are not good faith disputed issues of material fact and that the matter may be decided on the documents filed," while paragraph (c)3 authorizes referral to OAL only when the Commissioner deems a case "contested."

The commenter stated that by exercising this authority the Commissioner can preclude the creation of complete factual records via full fact finding by OAL that was expressly mandated by the Supreme Court for all contested cases, not just those deemed contested by the Commissioner. The commenter further stated that the system is also constitutionally defective as denying due process by prohibiting the creation of an administrative record after participation by all parties based upon the unfettered whim of the Commissioner.

The commenter believes that the regulations will likely lead to yet more unnecessary judicial intervention to determine whether the Commissioner's decision deeming a case not "contested" is appropriate. The commenter argued that these regulations also fail to achieve the practical objective behind the Supreme Court's creation of the Department of Insurance's role in reviewing the Public Advocate's billings.

RESPONSE: The Department disagrees with the commenter. In *State Farm*, the Supreme Court required the Commissioner to refer "contested cases" to the OAL, 118 N.J. at 358, presupposing a determination by the Commissioner that a bill challenge constituted a contested case. Such determination by the agency head is required for OAL jurisdiction. N.J.A.C. 1:1-3.2. If the Commissioner finds that the matter is not a contested case, as defined at N.J.A.C. 1:1-2.1, then the OAL has no jurisdiction and the matter cannot be referred there.

COMMENT: One commenter stated that N.J.A.C. 11:1-33.3(c) purports to allow the Commissioner to determine if a petition is "complete," though that term is not used. The commenter believes that all the insurer/petitioner should be required to do is to put the Public Advocate on notice of the fee dispute and raise the facts and issues which are disputed. The commenter stated that the Commissioner does not have the authority to dismiss a petition for review of Public Advocate fee disputes for failure to provide information. The commenter suggested that the Department amend this section to omit the Commissioner's ability to dismiss a petition "with prejudice" and to restrict the Commissioner's role to requesting necessary information and to request that any missing information be provided.

Another commenter objected to N.J.A.C. 11:1-33.3(c)1, which permits the Commissioner to dismiss a petition with prejudice if the Commissioner finds that the petition fails to meet the requirements of N.J.A.C. 11:1-33.4, which specifies the contents of the petition. The commenter stated that this provision exceeds the authorization set forth by the New Jersey Supreme Court in the *State Farm* decision.

RESPONSE: These rules set forth minimum requirements for the contents of an insurer's petition requesting Department review of the Public Advocate's charges, as prescribed by with the Supreme Court's decision in *State Farm*, 118 N.J. at 351-353.

These requirements are not difficult to meet. Therefore, the failure of an insurer to comply with the terms of these rules will result in the dismissal of the petition with prejudice.

COMMENT: One commenter suggested the following editorial change to N.J.A.C. 11:1-33.3(c)2: "If the Commissioner finds there are no good faith disputed issues of material fact, etc."

RESPONSE: This provision has been deleted as noted above.

COMMENT: One commenter objected to N.J.A.C. 11:1-33.3(c)3. The commenter stated that this provision fails to specify what a hearing on a contested case is to determine. The commenter believes that the rule should be clarified to state that a hearing will establish, among other things, the accuracy of the Public Advocate's bills and whether they were incurred in connection with proceedings initiated by an insurer, rating organization, etc. to change a rate.

RESPONSE: The Department will refer contested cases to the OAL. An Administrative Law Judge ("ALJ") will decide any disputed "questions of fact, law or dispositions relating to past, current, or proposed activities or interests." N.J.A.C. 1:1-2.1 ("contested case"). To limit the range of possible hearing issues in the text of the rule may constrain the ability of an ALJ to resolve issues raised in good faith during such proceedings.

COMMENT: One commenter believes that the petitioner should have the opportunity to cure any defects in its petition identified by the Commissioner under N.J.A.C. 11:1-33.3(c).

RESPONSE: The petitioner has the opportunity to cure any defects in its petition so long as it is done within 30 days of receiving the Public Advocate's Statement, that is, a petitioner could submit a superseding, amended petition within the time provided. For the reasons set forth in answers to the previous comments regarding the simple requirements for the petition and the importance of addressing these disputes promptly, the Department does not favor notifying the petitioner of defects, and having the petitioner resubmit after further delay.

COMMENT: Two commenters objected to N.J.A.C. 11:1-33.4. One commenter stated N.J.A.C. 11:1-33.4 is vague, ambiguous and fails to clarify the standards that should serve as a basis for requesting review of the Public Advocate's Statements. The commenter believes that the standards in *State Farm* should be incorporated into proposed N.J.A.C. 11:1-33.4(a)4.

The second commenter stated that the requirement that the insurer request the Commissioner to review the petition should be deleted. Additionally, the commenter stated that references in this section to the "Commissioner" should be replaced by the "Office of Administrative Law." The commenter believes that this way, insurers will be able to obtain the hearing on fee disputes required under the *State Farm* case.

RESPONSE: The Department disagrees with the commenters. In accordance with the Supreme Court's decision in *State Farm*, the Department shall conduct the inquiry necessary to determine whether the matter constitutes a contested case. After such determination, the Department will refer contested cases to the OAL. The Commissioner, however, remains the final decision-maker. The Department believes that the information required in N.J.A.C. 11:1-33.4 is necessary and reasonable for an insurer's petition that challenges or disputes the Public Advocate's Statement.

COMMENT: One commenter expressed concern with N.J.A.C. 11:1-33.4(a)4i, which relates to whether the Public Advocate's Statement violates expressed or implied legislative policies. The commenter stated that these rules should specify that the information requested includes, but is not limited to, consideration of whether the Public Advocate exceeded its statutory authority in seeking compensation for intervention and/or whether an insurer, or rating organization, etc. initiated a proceeding for the purpose of changing a rate.

Another commenter objected to N.J.A.C. 11:1-33.4(a)4ii, which asks whether an adequate factual basis exists to sustain the Public Advocate's Statement. The commenter believes that the standards set forth in *State Farm* should be incorporated into the proposed rule. The commenter suggested that this provision states that "these standards include, but are not limited to, such items as whether the bills are for proceedings that never occurred, whether they are false or duplicative and whether the charges meet the statutory standards of N.J.S.A. 52:27E-19.b".

RESPONSE: The Department agrees with both commenters and has amended this provision accordingly.

COMMENT: One commenter objected to N.J.A.C. 11:1-33.4(a)4iii, which addresses the contents of the petition. The commenter stated that the Commissioner's requirement that an insurer challenging the reasonableness of the Public Advocate's charges provide information regarding its own costs is burdensome. In some cases, it may be impossible to provide this information within 30 days.

Additionally, the commenter stated that the Public Advocate's charges must be analyzed on the basis of its expenditures without regard to the insurer's expenses. The commenter stated that if it is determined that the insurer's expenses are relevant under the particular circumstances of a case, this information should be sought through discovery and

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obtained during the course of the contested proceeding before the OAL where an administrative law judge is charged with the responsibility of developing the record and can protect against the potential disclosure of privileged strategy and/or work product.

RESPONSE: In accordance with the Supreme Court's holding in *State Farm*, N.J.A.C. 11:1-33.4(a)4iii requires a petition to seek resolution of one or more of the stated issues, one of which is whether the Public Advocate's bills are unreasonable under the circumstances of the rate change proceeding. The Department believes that the petitioner's expenses in a proceeding are extremely relevant to the reasonability of the Public Advocate's charges for expenses in the same proceeding, and, therefore, must be included in a petition.

COMMENT: One commenter stated that the petitioner's expenses for counsel, experts and assistants in a rate change proceeding is irrelevant to the reasonableness of the Public Advocate's statement of charges under N.J.A.C. 11:1-33.4(a)4iii. Additionally, to the extent petitioners rely on employee lawyers and actuaries in rate change proceedings, the petitioner should not be required to assign a value to those in-house services for the sole purpose of objecting to the Public Advocate's statement of charges.

RESPONSE: The Department disagrees. This provision is in accordance with the Supreme Court's holding in *State Farm*, N.J.A.C. 11:1-33.4(a)4iii requires a petition to seek resolution of one or more of the stated issues, one of which is whether the Public Advocate's bills are unreasonable under the circumstances of the rate change proceeding. The Department believes that the information required by N.J.A.C. 11:1-33.4(a)4iii is relevant to the reasonability of the Public Advocate charges for expenses in the same proceeding.

The Department believes that when the petitioner requests the Commissioner to review the Public Advocate's Statement, one of the issues to be resolved is whether the Public Advocate charges are unreasonable. The Department believes that the value of the services of the petitioner's lawyers and actuaries are relevant to this issue and should be addressed at the hearing when appropriate pursuant to N.J.A.C. 11:1-33.4(a)4.

COMMENT: Two commenters objected to N.J.A.C. 11:1-33.6(a), which provides that a petition shall be dismissed with prejudice if the petitioner fails to comply with N.J.A.C. 11:1-33 (the procedural requirements). One commenter believes that any provision that allows the Commissioner to dismiss a petition with prejudice exceeds the authorization provided by *State Farm*. The second commenter suggested that the Department delete this section.

RESPONSE: The Department disagrees. The Department has no other sanction but to dismiss the matter if the petitioner fails to comply with the procedural requirements of N.J.A.C. 11:1-33.

COMMENT: One commenter objected to proposed N.J.A.C. 11:1-33.6(b), which entitles the Public Advocate to summary judgment in its favor in the Law Division for the full amount of its statement of charges in the event a petition is not filed, on the basis that it is *ultra vires*. The commenter stated that the Commissioner does not have the authority to dictate to the Superior Court of New Jersey the result of a particular case.

RESPONSE: The Department disagrees with the commenter and believes that N.J.A.C. 11:1-33.6(b) is in accordance with the Supreme Court's ruling in *State Farm*, 118 N.J. at 358, that "in the absence of timely filing of such a petition the Public Advocate shall be entitled summarily to a judgment in its favor in the Law Division for the full amount billed."

COMMENT: One commenter stated that the jurisdiction of the Division of Rate Counsel in insurance matters is limited to "a proceeding initiated by an insurance company or a nonprofit service plan subject to Title 17 of the Revised Statutes and Title 17B of the Revised Statutes for authority to increase or change the charges for insurance." The commenter stated that it does not apply to the filing of contract forms by health service organizations under N.J.S.A. 17:48E-13. Consequently, the commenter objected to proposed rules N.J.A.C. 11:1-33 insofar as they may suggest that the Public Advocate has any role whatsoever in the filing of health service corporations' contract forms.

The commenter stated that contract forms for health service corporations are governed by a "file and use" provision, N.J.S.A. 17:48E-13. The commenter stated that unlike health service corporations rate filings which require prior approval by the Commissioner of Insurance, pursuant to N.J.S.A. 17:48E-27 and 27.1, there is no role for the Public Advocate's Division of Rate Counsel in Blue Cross/Blue Shield's form filings.

The commenter stated that the Supreme Court of New Jersey recognized this distinction in the Public Advocate's jurisdiction over rate

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approvals versus form filings in *State Farm*. In that case, which gave rise to these new rules N.J.A.C. 11:1-33, the Supreme Court considered when an insurer's forms sufficiently are related to changing rates to permit the Public Advocate to seek reimbursement for its expenses under N.J.S.A. 52:27E-19(b). The commenter stated that the Supreme Court made it clear that form filings that are not, in effect, rate applications are outside the Public Advocate's jurisdiction and that to the extent form filings effect a change in rates, the Public Advocate may examine the forms, not for the purpose of commenting on contract language or benefit design, but rather for consideration of whether the contract provisions impact on the rates requested. *Id.* at 356-57.

The commenter further stated that the *State Farm* case arose in the context of commercial lines coverage governed by the Commercial Insurance Deregulation Act of 1982, N.J.S.A. 17:29AA-1 et seq., which permits insurers writing commercial lines to adopt a "use and file" system eliminating the necessity for prior approval of rates. The commenter stated that the Supreme Court's opinion addresses the role of the Public Advocate following the deregulation of commercial lines insurance in New Jersey, and does not directly address health service corporations.

Additionally, the commenter stated that: "nonetheless, the language of the Supreme Court's opinion reiterates that the jurisdiction of the Public Advocate extends only to rate changes, and not to contract form issues. Even though the Public Advocate may request, and has in the past been provided with, copies of the commenter's contract forms when they are relevant to pending rate applications, the Public Advocate may not object to any form filings or comment upon the contract language or benefit design. Indeed, the contract forms are not necessary at all from an actuarial viewpoint for reviewing rates, a complete benefit description including limitations would suffice."

The commenter believes that, consequently, the Division of Rate Counsel is only entitled to reimbursement for its expenses under N.J.S.A. 52:27E-19b for applications by health service corporations to change rates under N.J.S.A. 17:48E-27 and 27.1. The commenter stated that the Public Advocate is not entitled to reimbursement for review of, nor should it comment on, the commenter's contract language or benefit design in form filings made under N.J.S.A. 17:48E-13.

Finally, the commenter requested that the proposed new rules N.J.A.C. 11:1-33 be revised to specifically exclude from the scope of the definition of "rate change proceeding" any reference to filing contract forms.

RESPONSE: The Department disagrees with the commenter. Some form filings affect rates. Such form filings are "within the Rate Counsel's compensation statute." *State Farm*, 118 N.J. at 356-357. In the absence of these rules, there would be no prescribed procedure for insurers to challenge or dispute a statement by the Public Advocate that it is entitled to be reimbursed.

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 33. PUBLIC ADVOCATE REIMBURSEMENT DISPUTES

11:1-33.1 Purpose and scope

(a) This subchapter sets forth the procedures used by the Department to review and resolve disputes concerning statements rendered by the Public Advocate for reimbursement of expenses incurred in connection with insurance rate change matters. These rules are intended to carry out the mandate of the New Jersey Supreme Court set forth in its decision of *State Farm Mutual Automobile Insurance Company v. Department of the Public Advocate*, 118 N.J. 336 (1990).

(b) This subchapter applies to all insurance companies, rating organizations and non-profit service plans required to reimburse the Public Advocate for expenses in connection with insurance rate matters pursuant to N.J.S.A. 52:27E-19.

11:1-33.2 Definitions

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

"Flex rate proceeding" means a challenge by the Public Advocate to a Statewide rate change filed by a private passenger automobile insurer pursuant to N.J.S.A. 17:29A-44 which results in a reduction or rescission of the rate change.

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"Commissioner" means the New Jersey Commissioner of Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person authorized or admitted to transact the business of insurance in this State which files rates and rating systems pursuant to N.J.S.A. 17:29A-1 et. seq. and N.J.S.A. 17:29AA-1 et. seq.; and any non-profit service plan as defined herein.

"Non-profit service plan" means a hospital service corporation as defined in N.J.S.A. 17:48-1; a medical service corporation as defined in 17:48A-1; a dental service corporation as defined in N.J.S.A. 17:48C-2(a); or a health service corporation as defined in N.J.S.A. 17:48E-1(e).

"Public Advocate" means the Division of Rate Counsel, Office of the Public Advocate, established pursuant to N.J.S.A. 52:27E-16.

"Public Advocate's Statement" means the statement of the compensation and expenses of counsel, experts and assistants employed by the Public Advocate which is issued by the Director of the Division of Rate Counsel pursuant to N.J.S.A. 52:E-19b.

"Rate change proceeding" means any process initiated by an insurance company, rating organization or non-profit service plan to increase or change the rates or charges for insurance, including, but not limited to, a filing to amend rates pursuant to N.J.S.A. 17:29A-14; a filing of rates or supplementary rate information pursuant to N.J.S.A. 17:29AA-5; a flex rate proceeding as defined herein; the filing of rates by any non-profit service plan pursuant to N.J.S.A. 17:45-9; N.J.S.A. 17:48A-10; N.J.S.A. 17:48C-14 and N.J.S.A. 17:48E-27 and 27.1; or any change in a rating system accomplished by filing policy forms or rating rules that effect a change in rates.

"Rating organization" means every person or persons, corporation, partnership, company, society or association engaged in the business of ratemaking for two or more insurers, licensed in accordance with N.J.S.A. 17:29A-2.

11:1-33.3 Procedural provisions

(a) Any insurer, rating organization or non-profit service plan that desires to challenge or dispute a Public Advocate's Statement shall, within 30 days of receiving the Public Advocate's Statement, file a petition with the Commissioner that includes at minimum the information set forth in N.J.A.C. 11:1-33.4, except that any insurer, rating organization or non-profit service plan which notified the Department of a pending reimbursement dispute no later than ***[30 days prior to the effective date of this subchapter]* *March 20, 1993*** shall file a petition pursuant to the provisions herein ***[within 30 days of the effective date of this subchapter]* *by May 19, 1993***.

1. The petitioner shall serve a copy of the petition on the Public Advocate simultaneously with filing the petition with the Department.

(b) The Public Advocate may file a response not later than 30 days after receipt of the petition.

1. The response by the Public Advocate, if filed, may identify any errors on the disputed Public Advocate's Statement, or set forth any revisions or amendments to the Public Advocate Statement as sent to the petitioner.

2. In the absence of ***[any]* *a timely*** response by the Public Advocate, the Commissioner shall deem that the Public Advocate confirms the original Public Advocate's Statement as sent.

(c) The Commissioner shall, within 60 days of receipt of the petition, determine whether the petition satisfies the requirements of N.J.A.C. 11:1-33.4 and whether the matter is a contested case. The Commissioner shall notify the petitioner and the Public Advocate of the determination.

1. If the Commissioner finds that the petition does not meet the requirements of N.J.A.C. 11:1-33.4, the Commissioner may dismiss the petition with prejudice.

[2. If the Commissioner finds that there are no good faith disputed issues of material facts and that the matter may be decided on the documents filed, the Commissioner shall issue a written decision either granting or denying, or partially granting and partially denying, the petition.]

[3.]*2. If the Commissioner finds that the matter is a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing to be conducted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) Nothing in this subchapter shall prohibit the resolution of any disputed issue at any time between the petitioner and the Public Advocate.

11:1-33.4 Contents of petition

(a) A petitioner requesting review of a disputed Public Advocate's Statement shall set forth at minimum the following information in the petition:

1. The name and address of the petitioner;
2. The name, address and telephone number of the attorney for the petitioner, including the name of the attorney personally handling the matter;
3. The date the Public Advocate's Statement was received by the petitioner;
4. The petitioner's request that the Commissioner review the Public Advocate statement to resolve one or more of the following issues:

i. Whether the Public Advocate's Statement violates expressed or implied legislative policies*, **which includes, but is not limited to, consideration of whether the Public Advocate exceeded its statutory authority in seeking compensation for intervention and/or whether the insurer, or rating organization, etc. initiated a proceeding for the purpose of a rate change***;

ii. Whether there is an adequate factual basis to sustain the Public Advocate's Statement*. **This standard includes, but is not limited to, such items as whether the bills are for proceedings that never occurred, whether they are false or duplicative and whether the charges meet the statutory standards of N.J.S.A. 52:27E-19.6***; or

iii. Whether the Public Advocate's Statement charges are unreasonable under the circumstances of the rate change proceeding, and such circumstances shall include, but not be limited to, the petitioner's expenses for counsel, experts, and assistants in the rate change proceeding;

5. Factual and legal contentions that the petitioner wishes to advance in support of its objections; and

6. Those portions of the Public Advocate's Statement, if any, which are not disputed and the date and manner of payment of those undisputed amounts.

(b) A copy of the disputed Public Advocate's Statement shall be appended to the petition.

11:1-33.5 Payment of undisputed amounts

The petitioner shall, as a condition of filing a petition to request review of a disputed Public Advocate's Statement, pay any portion of the charges set forth on the Public Advocate's Statement which are not in dispute.

11:1-33.6 Failure to comply with rules; failure to file

(a) Failure of the petitioner to comply with the rules set forth in this subchapter shall result in the dismissal of the petition with prejudice.

(b) Failure to timely file a petition entitles the Public Advocate to summary judgment in its favor in the Law Division for the full amount charged.

(a)

DIVISION OF FINANCIAL EXAMINATIONS**Unsatisfied Claim and Judgment Fund's
Reimbursement of Excess Medical Expense
Benefits Paid by Insurers****Adopted New Rule: N.J.A.C. 11:3-28.8**

Proposed: September 21, 1992 at 24 N.J.R. 3215(a).

Adopted: March 25, 1993 by Samuel F. Fortunato,
Commissioner, Department of Insurance.Filed: March 29, 1993 as R.1993 d.178, **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, 17:23-1 et seq. and 39:6-61 et seq.

Effective Date: April 19, 1993.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received four timely written comments from insurers, as follows:

1. Farm Family Insurance Companies;
2. Allstate Insurance Company;
3. Chubb & Son, Inc.; and
4. New Jersey Manufacturers Insurance Company.

COMMENT: One commenter explicitly commended the Department for proposing to codify a uniformed procedure for companies to report personal injury protection (PIP) losses which are reimbursed by the Unsatisfied Claim and Judgment Fund (UCJF). The commenter stated that it believes that the public interest is served by establishing uniformity, and by permitting the Department to track PIP losses in excess of \$75,000 consistently when comparing annual statements filed by all insurers.

COMMENT: Two commenters stated that it will be difficult to formulate and implement the necessary system changes by the end of 1992. The commenters thus requested that the rules become effective for the 1993 annual statement to be filed March 1, 1994, rather than for the 1992 annual statement to be filed March 1, 1993.

One commenter specifically stated that in order to implement the rule, a company would be required to develop new procedures for processing UCJF claims and train employees in these procedures, and change its claim processing system to treat recoveries from the UCJF as reinsurance recoveries. The commenter stated that these claims often have bodily injury claimants involving other reinsurance, and it is therefore necessary to reprogram its claim system to properly calculate reserves and payments due from the UCJF and from its reinsurers. The commenter further stated that after the changes described above have been made, time will be required to test and install these changes. Finally, the commenter stated that it will be necessary to reverse all current year transactions for UCJF claims and re-enter the transactions based on the new rule.

The commenter further noted that the rule requires that the reporting of page 14 and Schedule F of the annual statement be changed. The commenter stated that the new rule would require changes to many other annual statement pages, because it redefines direct and reinsurance ceded losses. The commenter stated that the pages to be changed include Parts 3 and 3A, portions of Schedule P, and Exhibits 1 and 3 (regarding reinsurance recoverables). The commenter further stated that the reports it uses to develop these pages would also have to be changed.

The commenter thus requested that the proposed rule be effective for 1993 transactions and that insurers provide the Department with a 1992 page 14 in accordance with the rule as a supplementary filing.

Moreover, the commenter stated that since the recoveries received from the UCJF are treated as a reinsurance transaction, the assessments paid to the UCJF also should be treated as a reinsurance transaction to maintain consistency between the treatment of premiums and losses.

RESPONSE: The Department recognizes that the data collection and processing systems utilized by insurers to complete the annual statement may differ. Therefore, it may be difficult for some insurers, depending on current systems utilized, to complete the annual statement in the format required by these rules for March 1, 1993. Accordingly, and for the reasons expressed by the commenter, the rules have been revised upon adoption to provide that the filing requirement will apply to the annual statement due March 1, 1994 (for calendar year ending December

31, 1993). However, for purposes of completing the annual statement due March 1, 1993, insurers shall provide the Department, by no later than July 1, 1993, with a supplemental page 14 and Schedule F of the annual statement as required under these rules and as was previously submitted for 1991 and prior years pursuant to Order No. A92-228.

The Department similarly agrees that for purposes of completing the annual statement, assessments paid the UCJF should be treated as a reinsurance transaction for the reasons expressed by the commenter. Accordingly, the rules have been changed upon adoption to provide that assessments paid to the UCJF based on premium for private passenger automobile liability and commercial automobile liability shall be treated as ceded premium for the appropriate line of business on which the assessment was based.

COMMENT: One commenter stated that the rule ignores the standards adopted by the National Association of Insurance Commissioners (NAIC) for page 14 of the annual statement by creating special rules and forms for filing in New Jersey. The commenter stated that by doing so, the Department violates the principles of uniformity and the NAIC's underlying rationale for creating the annual statement form. Moreover, the commenter stated that requiring unique forms for New Jersey increases the administrative costs associated with filing these reports. Accordingly, the commenter opposes the proposal in its entirety.

RESPONSE: The Department disagrees that this rule violates the principle of uniformity and the NAIC's rationale for creating the annual statement form. In fact, the purpose of this rule is to ensure consistency and uniformity in the manner by which losses for PIP are reported in the annual statement. Currently, there are no specific instructions about how insurers shall report losses for PIP benefits paid in excess of \$75,000. This has resulted in inconsistencies regarding the manner in which losses from PIP payments in excess of \$75,000 have been reported in the annual statement both among insurers and for individual insurers among different years. These inconsistencies may result in the distortion of an insurer's direct losses for PIP payments. This rule, which essentially codifies Order No. A92-228, is intended to ensure that all insurers' losses from payment of PIP benefits are accurately reflected for the preceding calendar year. This, in turn, will enable the Department to evaluate the insurer's actual financial condition. Moreover, the Department does not believe that this requirement should impose undue administrative costs on insurers as data regarding the reimbursement for PIP losses in excess of \$75,000 from the UCJF should be readily available.

COMMENT: One commenter objected to the requirement set forth in the rule because it believes that a "special" page 14 that reflects only losses up to \$75,000 for medical expense benefits could "tempt" individuals to seek to suppress rates for political reasons and manipulate financial results by understating losses. The commenter stated that to do so would violate New Jersey law and would otherwise be arbitrary, capricious and unreasonable. Moreover, the commenter stated that the UCJF has a deficit because of New Jersey's traditional practice of funding insurance mechanisms on a cash flow basis, rather than on an actuarially sound basis. The commenter stated that this illustrates why the Department and individual insurers must properly take into account total losses and not ignore losses over \$75,000. The commenter stated that to do otherwise would be "irresponsible" and would exacerbate the underfunding of the UCJF.

RESPONSE: The Department disagrees that filing page 14 of the annual statement as required by the rule reflects only losses up to \$75,000 for PIP benefits. In fact, the rule requires that insurers report the total amount of losses for PIP benefits payments, including those in excess of \$75,000. Accordingly, the insurer's total loss from PIP are reported. However, the rule recognizes that, ultimately, individual insurers are not directly liable for payment of PIP benefits in excess of \$75,000 for their own losses pursuant to N.J.S.A. 39:6-73.1. Thus, the Department believes it appropriate that insurers provide a footnote on page 14 that indicates the amount of losses from PIP, excluding amounts in excess of \$75,000.

The Department also notes that the rules do not affect the rate filing requirements or the procedures by which requested private passenger automobile insurance rates will be reviewed and acted upon in accordance with N.J.S.A. 17:29A-1 et seq. and N.J.A.C. 11:3-16. Rather, the rule merely sets forth reporting requirements for the statutory annual statement to ensure that transactions between insurers and the UCJF are accurately and consistently reported.

With respect to the comment regarding the funding mechanism of the UCJF, the Department believes that this comment is outside the scope of the proposal. The funding mechanism for the UCJF is set forth in N.J.S.A. 39:6-63. This rule does not address the funding mechanism of

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the UCJF required by statute. As noted previously, the rule merely ensures that payments to, and monies received from, the UCJF are accurately and consistently reported.

COMMENT: One commenter suggested that the Department, in lieu of adopting these rules, encourage insurers that do not currently include total PIP losses over \$75,000 to do so. In addition, the commenter suggested that the Department immediately commission a full and complete independent actuarial evaluation of the financial condition of the UCJF, with input and assistance from insurers participating in the UCJF, and take appropriate action based upon that report. The commenter stated that if the report confirms that the UCJF has an unfunded liability, immediate action should be taken to put it on an actuarially sound footing.

RESPONSE: As noted in the response to previous comment, the rule requires that insurers report total losses for PIP payments, including those in excess of \$75,000. However, the rule recognizes that insurers are not liable for losses for PIP payments in excess of \$75,000. This is consistent with the intent of the Legislature in providing for the reimbursement of PIP payments in excess of \$75,000. One of the goals of the reimbursement by the UCJF for PIP losses over \$75,000 was to eliminate the need for reserving for large claims and the corresponding impact on rates. As noted by the Assembly Commerce, Banking and Insurance Committee in a statement to Senate Bill No. 1380, P.L.1977, c.310: "At present, when an insurer receives . . . a potentially large claim, it sets aside a considerable sum of money as a reserve for such loss. This, in turn, is taken into consideration for the rate making purposes even though the money has not actually been paid out. This legislation would eliminate this distortion by eliminating the need for the larger reserve."

The Department further believes that the comment relating to an independent evaluation of the financial condition of the UCJF is outside the scope of this proposal for the reasons set forth in the response to the previous comment.

COMMENT: One commenter noted that the rule requires that an insurer consider the assumption and reimbursement by the UCJF as a reinsurance transaction. The commenter requested further clarification concerning the treatment of the UCJF as an insurer. For example, the commenter questioned: (1) whether the Department will consider the UCJF as an authorized reinsurer and the recoverables as admitted assets; (2) if the recoverable ages over 90 days, whether the insurer will be subject to a "surplus charge"; and (3) whether the insurer may treat the UCJF assessment as a reduction to gross written premiums. The commenter also stated that it is unclear how the UCJF transaction will be handled in states other than New Jersey.

RESPONSE: The Department shall consider the UCJF as an authorized reinsurer and the recoverables as admitted assets. In fact, this is consistent with procedures set forth in the NAIC model credit for reinsurance law. The NAIC model provides that credit for reinsurance is allowed when the reinsurance is ceded to an assuming insurer that does not meet any other requirements of the law, with respect to the insurance of risks where such reinsurance is "required by applicable law or regulation of that jurisdiction." With respect to the "aging" of recoverables over 90 days, the Department does not anticipate that insurers will be subject to a "surplus charge". The instructions to the annual statement for Schedule F—Part 2B—Sections 1 and 2, specifically provide that the procedures governing the "aging" of reinsurance recoverables do not apply to reinsurance ceded to a "state or federally created residual market mechanism." The UCJF acts as a mechanism for the pooling of catastrophic losses for private passenger automobile and commercial PIP. The Department therefore believes that the UCJF would fall into the exception provided in the NAIC annual statement instructions.

With respect to the treatment of the UCJF assessment, as previously noted, the Department agrees that assessments paid to the UCJF should be treated as ceded premium for purposes of completing the annual statement.

Finally, the Department would anticipate that other states would treat the UCJF as an authorized reinsurer. As previously noted, the NAIC model credit for reinsurance law provides that credit for reinsurance shall be allowed even though the insurer is not authorized or otherwise acceptable under the law to the extent that the reinsurance of such risks is required by applicable state law. It is anticipated that all states will have enacted the NAIC model credit for reinsurance law or a law substantially similar thereto. Since participation in the UCJF mechanism is required by New Jersey law, the Department would anticipate that

other states would allow credit for recoverables from the UCJF in the same manner as New Jersey.

COMMENT: One commenter stated that the footnote disclosure on page 14 is duplicative of the information required to be contained on Schedule F.

RESPONSE: The Department disagrees. The information on page 14 provides direct paid, unpaid and incurred losses, both gross and net of reimbursements of the UCJF. Data to be reported on Schedule F does not include incurred losses. Moreover, the data reported on Schedule F will provide in summary form amounts paid to and received from the UCJF. The Department therefore believes it is reasonable and appropriate to require the data on page 14 as well as Schedule F. Finally, while the commenter stated that the data to be disclosed on page 14 is duplicative of the information required to be contained on Schedule F, it provided no support for this assertion.

Summary of Agency-Initiated Changes:

1. The Department has revised the rule upon adoption to clarify that information to be reported regarding reimbursement from the UCJF relates both to reimbursement for private passenger automobile no-fault PIP (page 14, line 19.1) and commercial automobile no-fault PIP (page 14, line 19.3).

2. The rule is revised to delete the phrase "medical expense benefits." This change recognizes that insurers do not separately report losses for the medical expense benefits portion of PIP from the other components of PIP (that is, income continuation benefits, essential services benefits, death benefits, and funeral expenses benefits).

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

11:3-28.8 Reporting of losses for personal injury protection
[medical expense benefits] payments in excess of
\$75,000

(a) For purposes of completing page 14, Exhibit of Premiums and Losses, of the annual statement filed pursuant to N.J.S.A. 17:23-1, the insurer shall include the total amount of losses for ***private passenger automobile and commercial automobile*** personal injury protection ***[medical expense benefits]*** payments ***(lines 19.1 and 19.3)***, including those in excess of \$75,000. Insurers shall also provide a footnote on page 14 that indicates the amount of losses reported, excluding losses from payments of ***[medical expense benefits]* *private passenger automobile and commercial automobile personal injury protection payments*** in excess of \$75,000.

(b) For purposes of completing Schedule F of the annual statement, insurers shall consider the assumption and reimbursement by the Fund of ***[medical expense benefit]* *private passenger automobile and commercial automobile personal injury protection*** payments in excess of \$75,000 as a reinsurance transaction. ***Insurers shall consider assessments paid to the UCJF pursuant to N.J.S.A. 39:6-63 based on the insurer's premiums for private passenger automobile liability insurance (including PIP) and commercial automobile liability insurance (including PIP) as ceded premium, pro rated for the appropriate line of business on which the assessment was based.***

(c) Insurers shall comply with the provisions of this section beginning with the annual statement due March 1, 1994 (covering the calendar year ended December 31, 1993). For purposes of completing the annual statement due March 1, 1993 (covering the calendar year ended December 31, 1992), insurers shall file by no later than July 1, 1993 a supplemental page 14 and schedule F of the annual statement in accordance with the provisions of this section.

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(a)

**DIVISION OF WORKPLACE STANDARDS
OFFICE OF WAGE AND HOUR COMPLIANCE**

Prevailing Wages for Public Works

Readoption: N.J.A.C. 12:60

Proposed: February 1, 1993, at 25 N.J.R. 453(a).

Adopted: March 19, 1993, by Raymond L. Bramucci,

Commissioner, Department of Labor.

Filed: March 19, 1993 as R.1993 d.164, **without change**.

Authority: N.J.S.A. 34:11-56.25 et seq., specifically 34:11-56.43.

Effective Date: March 19, 1993.

Expiration Date: March 19, 1998.

Summary of Public Comments and Agency Responses:

The Department received a total of four comments on the proposed readoption of the Prevailing Wage rules, all of which supported the proposed readoption without amendment. One comment, however, indicated that the public bodies were not aware of the rules, especially the section requiring contractors to submit their certified payrolls to the public bodies. The commenters were National Electrical Contractors' Association, Northern New Jersey Chapter; the New Jersey State AFL-CIO; and the International Brotherhood of Electrical Workers, Local Union No. 675.

The referenced rule pertaining to certified payrolls was adopted effective February 18, 1992. In order to make public bodies aware of this new requirement, the Department has provided and continues to provide a notice advising of the rule along with its monthly wage determinations; the Department issues over 550 prevailing wage determinations for specific projects each month. Accordingly, the Department has made a significant effort to alert public bodies of the rules' requirements. Nevertheless, the Department would seriously consider any suggestions for expanding awareness of the prevailing wage rules among the affected public and welcomes the submission of any such recommendations.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:60.

(b)

**DIVISION OF WORKPLACE STANDARDS
Safety and Health Standards for Public Employees
Occupational Exposure to Formaldehyde**

Adopted Amendment: N.J.A.C. 12:100-4.2

Proposed: February 1, 1993 at 25 N.J.R. 455(a).

Adopted: March 26, 1993 by Raymond L. Bramucci,

Commissioner, Department of Labor.

Filed: March 26, 1993 as R.1993 d.171, **without change**.

Authority: N.J.S.A. 34:1-20, 31:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30.

Effective Date: April 19, 1993.

Expiration Date: September 22, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, with amendments published in the Federal Register through May 27, 1992 with certain exceptions noted in (b) and (c) below are adopted and are incorporated herein by reference as Occupational Safety and Health Standards and shall include:

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

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(c)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF EXAMINERS OF OPHTHALMIC
DISPENSERS AND OPHTHALMIC TECHNICIANS**

Continuing Education

Adopted Amendment: N.J.A.C. 13:33-1.41

Adopted New Rule: N.J.A.C. 13:33-1.43

Proposed: January 4, 1993 at 25 N.J.R. 57(b).

Adopted: March 3, 1993 by the Board of Examiners of

Ophthalmic Dispensers and Ophthalmic Technicians, Robert Troast, President.

Filed: March 26, 1993 as R.1993 d.173, **without change**.

Authority: N.J.S.A. 52:17B-41.13 and 41.6a.

Effective Date: April 19, 1993.

Expiration Date: March 12, 1995.

The Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians afforded all interested parties an opportunity to comment on the proposed amendment and new rule, N.J.A.C. 13:33-1.41 and 1.43, regarding continuing education. The official comment period ended on February 3, 1993. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 4, 1993, at 25 N.J.R. 57(b). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Society of Dispensing Opticians of New Jersey and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, Post Office Box 45011, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received five letters regarding the proposal from the following individuals:

- Susan R. Auer, O.D., Robert E. Brunner, Inc.
Opticians Association of New Jersey
- Joseph B. Neville, Director, Government Relations, Lenscrafters
- David F. Grimm, Executive Director, New Jersey Optometric Association (NJOA)
- Scott A. Krasny, Esq., counsel for the NJOA

Following is a summary of the comments received together with the Board's responses:

COMMENT: Susan R. Auer, O.D. and the Opticians Association of New Jersey expressed support for the proposal, stating that mandatory continuing education (CE) will improve the proficiency of New Jersey opticians and benefit the consumers of the State.

RESPONSE: The Board acknowledges and appreciates the support of these commenters for the proposal.

COMMENT: Referring to a statement in the Summary accompanying the proposal, the NJOA requested specific examples of the technological changes in the practice of opticianry, as currently defined in the statute, which would demonstrate a compelling need for CE for opticians.

RESPONSE: Among the many technological changes in the practice of opticianry during the past several years are new materials, coatings and fitting techniques as well as new laser technology. It is in the consumer's interest that all licensees be well-versed in these important new developments.

COMMENT: The NJOA questioned use of the term "legislative mandate" in the Summary, pointing out that N.J.S.A. 52:17B-41.6a states that the Board "may require" CE. The NJOA also questioned why the statute would "languish for 13+ years only to be resurrected in the form of a legislative mandate" and, if the proposal is based upon consumer complaints, why that justification was not specifically stated in the proposal.

RESPONSE: As stated above and in the Summary statement, technological changes, as outlined, in the field of opticianry—not consumer complaints—have given rise to the mandatory CE requirement. The commenter is correct that the statute states that the Board "may require" CE. Because the stated purpose of the licensing act is "to protect the public health, welfare and safety by providing for the regulation of the

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sale, dispensing and supplying of all ophthalmic appliances," the Board would be remiss and in violation of the statute if it did not impose a requirement which it now believes is necessary in order to protect the consumer. See, N.J.S.A. 52:17B-41.1 et seq.

COMMENT: The NJOA stated its disagreement with the statements in the Economic Impact Statement and Regulatory Flexibility Analysis with regard to the economic impact of the regulation on employers of opticians. Specifically, the NJOA asserts that:

(1) There will be a significant impact on employers in terms of scheduling and personnel assignments. The NJOA asked whether attendance at CE becomes a condition of employment.

(2) There will be a disruption of employer/employee relations concerning whether the employer is obligated to pay CE registration fees as well as wages and expenses for employed opticians to attend CE courses.

RESPONSE: An optician's employment responsibilities are separate and distinct from licensing requirements. Completion of CE credits is a condition of license renewal, not of employment, and must be undertaken as the sole responsibility of the optician and regardless of whether an employer subsidizes the costs thereof. Whether or not an employer will subsidize CE costs is a question which the Board leaves to the licensee to resolve in his or her particular employment situation. The Board believes that employers will benefit from the CE requirement in that it will enhance their employees' professional skill and knowledge.

COMMENT: With regard to the requirement that CE sponsors obtain prior approval of the Board, the NJOA asked whether, for example, the Opticians Association of America would be required to seek advance Board approval for CE courses offered at an out-of-State convention or whether the dispenser may submit a course description and certificate of attendance after attending the course.

RESPONSE: As stated in the proposal, all CE sponsors must obtain prior approval of the Board. The Board believes it is essential that it have oversight with regard to the subject matter and substance of course offerings.

COMMENT: The NJOA suggested that few, if any, of the national organizations sponsoring CE will pay the \$100.00 fee and seek prior approval, resulting in a virtual monopoly on CE for a few in-State organizations. The NJOA therefore recommended that the \$100.00 sponsorship fee be deleted from the proposal or that it apply only to in-State CE sponsors.

RESPONSE: Again, the Board believes that oversight with regard to CE courses—whether offered in-State or out-of-State—is essential, as is the requirement that the sponsor issue attendance verifications to licensees. The Board believes that out-of-State organizations who wish to extend their programs to New Jersey's licensees will comply with this Board's prior approval requirement.

COMMENT: Citing the recent additional biennial licensing fee of \$210.00 for optometrists seeking certification to prescribe certain medications, the NJOA stated that this Board is proposing to process the same amount of credit hours with only a few thousand dollars to be raised from the sponsoring organizations. The NJOA therefore asked whether a general licensing fee increase will be necessary in order to hire additional Board staff to administer the proposal.

RESPONSE: The comparison to the Board of Optometry certification fee is not apt here, as that fee covers costs other than CE administration, such as substantiating the applicant's credentials and Board enforcement actions in connection with the dispensing of medications. The proposed \$100.00 sponsor fee will, in the Board's opinion, cover the Board's costs of administering the CE program.

COMMENT: The NJOA asserts that the regulation affects the terms and conditions of the employment of ophthalmic dispensers contrary to N.J.S.A. 52:17B-41.5, which states:

"Nothing in . . . this act . . . shall be construed to limit or restrict . . . the practice of medicine by physicians . . . or the practice of optometry by optometrists . . ."

Specifically, the NJOA suggests that the rule restricts the employing optometrist's or physician's prerogatives to train or educate their employed staff to their own level of satisfaction. Accordingly, mandatory CE should extend only to independent practitioners and employees of optical chains who are not exempt as are employees of optometrists and physicians.

RESPONSE: The cited statutory provision merely exempts physicians and optometrists from licensure; it does not provide an exemption from licensure for opticians employed by physicians or optometrists. All opticians offering services in this State, regardless of employment status, are required pursuant to N.J.S.A. 52:17B-41.1 to be licensed. An employer

may continue to train and educate its staff to its own satisfaction as the optician's employment responsibilities are distinct from licensing requirements. The Board believes that the new rule will aid the employer in its efforts in that mandatory CE will enhance the employee's knowledge base.

COMMENT: Lenscrafters suggested that, in order to avoid a delay in obtaining approval for CE courses, the regulation should address the responsibility of the CE sponsor with regard to course assessment.

RESPONSE: Guidelines for course assessment will be supplied to sponsors upon application. The Board anticipates that a questionnaire completed by attendees will suffice as an assessment mechanism.

COMMENT: Lenscrafters suggested that the Board should approve a minimum of three hours of home-study courses for CE credit, stating that other licensed occupations and professions accept home-study courses; that they can be approved in the same manner as other CE courses; and that they are important to licensees because of the time and attention that must be devoted to the dispensary.

RESPONSE: The Board does not believe that home-study courses are appropriate as they provide no mechanism for Board oversight or for verification of completion. In any event, the Board believes that completion of nine credit hours as a requirement of biennial license renewal—4½ per year—will not unduly interfere with a licensee's professional practice.

COMMENT: Citing the statement in the proposal that CE courses "shall be in the areas of ophthalmic science, study related to the human eye and its care . . .," counsel for the NJOA argues that ophthalmic dispensers are not legally authorized to involve themselves in the care of the human eye. Therefore, the CE requirement is unwarranted and can only be a precursor to an attempt to expand the ophthalmic dispensing scope of practice.

RESPONSE: Course work in anatomy and physiology of the eye is part of the course work required in order to qualify to sit for the dispenser examination. Accordingly, continuing education requirements necessarily will include courses which will update licensees in this area, as well as in other areas within the ophthalmic dispenser's scope of practice.

Full text of the adoption follows.

13:33-1.41 Fee schedule

(a) The following fees shall be charged by the Board effective upon promulgation.

1.-8. (No change.)

9. Continuing education sponsor fee (biennial) \$100.00

13:33-1.43 Continuing education requirements

(a) No biennial renewal of a license for an ophthalmic dispenser shall be issued by the Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians for the biennial period commencing January 1, 1994 or any following biennial period unless the ophthalmic dispenser submits satisfactory proof to the Board of participation in approved continuing education courses as specified hereafter. Ophthalmic dispensers applying for their first biennial renewal are exempt from this mandatory continuing education requirement.

(b) Each ophthalmic dispenser licensed by the Board shall successfully complete nine credits per biennial period of approved continuing education course work, except that for the biennial period commencing January 1, 1994, five credits of continuing education course work shall be required for the period January 1, 1993 to December 31, 1993. One credit shall equal one hour of attendance at an approved course. Two credits may be carried over into a succeeding biennial period only if earned during the last six months of the preceding biennial period.

(c) Licensees shall submit to the Board, with the application for biennial license renewal, the sponsors' written verification of attendance. The ophthalmic dispenser shall maintain all sponsor verifications as part of his or her records for a period of three years. Falsification of any information submitted with the renewal application may result in an appearance before the Board, penalties and/or suspension of the license.

(d) The Board may waive the requirements of this section on an individual basis in cases of certified illness or undue hardship.

(e) The Board shall approve only such continuing educational programs as are available on a reasonable nondiscriminatory basis

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to all persons practicing ophthalmic dispensing in the State. The Board shall maintain a list of all approved courses and lecturers at the Board offices and shall furnish this information to licensees upon request. Courses to be approved for the continuing education requirement shall be in areas of ophthalmic science, study related to the human eye and its care, or such other areas of opticianry education as the Board shall designate. Speakers, lecturers and others participating in the presentation of programs shall be recognized as possessing requisite qualifications and being of recognized repute in their area of instruction.

(f) Any person desiring approval as a sponsor of a continuing education course, seminar or program shall:

1. Complete and submit the written application form provided by the Board. The application form will elicit descriptive information concerning the course offering, such as:
 - i. The name and address of sponsoring organization and the name of individual filing application;
 - ii. The title and a complete description of course offering;
 - iii. The date, time (beginning and end) and place of course offering;
 - iv. Curriculum vitae of each speaker; and
 - v. The mechanism to be used to assess program value.
2. Secure Board approval prior to offering any continuing education course, seminar or program and prior to representing that any course, seminar or program fulfills the requirements of this section;
3. Notify all licensees of the time, place and date of the course being offered; and
4. Monitor the attendance at each approved course and furnish to each enrollee a verification of attendance.

(g) An ophthalmic dispenser on inactive status who seeks to reactivate his or her license shall submit proof to the Board of successful completion of nine credits of approved continuing education course work for each biennial period of approved inactive status.

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF REAL ESTATE APPRAISERS
Apprentice Program**

**Adopted New Rules: N.J.A.C. 13:40A-7
Adopted Amendment: N.J.A.C. 13:40A-6.1**

Proposed: January 19, 1993 at 25 N.J.R. 267(a).
Adopted: March 9, 1993 by the Board of Real Estate Appraisers, Robert H. Scrivens, Jr., President.
Filed: March 26, 1993 as R.1993 d.177, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:14F-8(n).
Effective Date: April 19, 1993.
Expiration Date: December 16, 1996.

The Board of Real Estate Appraisers afforded all interested parties an opportunity to comment on the proposed new rules and amendment. The official comment period ended on February 18, 1993. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 19, 1993, at 25 N.J.R. 267(a). Announcements were also forwarded to the Star Ledger, Trenton Times, Bergen Record, Appraisal Institute, American Society of Appraisers, American Bankers Association, American Institute of Real Estate Appraisers, American Society of Farm Managers and Rural Appraisers, International Association of Assessing Officers, National Association of Certified Real Property Appraisers, National Association of Independent Fee Appraisers, National Society of Real Estate Appraisers, New Jersey Association of Realtors, New Jersey Real Estate Commission, and various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Real Estate Appraisers, Post Office Box 45012, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Five letters were received during the 30 day comment period. Three of the comments were submitted on behalf of professional associations; one was submitted on behalf of an educational institution; and one was submitted in an individual capacity. The commenters were:

- Lee O'Toole—New Jersey Bankers Association
- Robert F. Ferguson, Jr.—New Jersey Assn. of Realtors
- Anthony S. Graziano—Appraisal Institute
- Francis D. Polk—Ocean County College
- Joseph Sodano

All commenters expressed support for the proposal and indicated they were hopeful that the establishment of the apprentice program would alleviate the present difficulty of individuals seeking to enter the appraisal field. A summary of the more specific issues raised by the commenters follows:

COMMENT: The Mortgage Committee of the New Jersey Bankers Association commented that the establishment of the apprentice program was "essential . . . to alleviate the 'catch-22' status . . . of students who cannot find an employment opportunity because they are neither licensed nor certified." The commenter notes that these capable people should be given an opportunity to enter the appraisal field under the supervision of a senior appraiser.

RESPONSE: The Board acknowledges and appreciates the response. The Board is proposing the apprentice program in the hope that the existence of the program will facilitate the training of qualified individuals.

COMMENT: New Jersey Association of Realtors (NJAR) recognizes the need for the apprentice program to gain the required experience for licensure. The Association expresses concern over the rationale for limiting the number of times that an apprentice permit may be renewed. The NJAR commented that individuals should be able to obtain apprentice permits for periods greater than three years and that an individual should be permitted to renew the permits as many times as necessary.

RESPONSE: The Board maintains that provisions governing the apprentice program should be consistent with the provisions for licensure (N.J.A.C. 13:40A-3.4), requiring that the appraiser obtain experience in ". . . no less than two, nor more than four calendar years."

When formulating the rules, the Board's intent was that apprentice permits could be renewed a maximum of three times, so that one could hold an apprentice permit for up to a four year period. Given that, the comment from NJAR suggests that there may be some misunderstanding on this point.

In considering this comment, the Board determined to add a sentence to rules to clarify that apprentice permits are valid for a one year period, and may be renewed three times. Specifically, the Board added a sentence in N.J.A.C. 13:40A-7.4, to state "All apprentice permits shall be valid for a one year period."

COMMENT: New Jersey Association of Realtors requests that the Board make available a centralized list of appraisers who are interested in hiring and supervising appraisers, in order that apprentices could have some direction in finding supervisors prior to completing in the required education hours and expending money for an apprentice permit.

RESPONSE: While the Board appreciates the need to create opportunities for apprentices, such a function would ordinarily be inconsistent with the normal scope of authority for a professional licensing agency. The Board trusts that this function could be fulfilled by the operation of private market forces.

COMMENT: New Jersey Association of Realtors recommends that the Board establish a formal notification procedure once the rules are adopted to notify licensees of its availability.

RESPONSE: The Board has already compiled a list of over 300 individuals seeking information about the program and will be working closely with the approved schools and professional organizations offering appraisal education. The Board's newsletter, mailed to all of its licensees, will be used to notify the appraisal community of the apprentice program once it has been adopted.

COMMENT: Anthony Graziano, on behalf of the New Jersey State Government Relations Subcommittee of the Appraisal Institute, endorses the program as published and finds the provisions consistent with the nationally recommended standards of the Appraisal Institute.

RESPONSE: The Board acknowledges and appreciates the commenters' support for the proposal.

COMMENT: Francis D. Polk, Director of the School of Real Estate Appraisal at Ocean County College, urged the Board to approve the rules, but expressed concern that students may be confused that the 45

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hour classroom requirement may be different, or in addition to, the 75 classroom hour requirement for licensure. He was hopeful that schools would not be required to offer two separate programs.

RESPONSE: The Board's intent is that the 45 hours of classroom education necessary to obtain an apprentice permit may be included in the 75 hours required for licensure. The Board, through its staff, will work closely with educational providers and candidates to clarify this matter.

COMMENT: Joseph Sodano, an individual, commented that the proposed rules do not clearly state the ability of an apprentice to inspect property, and should consider specific detail regarding a preliminary apprentice period.

RESPONSE: The Board appreciates the comment. These concerns have been addressed by an advisory letter issued by the Board on March 12, 1992 which described the Board's policy on the inspection of property by unlicensed individuals. Neither New Jersey law nor Federal law explicitly precludes an unlicensed individual from "assisting" in the preparation of an appraisal report. This position was validated by an advisory opinion issued by the Appraisal Standards Board of the Appraisal Foundation (G-5), entitled "Assistance in the Preparation of An Appraisal." Opinion G-5 notes that neither Federal nor state law prohibits the use of unlicensed individuals to inspect property provided that the individuals are competent to do so under the *Uniform Standards of Professional Appraisal Practice*.

The Board is also working closely with the financial community to address this issue and is hopeful that the adoption of these rules will alleviate the reluctance of the banking community to permit the use of unlicensed people in the appraisal process.

The Board also wishes to make clear that the issuance of an apprentice permit is not a license to practice nor does it confer any independent authority to practice real estate appraising. The rules do, however, define the responsibilities of a licensed or certified appraiser to directly supervise an apprentice.

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

13:40A-6.1 Fee schedule

(a) Charges for credentialing, certification, licensure, apprentice permits and other services are as follows:

- 1.-21. (No change.)
- *[19.]****22.*** Apprentice permit fee, annual \$60*.**00***

SUBCHAPTER 7. APPRENTICE PERMITS

13:40A-7.1 Purpose and scope

The rules in this chapter establish a voluntary real estate appraiser apprentice program for individuals in the process of acquiring the 2,000 hours of appraisal experience required in order to be licensed or certified pursuant to this chapter.

13:40A-7.2 Application for apprentice permit; general requirements

(a) Each applicant for an apprentice permit shall submit, with a completed application form and the permit fee set forth in N.J.A.C. 13:40A-6.1, proof satisfactory to the Board that he or she:

- 1. Is more than 18 years of age;
- 2. Is of good moral character, as established by references from individuals, schools and other records acceptable to the Board;
- 3. Has a high school diploma or its equivalent; and
- 4. Has successfully completed the educational requirements set forth in N.J.A.C. 13:40A-7.3.

13:40A-7.3 Educational requirements

(a) To be eligible to receive an apprentice permit, an applicant shall have successfully completed:

- 1. One course covering Basic Principles of Appraising at least 30 classroom hours in length; and
- 2. One course covering the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation at least 15 classroom hours in length, which the applicant shall have taken subsequent to April 27, 1987.

(b) The Board shall grant credit for the courses required pursuant to (a) above only if the individual has successfully completed an examination pertinent to that educational offering.

(c) An applicant may obtain credit for the classroom hour requirement from any of the following: colleges, universities, community colleges or junior colleges accredited by the New Jersey Department of Higher Education or any State accrediting agency approved by the Board; real estate appraisal or real estate related organizations as approved by the Board; State or Federal agencies or commissions as approved by the Board; and proprietary schools as approved by the Board.

(d) The Board shall not grant credit for correspondence courses or for video and remote television educational offerings.

13:40A-7.4 Annual apprentice permit renewal

All apprentice permits shall be valid for a period of one year. An apprentice may renew his or her annual permit a maximum total of three times, upon submission to the Board of a renewal application, the permit renewal fee, and a log in the form set forth in N.J.A.C. 13:40A-7.7.

13:40A-7.5 Responsibilities of apprentice

(a) The holder of an apprentice permit issued by the Board shall work only under the "direct supervision," as that term is defined in N.J.A.C. 13:40-7.6, of a "supervising appraiser," who shall be an individual licensed or certified by this Board who has acknowledged in writing his agreement to perform the responsibilities of a supervisor set forth in 13:40A-7.6. Prior to commencing any work as an apprentice, the holder of an apprentice permit shall inform the Board in writing of the identity of any individuals who have agreed to serve as a "supervising appraiser" for the apprentice. The holder of an apprentice permit shall inform the Board in writing, within seven days, in the event that any individual previously designated as a "supervising appraiser" ceases to agree to perform the responsibilities of a "supervising appraiser," or in the event that any individual not previously designated as a "supervising appraiser" agrees to supervise the work product of the apprentice.

(b) The holder of an apprentice permit issued by the Board shall have the following duties and responsibilities:

- 1. The apprentice shall maintain and submit to the Board upon application for permit renewal a log which meets the requirements set forth in N.J.A.C. 13:40A-7.7;
- 2. The apprentice shall ensure that the log is available at all times for inspection by the Board; and
- 3. When performing appraisal assignments, the apprentice shall carry on his person the permit issued by the Board.

13:40A-7.6 Responsibilities of supervising appraiser

(a) Any individual designated as a "supervising appraiser" by the holder of an apprentice permit shall acknowledge in writing to the Board that he or she agrees to perform all responsibilities set forth in (b) below.

(b) A supervising appraiser shall have the following duties and responsibilities:

- 1. The supervisor shall at all times be responsible for and provide direct supervision of the work performed by the apprentice. For purposes of this section, to "directly supervise" means:
 - i. To personally review the work product of the apprentice; and
 - ii. To approve and sign each appraisal report including work product prepared by the apprentice or in which the apprentice has made a professional contribution and to sign all such reports and certify that all such reports have been independently and impartially prepared in compliance with the Uniform Standards of Professional Appraisal Practice, these rules and applicable statutory standards.
- 2. The supervisor shall, at least once a month, sign the log required to be kept by the apprentice pursuant to N.J.A.C. 13:40A-7.6 and shall set forth thereon his or her license or certification number.
- 3. The supervisor shall provide the apprentice with a copy of any final appraisal report in which the apprentice's work product has been utilized or in which the apprentice made a professional contribution.

13:40A-7.7 Real estate appraiser apprentice log

(a) A real estate appraiser apprentice shall maintain a log which shall include the following information concerning each appraisal assignment in which the apprentice participates:

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1. The name and address of the client;
 2. The type of appraisal report;
 3. The address of the appraised property;
 4. A description of work performed; and
 5. The number of hours claimed for the assignment.
- (b) Appraisal logs submitted to the Board shall indicate the nature of the apprentice's participation in each assignment and the apprentice shall set forth within the log, for each assignment, information indicating whether the apprentice was involved in obtaining, calculating, or preparing:
1. Land/site inspections and descriptions;
 2. Building inspections and descriptions;
 3. Neighborhood descriptions and analysis;
 4. Highest and best use analysis;
 5. Research of comparable sales and analysis;
 6. Cost analysis;
 7. Income analysis (only for apprentices whose experience includes income properties);
 8. Meaningful sales analysis;
 9. Correlation of data into final value; and
 10. Any other components of the appraisal process.

(a)

**NEW JERSEY RACING COMMISSION
Pre-Race Blood Gas Analyzing Machine Testing Program**

Adopted New Rules: N.J.A.C. 13:71-23.3A

Proposed: January 19, 1993 at 25 N.J.R. 269(a).
 Adopted: March 18, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
 Filed: March 26, 1993 as R.1993 d.174, **without change**.
 Authority: N.J.S.A. 5:5-30.
 Effective Date: April 19, 1993.
 Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Response:
No comments received.

With regard to the newly adopted rule, comment was received from Bruce H. Garland, General Manager of Standardbred Racing, New Jersey Sports and Exposition Authority, Meadowlands Racetrack. A summary of the comment as it relates to N.J.A.C. 13:71-23.3A, and the agency response, is set forth immediately below:

COMMENT: The Meadowlands Racetrack, in its comments, indicated that it supported the new rule. However, it suggested the rule not require that the levels of each of the three categories (bicarbonate, sodium and pH) be exceeded, as a result of testing utilizing the blood gas analyzing machine, before a horse may be scratched in accord with a Commission approved track rule. Rather, the Meadowlands Racetrack recommended that the rule allow for the approval of a track rule by the Commission that allows a horse to be scratched based upon excess determined levels less than all three categories. Additionally, the comments of the Meadowlands Racetrack recommended that there be a provision in the rule to address the issue of "repeat offenders."

RESPONSE: Rejected. The rule provides that, with the prior authorization of the Commission and subject to those conditions as the Commission may determine to impose, a track association may adopt a track rule which provides that its acceptance of the entry of a horse in a race is subject to the condition that all persons with an interest in the horse consent to it being scratched should, on the date of the race and as a result of pre-race blood testing utilizing a blood gas analyzing machine, the horse registers levels of bicarbonate (HCO₃) sodium (Na) and a pH level each of which equals or exceeds the levels stated in the approved track rule. The Commission, based upon actual testing and received information, is of the view that all three levels need to be considered in the assessment of whether the horse's participation in the race would be adverse to the best interests of harness racing and to the horse.

Also in its comments, the Meadowlands Racetrack recommends that there be provisions in the rule to address the issue of "repeat offenders."

Although the Racing Commission has determined not to amend the instant rule in accord with the comment, at its February, 1993 public meeting the Commission determined to advertise for public comment a proposed new rule, N.J.A.C. 13:71-23.3B, which would require pre-race guarded quarantine for the horses of those trainers who have experienced repeated incidents of any horse or horses under the trainer's custody, care and control being scratched in accord with the procedures set forth in N.J.A.C. 13:71-23.3A. The Commission, once it secures public comment and related information, will determine whether or not to adopt such proposal.

Full text of the adoption follows.

13:71-23.3A Pre-race blood gas analyzing machine testing program

(a) An excess bicarbonate, sodium and pH level in the race horse is deemed adverse to the best interests of harness racing, and adverse to the best interests of the horse in that such condition alters its normal physiological state. Accordingly, with the prior authorization of the Commission and subject to those conditions as the Commission may determine to impose, a track association may adopt a track rule which provides that its acceptance of the entry of a horse in a race is subject to the condition that all persons with an interest in the horse consent to it being scratched should, on the date of the race and as a result of pre-race blood testing utilizing a blood gas analyzing machine, the horse registers levels of bicarbonate (HCO₃), sodium (Na), and a pH level at or in excess of the levels stated in the approved track rule. In such event, the entry of a horse shall constitute permission for a veterinarian appointed in accordance with (e) below to obtain blood samples from the entered horse, and shall further constitute consent to the judges scratching of the horse from the race in accord with this section.

(b) Where the Commission approves the track association's adoption of a track rule as described in (a) above, and a horse is entered to participate in a race at the track association following the adoption of said rule, the judges shall order scratched any entered horse which on the day of the scheduled race registers readings in excess of each of the three levels (bicarbonate, sodium and pH) as set forth in the approved track rule, on each of two tests conducted utilizing the blood gas analyzing machine.

(c) If the levels of bicarbonate, sodium and pH are determined to equal or exceed those set forth in the approved track rule for any single horse, and the licensed owner or trainer of that horse contends that such levels are physiologically normal for the particular horse, said licensee may request that the horse be held in guarded quarantine. In the event so requested, the track association implementing the track rule pursuant to (a) above shall make such guarded quarantine available, for a period of time to be determined by the judges but in no event less than 48 hours, at the sole expense of the licensee requesting same. During any quarantine, the horse shall be re-tested periodically and, although the horse may not race during such quarantine period, it may be exercised and trained at times prescribed by the association and consistent with the ability to monitor the horse. If the judges are satisfied, on the basis of the evident facts, the quarantine and the testing of the horse's blood utilizing the blood gas analyzing machine, that the three levels (bicarbonate, sodium and pH) set forth in the approved track rule are physiologically normal for that particular horse, the judges notwithstanding the implementation of the track rule may permit the horse to race. In such case, the judges in their discretion may, at the sole expense of the track association implementing the track rule, require that the horse re-establish that such levels are physiologically normal to it pursuant to the procedure set forth in this subsection but no sooner than 35 days after the last quarantine period for the horse.

(d) Where the Commission approves the track association's adoption of a track rule as described in (a) above, and a horse is entered to participate in a race at the track association following the adoption of said rule, any owner, trainer or licensed representative of same who refuses to cooperate in connection with the testing of the horse, or who fails to permit any horse to be tested utilizing the blood gas analyzing machine, shall be deemed to be acting contrary to the track rule under which condition the horse was entered to race. In such circumstance, the judges shall order the horse scratched.

TRANSPORTATION

(e) All persons participating in any blood gas analyzing machine testing or quarantine process as described in this section, whether an employee of the Racing Commission or the track association, shall act at the direction of the Commission representative as designated by the Commission or its Executive Director. In no event shall a horse entered to participate in a race have blood drawn, for the purpose of testing utilizing the blood gas analyzing machine, without all horses participating in said race having also had blood drawn for the purpose of such testing. Only a licensed veterinarian, approved by the Commission or its Executive Director, shall draw blood from any horse for testing on the blood gas analyzing machine. The procedures outlined or authorized in this section shall govern the conduct of any blood gas analyzing machine testing program, notwithstanding anything to the contrary in N.J.A.C. 13:71-23.3.

(f) Nothing contained in this section shall prohibit the Racing Commission, in its sole discretion, from rescinding its approval of any track rule authorized pursuant to (a) above, and from ordering the discontinuance of any testing program utilizing the blood gas analyzing machine as established pursuant to this section.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes N.J. 27 in Union County and N.J. 15 in Morris County

Adopted Amendments: N.J.A.C. 16:28A-1.18 and 1.65

Proposed: February 16, 1993 at 25 N.J.R. 675(a).

Adopted: March 19, 1993 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: March 23, 1993 as R.1993 d.168, **without change**.

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

Effective Date: April 19, 1993.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28A-1.18 Route 27

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

(e) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified. In accordance with the provisions of N.J.S.A. 39:4-198, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. (No change.)

2. In the City of Linden, Union County:

i. (No change.)

ii. East St. Georges Avenue:

(1) Along the west side:

(A) Two hour time limit parking from 8:00 A.M. to 6:00 P.M. Sunday through Saturday from Cranford Avenue to Grant Street.

16:28A-1.65 Route 15

(a) The certain parts of State highway Route 15 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.

1.-2. (No change.)

3. No stopping or standing in the Town of Dover, Morris County:

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i.-ii. (No change.)

iii. Along both sides:

(1) From Davis Avenue north to the corporate limits.

4.-5. (No change.)

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Cigarette Tax

Tax Stamps

Adopted Amendments: N.J.A.C. 18:5-2.3, 3.3, 3.9, 3.10, 3.11, 3.12, 3.13, 3.20, 3.21, 3.22, 3.23, 3.24, 3.25, 4.3, 4.4, 4.5, 4.6, 4.7, and 5.8

Adopted Repeals: N.J.A.C. 18:5-3.7 and 3.8

Adopted Repeals and New Rules: N.J.A.C. 18:5-3.2, 3.4, 3.5 and 3.6

Proposed: July 6, 1992 at N.J.R. 2415(a).

Adopted: March 19, 1993 by Leslie A. Thompson, Director, Division of Taxation.

Filed: March 22, 1993 as R.1993 d.167, **without change**.

Authority: N.J.S.A. 54:40A-20 and 54:40B-1 et seq., specifically 54:40B-12.

Effective Date: April 19, 1993.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

18:5-2.3 Computation of tax

The provisions of the Act impose a tax computed at the rate of \$0.02 for each cigarette.

18:5-3.2 Types of stamps available; denominations

(a) Heat decalcomania tax stamps applied by machine in denominations of \$0.40 are sold only in multiples of 30,000 stamps.

(b) Heat decalcomania tax stamps applied by machine in denominations of \$0.50 are sold only in multiples of 7,200 stamps.

(c) Heat decalcomania tax stamps applied by hand in denominations of \$0.20, \$0.40, and \$0.50 are sold in blocks of individual sheets of 100 stamps and only multiples of 1,000 stamps.

18:5-3.3 Purchase of stamps; location

Decalcomania tax stamps are available and may be purchased only at the Division of Taxation, Trenton, New Jersey.

18:5-3.4 Purchase of stamps; discount allowed

(a) The following discounts shall be allowed on all sales of cigarette revenue tax stamps to licensed distributors provided the distributor is in compliance with all of the provisions of the Act and these rules:

1. A discount of .01215 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of \$0.20 when the number purchased is in excess of 1,000 stamps.

2. A discount of .01125 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of \$0.40 when the number purchased is in excess of 1,000 stamps, or in multiples of 30,000 stamps for machine applied stamps.

3. A discount of .009 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of \$0.50 when the number purchased is in excess of 1,000 stamps, or in multiples of 7,200 stamps for machine applied stamps.

18:5-3.5 Purchase of stamps; noncredit basis

Licensed distributors may make noncredit purchases of heat applied tax stamps by telephoning their order to the Division of Taxation, Revenue Accounting, 609-984-2029 or 984-3723 and mail-

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ing a money order or check to the Division of Taxation, Revenue Accounting, CN 250, Trenton, New Jersey 08646. Once ordered, the stamps will be mailed to the purchaser.

18:5-3.6 Purchase of stamps on a credit basis

All purchases of heat applied tax stamps shall be made through telephone order to the Division of Taxation, Revenue Accounting, Trenton, New Jersey, 609-984-2029 or 984-3723. Once ordered these stamps will either be mailed out or picked up at the Division of Taxation, Trenton, New Jersey.

18:5-3.7 (Reserved)

18:5-3.8 (Reserved)

18:5-3.9 Purchase of stamps; credit basis payments

Payment for all revenue tax stamps purchased on a credit basis must be received by the Director at the Division of Taxation in Trenton, New Jersey, within 30 days (including Saturdays, Sundays, and holidays) of the date of purchase.

18:5-3.10 Decalcomania revenue tax stamps

(a) Decalcomania revenue tax stamps of the proper denomination shall be affixed to each individual package of cigarettes in such manner as to adhere securely in accordance with the instructions of the manufacturer.

(b) If packages of cigarettes are wrapped in or covered by some substance to which the stamps do not readily adhere, such wrapper or covering must be roughened or treated so that the stamps will adhere securely thereto.

18:[1]*5-3.11 Stamping machines; authorization to use

(a) The Director may, at his or her discretion, approve the use of stamping machines to affix, print or impress revenue tax stamps upon individual packages of cigarettes.

(b) Authorization for the use of stamping machines may be granted only to duly licensed distributors.

(c) The Director reserves the right to rescind all authorization to use stamping machines upon 30 days notice, should such action appear to be in the best interest of the State of New Jersey.

(d) The Director shall be informed immediately by the seller of all sales of stamping machines delivered to New Jersey or for use in applying New Jersey tax decalcomania, including the name and address of the buyer.

18:[1]*5-3.12 Stamping machines; conditions of use

(a) Application by licensed distributors for authorization to use a stamping machine is to be made to the Director, who shall apply the following terms and conditions to such authorization:

1. Only stamping machines of a type approved by the Director are to be used to affix stamps;
2. Only stamping machines registered with the Director are to be used to affix stamps;
3. Stamping machines registered with the Director are to be used to affix stamps only on packages of cigarettes owned by the distributor affixing same;
4. Each stamping machine and stamps are to be kept in a safe place when not in use, and are to be safeguarded when being transported;
5. No stamping machine is to be transferred or otherwise disposed of without prior written permission of the Director;
6. All stamping machines must be regularly serviced and cleaned in accordance with the instructions issued by the manufacturer of the equipment.

18:[1]*5-3.13 Stamping machine inspection

(a) All stamping machines and related equipment are subject to inspection and examination regularly by the Director.

(b) If the Director finds that any machine or equipment is not being used either in accordance with the instructions of the manufacturer, or these rules, the Director may suspend or revoke a licensed distributor's privilege to use a stamping machine.

18:[1]*5-3.20 Suspension or revocation of stamping machine privilege

The Director may, at his or her discretion, suspend or revoke the stamping machine privilege of any licensed distributor who fails to use a machine in accordance with either the instructions of the manufacturer or with these rules.

18:[1]*5-3.21 Notice of suspension or revocation of discount, credit, or stamping machine privilege

The Director, before suspending or revoking the discount, credit, or stamping machine privilege of any licensed distributor, shall give 10 days notice to the licensee personally, or by mail addressed to his last known address, which notice shall recite in detail the reasons and basis for the suspension or revocation, and shall specify the date, time and place for the hearing.

18:[1]*5-3.22 Hearing of suspension or revocation of discount, credit, or stamping machine privilege

The Director shall afford any person who has received a notice of a hearing to suspend or revoke the discount, credit, or stamping machine privilege, the right to be heard in person or by attorney, to offer evidence pertinent to the subject of the hearing, and to invoke the powers of the Director with respect to the compulsory attendance of witnesses and the production of books, accounts, papers, records and documents by subpoena.

18:[1]*5-3.23 Basis of order suspending or revoking the discount, credit, or stamping machine privilege

After a hearing, the Director, in issuing any Order which suspends or revokes the discount, credit, or stamping machine privilege of any licensed distributor shall include in the Order the findings of fact upon which such Order is based.

18:[1]*5-3.24 Service of order suspending or revoking the discount, credit, or stamping machine privilege

The Director shall serve any Order suspending or revoking the discount, credit, or stamping machine privilege of any licensed distributor by personal delivery of a certified copy, or by mailing a copy thereof to him at his last known address.

18:[1]*5-3.25 Appeal of order suspending or revoking the discount, credit, or stamping machine privilege

Any licensed distributor may within 45 days from the date of any Order of the Director suspending or revoking the discount, credit, or stamping machine privilege of such distributor appeal to the Appellate Division of the Superior Court of New Jersey by filing a notice of appeal.

18:[1]*5-4.3 Redemption of unused or mutilated tax stamps

(a) A refund equal to the face value, less the discount allowed, is made to licensed distributors on returned, unused or mutilated but identifiable cigarette decalcomania tax stamps when accompanied by a properly executed claim for refund (Form A-3730).

(b) (No change.)

18:[1]*5-4.4 Redemption of tax stamps affixed to spoiled packages of cigarettes

(a) A refund equal to the face value, less the discount allowed, on identifiable cigarette decalcomania tax stamps affixed to spoiled packages of cigarette may be obtained by licensed distributors when an agent of the Director has witnessed the destruction of the spoiled packages of cigarettes and the stamps thereon, and a properly executed claim for refund (Form A-3730) is filed.

(b) (No change.)

18:[1]*5-4.5 Redemption of tax stamps affixed to packages of cigarettes returned to manufacturers

(a) A refund equal to the face value, less the discount allowed, on identifiable cigarette decalcomania tax stamps affixed to packages of cigarettes returned to manufacturers may be obtained by licensed distributors when a properly executed claim for refund (Form A-3730) is filed.

(b) (No change.)

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- 18:[1]*5-4.6 Redemption of tax stamps affixed to packages of cigarettes sold to the United States Government or its agencies
 - (a) A refund equal to the face value, less the discount allowed, on cigarette decalcomania revenue tax stamps affixed to packages of cigarettes sold to the United States Government or its agencies may be obtained by licensed distributors when a properly executed claim for refund is made on Form A-3730. The claim must be accompanied by:
 - 1.-2. (No change.)
- 18:[1]*5-4.7 Redemption of tax stamps affixed to packages of cigarettes exported
 - (a) A refund equal to the face value, less the discount allowed, on cigarette decalcomania revenue tax stamps affixed to packages of cigarettes exported to points outside of New Jersey may be obtained by licensed distributors when a properly executed claim for refund is made on Form A-3730. The claim must be accompanied by:
 - 1.-2. (No change.)
- 18:[1]*5-5.8 Nonresident distributors' report
 - (a) Every licensed nonresident distributor is required to file a monthly report on form CNR-1 (Nonresident Distributors Cigarette Tax Return). The following schedules must accompany the return, when applicable:
 - 1.-2. (No change.)
 - 3. Schedule D (Form CNR-5) Purchases of Revenue Stamps during the report month.

- 19:41-1.4 Employee license credentials; display; temporary credentials; obligation to obtain renewed credentials
 - (a)-(h) (No change.)
 - *[(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.]*
- 19:41-14.3 Contents of renewal application
 - (a) An application for the renewal of an employee license shall include:
 - 1. A completed Employee License Renewal Application form signed by the applicant and notarized by a person authorized to administer oaths in the State of New Jersey. This form shall contain all relevant information since the applicant's initial application for licensure or most recent renewal application concerning the following:
 - i.-vii. (No change.)
 - 2. A Release Authorization signed by the applicant and notarized by a person authorized to administer oaths in the State of New Jersey, which Release Authorization shall direct all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions, and all governmental agencies, to release any and all information pertaining to the applicant as requested by the Division or Commission; and
 - 3. (No change.)
 - (b)-(c) (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications

Employee Licenses; Renewal of Employee Licenses

Adopted Amendments: N.J.A.C. 19:41-1.4 and 14.3

Proposed: January 19, 1993 at 25 N.J.R. 276(a).
 Adopted: March 17, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
 Filed: March 19, 1993 as R.1993 d.163, with a technical change not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).
 Authority: N.J.S.A. 5:12-63, 69, 70a and b, 80, 94 and 95.
 Effective Date: April 19, 1993.
 Operative Date: July 1, 1993.
 Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Sands Hotel and Casino filed a comment stating that it did not object to the adoption of the proposed amendments.
 RESPONSE: The Sands comment has been accepted by the Commission as indicated by its adoption of the amendments.

Summary of Agency-Initiated Changes:

Since the proposed amendment to N.J.A.C. 19:41-1.3 was published, subsection (h) of the rule was repealed and recodified as part of a new rule which addresses requirements applicable to employee license credentials. See N.J.A.C. 19:41-1.4(i). The text of the subsection was not modified when recodified. The same rationale which caused the Commission to propose the deletion of N.J.A.C. 19:41-1.3(h) in its January 19, 1993 proposal, namely that such provision will be duplicated in N.J.A.C. 19:41-14.5(e) when that rule becomes operative on July 1, 1993, applies with equal force to the recodified language in N.J.A.C. 19:41-1.4(i). Accordingly, the Commission has modified the current proposal on adoption to repeal N.J.A.C. 19:41-1.4(i), operative on July 1, 1993.

Full text of the adoption follows (deletion from proposal indicated in brackets with asterisks *[thus]*).

(b)

CASINO CONTROL COMMISSION

Notice of Administrative Corrections

Internal Controls

Procedures for Complimentary Cash and Noncash Gifts

Gaming Equipment

Nature and Exchange of Gaming Chips, Slot Tokens and Plaques

Cards; Physical Characteristics

Persons Doing Business with Casino Licensees

Standards for Qualification; Persons Required to be Qualified

N.J.A.C. 19:45-1.9B; 19:46-1.5 and 1.17; and 19:51-1.3 and 1.4

Take notice that the Casino Control Commission has discovered errors in the current text of N.J.A.C. 19:45-1.9B, 19:46-1.5 and 1.17, and 19:51-1.3 and 1.4.

At N.J.A.C. 19:45-1.9B(d), the phrase "the issuance of a complimentary cash and noncash gift" read "the issuance of a complimentary cash or noncash gift" in the original proposal and adoption documents (see PRN 1992-332 and R.1992 d.499, respectively), but was incorrectly reproduced in the New Jersey Register publication of those documents. As the correct form of the phrase is indicated in the notice of adoption in the comment from the Division of Gaming Enforcement and the Commission's response (see the 17th comment and response, 24 N.J.R. 4572), the error can be corrected through this notice.

At N.J.A.C. 19:46-1.5(b), the first clause of the second sentence should read, "Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage;" (see 20 N.J.R. 516(a) and 1099(a)). However, the words "issued to casino patrons at the gaming tables and shall only be" were omitted from both the original and published notices of proposal and adoption for the most recent amendments to this section (see 24 N.J.R. 3695(a) and 25 N.J.R.

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348(b)). Through this notice of administrative correction, the missing text is reinserted.

At N.J.A.C. 19:46-1.17(a), the term "baccarat/minibaccarat" was revised as "baccarat, minibaccarat" in the most recent proposal and adoption affecting this section (see 24 N.J.R. 2351(a) and 25 N.J.R. 367(a)). As the change is not reflected in the Code, this notice will correct the term.

Due to the recodification of the former N.J.A.C. 19:43 as 19:51 (see 24 N.J.R. 3225(a) and 4563(a)), several cross-references in N.J.A.C. 19:51-1.3 and 1.4 to provisions in the former N.J.A.C. 19:43 must be changed to reflect the new codification in N.J.A.C. 19:51.

This notice of administrative corrections is published pursuant to N.J.A.C. 1:30-2.7.

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

19:45-1.9B Procedures for complimentary cash and noncash gifts

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

(d) Notwithstanding the provision of N.J.A.C. 19:45-1.9(b), no casino licensee shall permit any employee to authorize the issuance of a complimentary cash [and] or noncash gift with a value of \$10,000 or more unless the employee is licensed and functioning as a casino key employee and the authorization is co-signed by a second employee licensed and functioning as a casino key employee.

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

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques

(a) (No change.)

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the [cashiers'] cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths for coin or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 to play the slot machines and may be used for simulcast wagering.

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

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, [baccarat/minibaccarat] **baccarat, minibaccarat**, pai gow poker, pokette and red dog shall be in decks of 52 cards each with each card identical in size and shape to every

other card in such deck. Notwithstanding the foregoing, decks of cards used to play pai gow poker shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck.

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

19:51-1.3 Standards for qualification

(a) The standards for qualification for a casino service industry or junket enterprise license are set forth below and in N.J.A.C. [19:43-1.5] **19:51-1.5**. Additional rules establishing standards for qualification for gaming schools are set forth in N.J.A.C. 19:44-3 and 19:44-4.

(b) (No change.)

(c) Each applicant required to be licensed as a casino service industry in accordance with subsections 92c and d of the Act or as a junket enterprise in accordance with section 102 of the Act shall, prior to the issuance of any casino service industry or junket enterprise license, produce such information, documentation, including, without limitation as to the generality of the foregoing, its financial books and records, and assurances to establish by clear and convincing evidence its good character, honesty and integrity.

1. Each applicant for a casino service industry license issued pursuant to subsections 92c and d of the Act shall also be required to establish the good character, honesty and integrity of each of the persons required to be qualified pursuant to the provisions of N.J.A.C. [19:43-1.14] **19:51-1.14**.

2. Each applicant for a junket enterprise license shall also be required to establish that such of its owners, management and supervisory personnel, junket representatives and other principal employees as the Commission may consider appropriate for qualification pursuant to N.J.A.C. [19:43-1.14] **19:51-1.14** shall qualify under the standards, except for residency, established for the qualification of a casino key employee under N.J.S.A 5:12-89.

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

19:51-1.4 Persons required to be qualified

The general rules relating to the persons required to be qualified prior to the issuance of a casino service industry or junket enterprise license are set forth in N.J.A.C. [19:43-1.14] **19:51-1.14**. Additional rules relating to the persons required to be qualified prior to the issuance of a casino service industry license to a gaming school are set forth in N.J.A.C. 19:44-4.

PUBLIC NOTICES

HEALTH

(a)

DIVISION OF FAMILY HEALTH SERVICES

Notice of Availability of Grants Chronic Renal Disease

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7) the Department of Health hereby publishes notice of the availability of the following grant:

Name of grant program: Chronic Renal Disease, Grant Program No. 94-63-CR.

Purpose for which the grant program funds will be used: Develop a Statewide disaster plan related to end-stage renal disease (ESRD); analyze, summarize and report data on the adequacy of dialysis prescriptions, and issue recommendations to dialysis centers.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

Eligible applicants must comply with the following requirements:

1. Terms and conditions for the administration of health service grants;
2. General and specific grant compliance requirements issued by the granting agency; and
3. Applicable Federal cost principles relating to the applicant.

Groups or entities which may apply for the grant program: Trans-Atlantic Renal Council, East Brunswick, New Jersey.

Qualifications needed by an applicant to be considered for a grant: As above.

Procedures for eligible entities to apply for grant funds: Complete and timely submission of application.

For information contact:

Patricia J. Barta, MPH, RN
Health Promotion Program, Chronic Renal Disease Activity
Division of Family Health Services
CN 364
Trenton, New Jersey 08625-0364
(609) 292-4961

Deadline by which applications must be submitted: Applications are submitted approximately four to six weeks after release of Request for Application (RFA); deadline for submission is included in RFA.

Date by which applicant shall be notified whether they will receive funds: Approximately eight weeks after deadline for submission of applications.

(b)

DIVISION OF ALCOHOLISM, DRUG ABUSE AND ADDICTION SERVICES

Notice of Availability of Grants Mutual Assistance Program—Inmate Release

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7) the Department of Health hereby publishes notice of the availability of the following grant:

Name of grant program: Mutual Assistance Program—Inmate Release, Grant Program No. 94-65-ADA.

Purpose for which the grant program funds will be used: To provide residential and outpatient alcohol and drug treatment in existing treatment programs for prison inmates in the early release program.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

Eligible applicants must comply with the following requirements:

1. Terms and conditions for the administration of health service grants;

2. General and specific grant compliance requirements issued by the granting agency; and

3. Applicable Federal cost principles relating to the applicant.

Groups or entities which may apply for the grant program:

County governments, not-for-profit corporations and other local government organizations.

Qualifications needed by an applicant to be considered for a grant: Demonstrated ability in the provision of substance abuse treatment services consistent with Department of Health licensure standards.

Procedures for eligible entities to apply for grant funds:

Submit a concept paper (five pages or less) including: 1) a description of the applicant agency; 2) alcohol/drug services to be provided (with measurable goals and objectives); 3) implementation methods; 4) needs description; 5) implementation time frames; 6) site description; 7) target population; and 8) operating budget with source of funds. A copy must be submitted to applicant agency's county Local Advisory Committee on Alcoholism and Drug Abuse.

For information contact:

Gary S. Chorba, Program Manager
Treatment and Rehabilitation Service Unit
Division of Alcoholism, Drug Abuse and
Addiction Services
CN 362
Trenton, NJ 08625-0362
609-292-7263

Deadline by which applications must be submitted:

Concept paper due to funding program by May 15, 1993.

Date by which applicant shall be notified whether they will receive funds:

Applicant will be notified 30 days prior to start date of Grant.

(c)

DIVISION OF FAMILY HEALTH SERVICES

Notice of Availability of Grants Chronic Renal Disease

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7) the Department of Health hereby publishes notice of the availability of the following grant:

Name of grant program: Chronic Renal Disease, Grant Program No. 94-62-CR.

Purpose for which the grant program funds will be used: To extend financial assistance in obtaining medications and nutritional supplements to persons suffering from end-stage renal disease.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

Groups or entities which may apply for the grant program: Licensed New Jersey chronic renal dialysis centers.

Qualifications needed by an applicant to be considered for a grant: As above.

Procedures for eligible entities to apply for grant funds: Complete and timely submission of application.

For information contact:

Patricia J. Barta, MPH, RN
Health Promotion Program, Chronic Renal Disease Activity
Division of Family Health Services
CN 364
Trenton, New Jersey 08625-0364
(609) 292-4961

Deadline by which applications must be submitted: Applications are submitted approximately four to six weeks after release of Request for Application (RFA); deadline for submission is included in RFA.

Date by which applicant shall be notified whether they will receive funds: Approximately eight weeks after deadline for submission of applications.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ALCOHOLISM, DRUG ABUSE AND ADDICTION SERVICES

Notice of Availability of Grants Tobacco Use Control Activities

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7) the Department of Health hereby publishes notice of the availability of the following grant:

Name of grant program: Tobacco Use Control Activities, Grant Program No. 94-64-ADA.

Purpose for which the grant program funds will be used: To implement tobacco use control activities aimed at prevention, education, and treatment of nicotine addiction. Target populations include at-risk youth, children of blue-collar workers, minorities and pregnant adolescents. Types of grant programs and amount of funds released varies annually.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

Eligible applicants must comply with the following requirements:

1. Terms and conditions for the administration of health service grants;
2. General and specific grant compliance requirements issued by the granting agency; and
3. Applicable Federal cost principles relating to the applicant.

Groups or entities which may apply for the grant program: Depending on the types of proposals released, applicable agencies may be health departments, hospitals, voluntary agencies, community organizations, etc.

Qualifications needed by an applicant to be considered for a grant: Depending on the exact RFA(s) released, agencies funded may need specialized staff (health educators, nurses, counselors, etc.) to conduct grant activities.

Procedures for eligible entities to apply for grant funds: Completion of Request for Application (RFA) which is available through program office.

For information contact:

Ms. Janice Marshall
Tobacco Use Prevention
Division of Alcoholism, Drug Abuse and Addiction Services
129 East Hanover Street
Trenton, NJ 08625-0362
(609) 984-1307

Deadline by which applications must be submitted: Applications are submitted approximately four to six weeks after release of the RFA.

Date by which applicant shall be notified whether they will receive funds: Approximately eight weeks after completed RFA's are returned to the Department.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Sussex County and Northeast Water Quality Management Plans

Public Notice

Take notice that on March 19, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County and Northeast Water Quality Management Plans was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Jefferson Township. The adopted WMP allows for three new sewage treatment plants (STPs), discharging to ground water, to serve the proposed Henderson Cove and Seneca Gardens developments, both in the Musconetcong River drainage basin, and the Moosepac proposed development in the Rockaway and Pequannock River drainage basins. The

WMP also allows for the continuation of the discharge to a tributary of Lake Shawnee from the Jefferson Township Board of Education Stanlick School STP. The service area of the existing White Rock STP will be expanded to include two proposed developments and an existing shopping center. The White Rock STP, which discharges to surface water, will be expanded to treat this flow. In addition, the WMP delineates the ground water discharge service areas for facilities with design capacities of less than 20,000 gallons per day (gpd).

This amendment was noticed in the New Jersey Register on June 1, 1992 at 24 N.J.R. 2082(a). The Sussex County Board of Chosen Freeholders held a public hearing on the amendment on July 1, 1992. Comments on this amendment were received during the comment period and are summarized below with the Department's responses.

1. COMMENT: The Lake Hopatcong Regional Planning Board (LHRPB) did not endorse the WMP and expressed concern regarding the continuing surface water discharge from the Stanlick School STP. The Board specified that the following requirements be incorporated into the WMP: a) That the school agree to install phosphorous removal technology; b) That the discharge be suspended during the summer season; c) That the downstream freshwater wetlands area be deed restricted so as to permanently preserve its character; d) That the school agree to copy the LHRPB on all Discharge Monitoring Reports and other submittals to the Department.

RESPONSE: The requirements specified above were not appropriate for inclusion as part of the WMP. Therefore, a separate agreement was formulated by the LHRPB and the Jefferson Township Board of Education to address these concerns. The WMP mentions this agreement for informational purposes only. The agreement is not part of the WMP. The LHRPB has now endorsed the WMP.

The Jefferson Township Environmental Commission made the following comments:

2. COMMENT: The categorization of the Town in the WMP conflicts with its categorization in other documents.

RESPONSE: The WMP has been revised so that reference to the categorization of the Township as a suburban municipality on page 3 has been deleted.

3. COMMENT: The WMP should be revised to delineate areas within 100 feet of lakes as critical. In addition, mention is necessary of the high efficiency rating of a closed system over that of a mounded system and that in these designated lake areas the closed system would be preferable to the mounded system. Another alternative to the closed system is nondevelopment of these areas until such time as sewers are available.

RESPONSE: The design, construction, installation, and operation of individual subsurface sewage disposal systems is regulated by N.J.A.C. 7:9A. Therefore, it is inappropriate to regulate their use through the WMP. The WMP may, however, be revised to reference any ordinances adopted by the Township Council which address the Environmental Commission's concerns related to individual subsurface sewage disposal systems within 100 feet of lakes.

4. COMMENT: The WMP should include a historical overview of the development of Milton including major flows and changes in commercial zoning.

The Environmental Commission feels a great deal of concern regarding the development of Milton. Not only is it at the head of the aquifer, but it has sensitive soils. Its layout and location do not readily lend itself to centralized water or sewage.

RESPONSE: A historical overview is not required and has not been included as part of the WMP.

The kind of wastewater treatment and disposal proposed by the WMP for this area of the Township is based on the type and number of development units allowed by the Township zoning as required in N.J.A.C. 7:15-5.18(b). The areas zoned commercial and multi-family residential are appropriately included in a service area for ground water disposal facilities with a design capacity of less than 20,000 gpd. For the control of the discharge of pollutants into ground water, any ground water discharge facility with a design capacity of greater than 2,000 gpd proposed within this area is required to obtain a New Jersey Pollutant Discharge Elimination System (NJPDDES) permit from the Department prior to construction and operation of the facility. The areas zoned for lower density residential are included in an area for individual subsurface sewage disposal systems which are regulated under N.J.A.C. 7:9A.

5. COMMENT: The crossing of watersheds should be addressed and the current proposed gallonage and the State's limit on gallonage should be reflected in the WMP.

ENVIRONMENTAL PROTECTION

PUBLIC NOTICES

RESPONSE: The crossing of watersheds is an issue when water is removed from one basin (consumptively) and returned to another basin via wastewater treatment plants. This does not appear to be an issue between the Rockaway and Pequannock River Basins as water will be returned to the same basin from which it is removed, and between the Rockaway and Musconetcong River Basins in which there is no specific ground water diversion proposed.

6. COMMENT: Plate A-1 should be revised to include additional dry sewer lines on a basis of geologic features, including Liffy Island and the block outlined by Espanong Road, Bowling Green Parkway and Route 15. Based on the geology of these areas, the WMP should stipulate that sewers are necessary for development.

RESPONSE: Dry sewer lines must be included in the appropriate sewer service area in order to be consistent with the applicable WQMP. At this stage, the Jefferson Township WMP only proposes a conceptual service area to the Musconetcong Sewerage Authority (MSA) STP which does not include the above referenced areas. The service area is taken from the Environmental Constraints Analysis done for the 201 Facilities Plan for the Upper Musconetcong Drainage Basin approved in 1988. As the MSA service area in the Jefferson Township WMP is only conceptual, it would be inappropriate to revise the sewer service area at this time.

The MSA is currently proceeding with a draft WMP which will delineate the future MSA sewer service area in Jefferson Township; however, this delineation is also based on the Environmental Constraints Analysis. To change this service area, an amendment to the Sussex County WQMP is required (either via the MSA WMP or a separate amendment) as well as possible revision to the Environmental Constraints Analysis.

7. COMMENT: The WMP should include a section referencing the Department's new ground water standards, the Well Head Protection Program (WHPP), and the Aquifer Recharge Area Protection Program (ARAPP).

This section should also address the types of businesses and industry that would be suitable due to what they put into the water and any zoning changes necessary to comply with the WHPP.

RESPONSE: The new Ground Water Quality Standards (N.J.A.C. 7:9-6) were recently adopted (January 7, 1993) and supersede the information presented in Table E-1 of the WMP.

Page J-4 has been revised to reference the WHPP and the ARAPP. Mention of the specific types of businesses and industry in an area is not required to be included and is not appropriate for inclusion in the WMP. This, instead, may be addressed in part by the WHPP and the specific State regulations which will be revised in the process of implementing this plan. In regard to zoning, a separate amendment to the WMP should be proposed to address zoning ordinance changes which will affect service areas.

8. COMMENT: The Stanlick school remains on a marginally acceptable level due to the current low population and seasonal usage. Mention should be made that if this should change, further review would be necessary to determine if the discharges remain at an acceptable rate at the new usage levels.

RESPONSE: Contrary to the above, the Stanlick School STP is currently meeting its NJPDES permit. Further review of the discharge by the Department will be necessary when the NJPDES permit for this facility (No. NJ0021105) is renewed or if the STP does not meet its permit limits.

9. COMMENT: The WMP should mention that no provision has been made to supply the residents of the Township with potable water should anything happen to Jefferson's ground water. Regarding this, the Commission is extremely concerned about the proposed Moosepac development. Development will occur at the head of the Milton aquifer. The soils in this area are sandy and more susceptible to damage than other soils.

RESPONSE: At this stage of the WQMP process, WMPs are not required to address many of the issues related to water supply. However, the wells of the municipal water supplier, Jefferson Township Water Utility, are permitted by the Bureau of Safe Drinking Water and as such are subject to continuous monitoring for contaminants under the Safe Drinking Water Act. Homeowners not connected to the municipal supplier that use domestic wells as a potable water source are responsible for testing these wells for contaminants on their own. The Bureau of Wellfield Remediation administers the existing program that addresses domestic wells that have become contaminated from industrial, commercial or hazardous pollutants.

In regard to the Moosepac development, that STP must receive a NJPDES permit for the control of discharges into the ground water. The discharge will be required to meet ground water quality standards.

(a)

**OFFICE OF LAND AND WATER PLANNING
Amendment to the Upper Delaware Water Quality
Management Plan
Public Notice**

Take notice that on March 17, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment, requested by Lopatcong Township, expands the Town of Phillipsburg Sewerage Treatment Plan (STP) sewer service area in Lopatcong Township, Warren County. The SACKS Associates (Block 86, Lot 22) and Overlook at Lopatcong (Block 98, Lot 4, Block 99, Lots 3.2, 4, 4.1, 4.2 and 5) residential development sites have been included in the sewer service area. The proposal amends the Town of Phillipsburg, Borough of Alpha, Pohatcong Township, Lopatcong Township Wastewater Management Plan. Population and flow projections for Lopatcong Township have been updated.

(b)

**OFFICE OF LAND AND WATER PLANNING
Amendment to the Upper Delaware 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 Upper Delaware Water Quality Management (WQM) Plan. This amendment, requested by representatives of Blair Plaza, Inc., would remove Lots 1, 2, 3-01, 3-02 and 3 in Block 703 of Blairstown Township from the sewer service area of the proposed Lambert Road Sewage Treatment Plant. These lots would be designated for service by On-site Ground Water Disposal Facilities. Of the five lots, three (Lots 1, 2, and 3-01) have already been developed with on-site ground water disposal facilities. The property owned by Blair Plaza, Inc. (Lots 3 and 3.02) is the only property left to be developed. All lots are located between Route 94 and Buchanan Road (County Road 674) in the Highway Commercial Zone.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Delaware WQM Plan. All information relating to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, 401 East State Street, CN-423, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the amendment to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the NJDEPE address cited above with a copy sent to Mr. Ilmar Aasmaa, President, Morris Engineers Inc., P.O. Box 289, Ledgewood, New Jersey 07852. 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 Dr. Van Abs at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

PUBLIC NOTICES

OTHER AGENCIES

(a)

**OFFICE OF LAND AND WATER PLANNING
Amendment to the Tri-County Water Quality
Management Plan
Public Notice**

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comments on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment, which was proposed on behalf of the Hessert Family Partnership, would update the Medford Township Wastewater Management Plan (WMP). The amendment would expand the sewer service area of the Medford Township Sewage Treatment Plant (STP) to include a portion of the Township known as the Hessert Tract (Block 905, Lot 13) and adjacent existing subdivisions (Blocks 1001, 1002, 1101, 1102) which are experiencing septic problems, both situated in a Rural Suburban Development zone. An existing restaurant (Block 905, Lot 14) which already is connected to the public sewer system also lies within the area to be added to the sewer service area designation. The proposed wastewater flow from the added sites is 13,260 gallons per day. In addition, the WMP update includes a minor revision to Block 2701.20, Lots 9 and part of 10. This revision corrects the service area designation from proposed septic service area to proposed sewer service area. This site presently lies within the sewer service area boundary of the Medford Township STP, but was improperly labeled as septic service area. Wetlands issues will be addressed by the Pinelands Commission during their review and approval process.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons should submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEPE address cited above with a copy sent to Barbara Fegley, Environmental Resolutions, Inc., 16000 Commerce Parkway, Suite P, Mt. Laurel, N.J. 08054. 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 persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment (or extend the public

comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this notice to Dr. Van Abs at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

**Notice of Receipt
Petition for Rulemaking
Slot Cash Storage Boxes, Transportation to and from
Bill Changers**

N.J.A.C. 19:45-1.17

Petitioner: Greate Bay Hotel and Casino, Inc.
Authority: N.J.S.A. 5:12-69(c) and 52:14B-4.

Take notice that on March 5, 1993, Greate Bay Hotel and Casino, Inc. filed a rulemaking petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:45-1.17. The petitioner makes this request for rulemaking so that the regulation will no longer require a Commission inspector as part of the team of persons who collect slot cash storage boxes from bill changers.

The petitioner contends that, akin to the drop boxes required for table games, slot cash storage boxes already provide excellent security for the funds they contain; however, while current regulations do not require the presence of a Commission inspector during the collection of drop boxes from the tables, a Commission inspector is currently required to be present during the collection of slot cash storage boxes. According to the petitioner, the integrity of the collection process for slot cash storage boxes is maintained by the fact that such collection is conducted by employees from separate departments, as augmented by the use of the surveillance department. Given the expected increase in the number of bill changers in use and the concomitant increase in slot cash storage boxes, the petitioner maintains that the requirement that a Commission inspector be present during the collection of slot cash storage boxes may require a similar increase in the number of Commission inspectors.

After due notice, the petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

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 March 1, 1993 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

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 FEBRUARY 16, 1993

NEXT UPDATE: SUPPLEMENT MARCH 15, 1993

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
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	24 N.J.R. 4455 and 4606	December 21, 1992
24 N.J.R. 2103 and 2314	June 15, 1992	25 N.J.R. 1 and 218	January 4, 1993
24 N.J.R. 2315 and 2486	July 6, 1992	25 N.J.R. 219 and 388	January 19, 1993
24 N.J.R. 2487 and 2650	July 20, 1992	25 N.J.R. 389 and 616	February 1, 1993
24 N.J.R. 2651 and 2752	August 3, 1992	25 N.J.R. 619 and 736	February 16, 1993
24 N.J.R. 2753 and 2970	August 17, 1992	25 N.J.R. 737 and 1030	March 1, 1993
24 N.J.R. 2971 and 3202	September 8, 1992	25 N.J.R. 1031 and 1308	March 15, 1993
24 N.J.R. 3203 and 3454	September 21, 1992	25 N.J.R. 1309 and 1620	April 5, 1993
24 N.J.R. 3455 and 3578	October 5, 1992	25 N.J.R. 1621 and 1796	April 19, 1993
24 N.J.R. 3579 and 3784	October 19, 1992		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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ADMINISTRATIVE LAW—TITLE 1

1:13A-1.2, 18.1, 18.2 Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
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Most recent update to Title 1: TRANSMITTAL 1992-5 (supplement November 16, 1992)

AGRICULTURE—TITLE 2

2:1-4 Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(a)		
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)		
2:34-2.1, 2.2 Equine Advisory Board rules	25 N.J.R. 740(a)		
2:76-2.1, 2.2, 2.3, 2.4 Recommendation of agricultural management practices	25 N.J.R. 622(a)		
2:76-3.12, 4.11 Farmland preservation programs: deed restrictions on enrolled lands	25 N.J.R. 222(a)		
2:76-6.15 Agriculture Retention and Development Program: lands permanently deed restricted	25 N.J.R. 223(a)		

Most recent update to Title 2: TRANSMITTAL 1993-2 (supplement February 16, 1993)

BANKING—TITLE 3

3:1-2.3, 2.5, 2.21 Depository charter applications and branch applications	25 N.J.R. 1033(a)		
3:1-14.5 Revolving credit equity loans	25 N.J.R. 1033(b)		
3:2-1.4 Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:3-3 Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(b)		
3:18-3.2, 5.1, 5.3, 8.1 Secondary mortgage loans	25 N.J.R. 1033(b)		
3:38-1.1, 1.10, 5.1 Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:41-2.1, 11 Cemetery Board: location of interment spaces and path access	25 N.J.R. 623(a)		
3:42 Pinelands Development Credit Bank	25 N.J.R. 223(b)	R.1993 d.151	25 N.J.R. 1511(a)

Most recent update to Title 3: TRANSMITTAL 1993-2 (supplement February 16, 1993)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)

PERSONNEL—TITLE 4A

4A:1-5 Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(c)		
4A:4 Selection and appointment	25 N.J.R. 1085(b)		
4A:4-6.4, 6.6 Selection and placement appeals	24 N.J.R. 4467(a)	R.1993 d.162	25 N.J.R. 1511(b)

Most recent update to Title 4A: TRANSMITTAL 1993-2 (supplement February 16, 1993)

COMMUNITY AFFAIRS—TITLE 5

5:5 Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA))	25 N.J.R. 1315(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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, 2.4, 2.5, 2.7, 3.1-3.5, 3.7, 3.13, 3.17, 3.20, 3.30, App. 3A, 4.7, 4.9, 4.11, 4.12, 4.19	Uniform Fire Code	25 N.J.R. 393(a)		
5:18-2.9, 2.12, 2.14, 2.16, 2.17	Uniform Fire Code: enforcement and penalties for violations	25 N.J.R. 397(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:18A-4.6	Fire Code enforcement: review of proposed action against certified fire official	25 N.J.R. 399(a)		
5:23	Uniform Construction Code	24 N.J.R. 1420(b)	R.1993 d.106	25 N.J.R. 920(a)
5:23	Uniform Construction Code: effective date of Model Codes	_____	_____	25 N.J.R. 1512(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	25 N.J.R. 624(a)		
5:23-5.4, 5.5	Uniform Construction Code: licensure of elevator subcode officials and inspectors	24 N.J.R. 4309(a)	R.1993 d.105	25 N.J.R. 920(b)
5:23-9.7	Uniform Construction Code: manufacturing, production and process equipment exemption	24 N.J.R. 3458(a)	R.1993 d.132	25 N.J.R. 1512(b)
5:25-1.3	Definition of State New Home Warranty Security Plan: administrative change	_____	_____	25 N.J.R. 1755(a)
5:27-3.5	Rooming and boarding houses: conformity with Fair Housing Act amendments	24 N.J.R. 4310(a)	R.1993 d.104	25 N.J.R. 920(c)
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:91-14	Council on Affordable Housing: interim procedures	25 N.J.R. 1118(a)		
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
5:93	Council on Affordable Housin: substantive rules	25 N.J.R. 1118(a)		
Most recent update to Title 5: TRANSMITTAL 1993-2 (supplement February 16, 1993)				
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:7-1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1317(a)		
Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)				
EDUCATION—TITLE 6				
6:3	School districts	25 N.J.R. 1095(a)		
6:5-2.3, 2.4, App.	Organization of Department	Exempt	R.1993 d.107	25 N.J.R. 921(a)
6:8-9.4, 9.8	Educational improvement plans in special needs districts: fiscal, strategy and program requirements	24 N.J.R. 4467(b)	R.1993 d.112	25 N.J.R. 922(a)
6:9	Educational programs for pupils in State facilities	25 N.J.R. 400(a)		
6:11-3.2	Professional licensure and standards: fees	25 N.J.R. 1111(a)		
6:21-12	Use of school buses	25 N.J.R. 1095(a)		
6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1-4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.2, 11.4, 11.9	Special education	25 N.J.R. 1318(a)		
6:28-8.1, 8.3, 8.4	Educational programs for pupils in State facilities	25 N.J.R. 400(a)		
6:29-1.7, 9, 10	Eye protection in schools; reporting of child abuse allegations; safe and drug free schools	25 N.J.R. 1095(a)		
6:30	Adult education programs	25 N.J.R. 1112(a)		
Most recent update to Title 6: TRANSMITTAL 1993-2 (supplement February 16, 1993)				
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)		
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:1G-1.2, 6.1-6.11, 6.13-6.16	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)		
7:1I	Processing of damage claims under Sanitary Landfill Facility Contingency Fund Act	25 N.J.R. 741(a)		
7:1K	Pollution Prevention Program	24 N.J.R. 3609(a)	R.1993 d.108	25 N.J.R. 930(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:1K-6.1	Pollution Prevention Plan progress reporting: administrative correction			25 N.J.R. 1549(a)
7:3	Bureau of Forestry rules	25 N.J.R. 1348(a)		
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:5A	Natural Areas System	25 N.J.R. 1350(a)		
7:5B	Open lands management	25 N.J.R. 1354(a)		
7:6-1.45	Seven Presidents Park, Long Branch: boating restrictions within jetty areas	25 N.J.R. 57(a)	R.1993 d.158	25 N.J.R. 1516(a)
7:7-1.7	Coastal Permit Program fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)	R.1993 d.159	25 N.J.R. 1755(b)
7:7A-16.1	Freshwater wetlands permit fees	24 N.J.R. 2768(a)	R.1993 d.111	25 N.J.R. 924(a)
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)	R.1993 d.140	25 N.J.R. 1549(a)
7:8	Stormwater management	24 N.J.R. 4469(a)	R.1993 d.113	25 N.J.R. 990(a)
7:8	Stormwater runoff and nonpoint source pollution control: public meeting and request for comment	24 N.J.R. 4470(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)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(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)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-6.4, 6.8, Table 1	Ground water quality standards: administrative corrections			25 N.J.R. 1552(a)
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2-12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)		
7:11	New Jersey Water Supply Authority: policies and procedures	25 N.J.R. 1036(a)		
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: rates for sale of water	24 N.J.R. 4472(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: rates for sale of water	24 N.J.R. 4474(a)		
7:13-7.1	Flood plain redelineation of Green Brook in Scotch Plains and Watchung	24 N.J.R. 4475(a)	R.1993 d.160	25 N.J.R. 1556(a)
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A-1.8	NJPDES Program fees	25 N.J.R. 1358(a)		
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-4.7	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1-3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)		
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, 10.12	Financial assistance programs for wastewater treatment facilities	24 N.J.R. 4310(b)		
7:25-6.13	1993-94 Fish Code: harvest of largemouth and smallmouth bass	25 N.J.R. 224(a)	R.1993 d.139	25 N.J.R. 1556(b)
7:25-7.13, 14.1, 14.2, 14.4, 14.6, 14.7, 14.8, 14.11, 14.12, 14.13	Crab management	25 N.J.R. 1371(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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	Freshwater fishing line for Rahway River in Union County	24 N.J.R. 2977(a)	R.1993 d.116	25 N.J.R. 1231(a)
7:25-18.16	Taking of horseshoe crabs	24 N.J.R. 2978(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(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)	R.1993 d.98	25 N.J.R. 990(b)
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)		
7:26-6.5	Interdistrict and intradistrict solid waste flow	24 N.J.R. 3291(a)	R.1993 d.109	25 N.J.R. 991(a)
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-7.6	Hazardous waste facility operator responsibilities: administrative correction	_____	_____	25 N.J.R. 1556(c)
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-8.13, 8.16, 8.19	Hazardous waste listings: F024 and F025	25 N.J.R. 755(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-1.3, 1.5, 1.6, 1.8, 1.9	Environmental Cleanup Responsibility Act rules	25 N.J.R. 100(a)	R.1993 d.137	25 N.J.R. 1557(a)
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(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)		
7:26E	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)	R.1993 d.128	25 N.J.R. 1254(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)	R.1993 d.129	25 N.J.R. 1231(b)
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)		
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)	R.1993 d.128	25 N.J.R. 1254(a)
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations; extension of comment period	25 N.J.R. 1039(a)		
7:29-1.1, 1.2, 2	Determination of noise from stationary sources: extension of comment period	25 N.J.R. 1425(a)		
7:29-1.1, 1.5, 2	Determination of noise from stationary sources	25 N.J.R. 1040(a)		
7:31	Toxic Catastrophe Prevention Act Program	25 N.J.R. 1425(b)		
7:36	Green Acres Program: opportunity to review draft rule revisions	25 N.J.R. 1473(a)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
7:50-4.1, 4.70	Pinelands Comprehensive Management Plan: expiration of development approvals and waivers	25 N.J.R. 225(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		
7:61-3	Board of Commissioners of Pilotage: Drug Free Workplace Program	25 N.J.R. 625(a)		

Most recent update to Title 7: TRANSMITTAL 1993-2 (supplement February 16, 1993)

HEALTH—TITLE 8

8:2	Creation of birth record	24 N.J.R. 4325(a)		
8:2	Creation of birth record: reopening of comment period	25 N.J.R. 660(a)		
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:24	Retail food establishments and food and beverage vending machines	25 N.J.R. 662(a)		
8:25	Youth Camp Safety Act standards	25 N.J.R. 756(a)		
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:35A-1.2, 3.4, 3.6, 4.1, 5.3	Maternal and child health consortia: fiscal management and staffing	25 N.J.R. 1116(a)		
8:39	Long-term care facilities: licensing standards	25 N.J.R. 1474(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	Licensure of residential health care facilities	25 N.J.R. 25(a)		
8:43	Licensure of residential health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43A	Licensure of ambulatory care facilities	25 N.J.R. 757(b)		
8:42B	Drug treatment facilities: standards for licensure	25 N.J.R. 1476(a)		
8:43G-5.10	Acute care hospital participation in New Jersey Poison Control Information and Education System	25 N.J.R. 792(a)		
8:43G-5.10	Hospital payments to maternal and child health consortia	Emergency (expires 5-1-93)	R.1993 d.138	25 N.J.R. 1295(a)
8:43G-5.10, 19.1, 19.20	Hospital licensing standards: funding for regionalized services; obstetric services structural organization	25 N.J.R. 1117(a)		
8:44-2.2, 3	Limited purpose laboratories	25 N.J.R. 668(a)		
8:59-1, 2, 5, 6, 9, 11, 12	Worker and Community Right to Know Act rules	25 N.J.R. 864(a)		
8:59-3.1, 3.2, 3.3, 3.5-3.9, 3.11, 3.13-3.17	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)		
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:71	Interchangeable drug products (24 N.J.R. 2559(a))	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b))	24 N.J.R. 1674(a)	R.1993 d.65	25 N.J.R. 582(a)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a))	24 N.J.R. 2414(b)	R.1993 d.67	25 N.J.R. 583(a)
8:71	Interchangeable drug products (24 N.J.R. 4261(a))	24 N.J.R. 2997(a)	R.1993 d.66	25 N.J.R. 582(b)
8:71	Interchangeable drug products	24 N.J.R. 4009(a)	R.1993 d.64	25 N.J.R. 580(b)
8:71	Interchangeable drug products	25 N.J.R. 55(a)	R.1993 d.124	25 N.J.R. 1221(a)
8:71	Interchangeable drug products	25 N.J.R. 875(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)		

Most recent update to Title 8: TRANSMITTAL 1993-2 (supplement February 16, 1993)

HIGHER EDUCATION—TITLE 9

9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:4-1.12	County college construction projects	25 N.J.R. 668(b)		
9:4-3.12	Noncredit courses at county colleges	25 N.J.R. 227(a)	R.1993 d.172	25 N.J.R. 1763(a)
9:6A	State college personnel system	24 N.J.R. 3052(a)	R.1993 d.118	25 N.J.R. 1221(b)
9:7-1.2, 2.11, 4.2	Student Assistance Programs: administrative corrections			25 N.J.R. 1513(a)

Most recent update to Title 9: TRANSMITTAL 1993-1 (supplement January 19, 1993)

HUMAN SERVICES—TITLE 10

10:1-2	Public comments and petitions regarding Department rules (recodify as 10:1A)	25 N.J.R. 1042(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(b)		
10:14	Statewide Respite Care Program Manual	25 N.J.R. 876(a)		
10:31-1.4, 2.1, 2.2, 2.3, 8.1, 9.1	Screening and Screening Outreach Programs: mental health services	25 N.J.R. 1324(a)		
10:37-5.46-5.50, 12	Community mental health services: children's partial care programs	25 N.J.R. 669(a)		
10:38A	Pre-Placement Program for patients at State psychiatric facilities	24 N.J.R. 4326(a)		
10:41-2.3, 2.8, 2.9	Division of Developmental Disabilities: access to client records and record confidentiality	25 N.J.R. 432(a)		
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:51-1.1	Hospital services reimbursement methodology	Emergency (expires 5-10-93)	R.1993 d.154	25 N.J.R. 1582(a)
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.17	Out-of-state inpatient hospital services: administrative correction	_____	_____	25 N.J.R. 1513(b)
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:52-5, 6, 7, 8, 9	Hospital services reimbursement methodology	Emergency (expires 5-10-93)	R.1993 d.154	25 N.J.R. 1582(a)
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:63-3.3, 3.8	Long-term care services: elimination of salary regions	25 N.J.R. 433(a)		
10:69	Hearing Aid Assistance to the Aged and Disabled Eligibility Manual	25 N.J.R. 228(a)		
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual	24 N.J.R. 4479(a)	R.1993 d.175	25 N.J.R. 1764(a)
10:69A-2.1, 4.1-4.4, 5.3, 5.5	PAAD prescription copayment	24 N.J.R. 4328(a)	R.1993 d.155	25 N.J.R. 1514(a)
10:72-1.1, 4.1, 4.5	New Jersey Care—Special Medicaid Manual: specified low-income Medicare beneficiaries	25 N.J.R. 1042(b)		
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(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)		
10:83-1.11	Supplemental Security Income (SSI) payment levels	25 N.J.R. 434(a)	R.1993 d.166	25 N.J.R. 1764(b)
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:89-2.3, 3.1, 3.4, 3.6, 4.1	Home Energy Assistance	24 N.J.R. 4593(a)	R.1993 d.97	25 N.J.R. 997(a)
10:122C-2.5	Approval of foster homes: administrative correction	_____	_____	25 N.J.R. 1514(b)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	24 N.J.R. 3088(a)		
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses: annual adjustment	25 N.J.R. 229(a)	R.1993 d.152	25 N.J.R. 1515(a)
10:124-5.1	Children's shelter facilities and homes: local government physical facility requirements	24 N.J.R. 4482(a)	R.1993 d.156	25 N.J.R. 1515(b)
10:133A-1.1	DYFS initial response: administrative correction	_____	_____	25 N.J.R. 1514(b)
10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		

Most recent update to Title 10: TRANSMITTAL 1993-2 (supplement February 16, 1993)

CORRECTIONS—TITLE 10A

10A:1-2.2	"Division of Operations", "indigent inmate" defined	25 N.J.R. 1043(a)		
10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)		
10A:3-3.7	Use of chemical agents	25 N.J.R. 1044(a)		
10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)		
10A:71-6.4, 7.3	State Parole Board: conditions of parole	25 N.J.R. 435(a)		

Most recent update to Title 10A: TRANSMITTAL 1992-7 (supplement December 21, 1992)

INSURANCE—TITLE 11

11:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1327(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:1-7	New Jersey Property-Liability Insurance Guaranty Association: plan of operation	25 N.J.R. 1045(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
11:1-32.4	Workers' compensation self-insurance	24 N.J.R. 1944(a)	R.1993 d.157	25 N.J.R. 1526(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)	R.1993 d.179	25 N.J.R. 1764(c)
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:2-33	Workers' compensation self-insurance	24 N.J.R. 1944(a)	R.1993 d.157	25 N.J.R. 1526(a)
11:2-33	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:3-2.8, 33.2, 34.4, 44	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	Emergency (expires 4-30-93)	R.1993 d.135	25 N.J.R. 1290(a)
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.12	Automobile insurance: filings reflecting paid, apportioned MTF expenses and losses	24 N.J.R. 4486(a)	R.1993 d.148	25 N.J.R. 1543(a)
11:3-16.12	Automobile insurance: public hearing and extension of comment period regarding filings reflecting paid, apportioned MTF expenses and losses	25 N.J.R. 56(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)	R.1993 d.178	25 N.J.R. 1769(a)
11:3-29.2, 29.4, 29.6	Automobile insurance PIP coverage: medical fee schedules	25 N.J.R. 229(b)		
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)		
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)		
11:5-1.36	Real Estate Guaranty Fund assessment	25 N.J.R. 56(b)	R.1993 d.153	25 N.J.R. 1548(a)
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:6-2	Workers' compensation managed care organizations	25 N.J.R. 1330(a)		
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:13-8	Commercial lines: prospective loss costs filing procedures	25 N.J.R. 1047(a)		
11:15-3	Joint insurance funds for local government units providing group health and term life benefits	25 N.J.R. 436(a)		
11:17	Producer licensing	25 N.J.R. 883(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, 1.3, 1.4, 1.5, 4.6	Insurance producers and limited insurance representatives: licensure and registration	25 N.J.R. 446(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-1.2, 1.7	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	Emergency (expires 4-30-93)	R.1993 d.135	25 N.J.R. 1290(a)
11:19-3	Financial Examination Monitoring System: data submission by surplus lines producers and insurers	24 N.J.R. 3003(a)		

Most recent update to Title 11: TRANSMITTAL 1993-2 (supplement February 16, 1993)

LABOR—TITLE 12

12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1334(a)		
12:18	Temporary Disability Benefits Program	25 N.J.R. 262(a)	R.1993 d.141	25 N.J.R. 1515(c)
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program: extension of comment period	25 N.J.R. 1335(a)		
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program	25 N.J.R. 1515(c)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)		
12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)		
12:58-1.2	Child labor: student learner in cooperative vocational education program	25 N.J.R. 889(a)		
12:60	Prevailing wages for public works	25 N.J.R. 453(a)	R.1993 d.164	25 N.J.R. 1771(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)		
12:100-4.1, 4.2	Public employee safety and health: Process Safety Management of Highly Hazardous Chemicals; employer defined	25 N.J.R. 890(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	Public employee safety and health: exposure to hazardous chemicals in laboratories	25 N.J.R. 453(b)		
12:100-4.2	Public employee safety and health: exposure to formaldehyde	25 N.J.R. 455(a)	R.1993 d.171	25 N.J.R. 1771(b)

Most recent update to Title 12: TRANSMITTAL 1993-2 (supplement February 16, 1993)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1335(b)		
12A:9	Development of small businesses and women and minority businesses: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 1335(c)		
12A:11	Certification of women-owned and minority-owned businesses	25 N.J.R. 1056(a)		
12A:31-1.4	New Jersey Development Authority: interest rate on direct loans	25 N.J.R. 891(a)		

Most recent update to Title 12A: TRANSMITTAL 1993-1 (supplement January 19, 1993)

LAW AND PUBLIC SAFETY—TITLE 13

7:6-1.45	Boat Regulation Commission: restrictions within Seven Presidents Park jetty areas	25 N.J.R. 57(a)	R.1993 d.158	25 N.J.R. 1516(a)
13:1	Police Training Commission rules	25 N.J.R. 1336(a)		
13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)		
13:2-14.2, 14.7, 20.6, 21.4	Alcoholic beverage control: permits, insignia and fees	25 N.J.R. 1341(a)		
13:3	Amusement games control	25 N.J.R. 891(b)		
13:19-1.1, 1.7	Driver Control Service: administrative hearings applicability	25 N.J.R. 893(a)		
13:28	Board of Cosmetology and Hairstyling rules	25 N.J.R. 893(b)		
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:20-38	Dimensional standards for automobile transporters	25 N.J.R. 1342(a)		
13:21-19.9	Motor Vehicle Franchise Committee: administrative hearing costs	24 N.J.R. 3015(c)	R.1993 d.103	25 N.J.R. 998(a)
13:24-4.1, 4.2	Amber light permit for rural route letter carrier vehicles	24 N.J.R. 4236(a)	R.1993 d.115	25 N.J.R. 1222(a)
13:26	Transportation of bulk commodities	25 N.J.R. 1343(a)		
13:27-2.2 through 13:45A-26.4	Division of Consumer Affairs: administrative changes to various licensing board and committee rules	_____	_____	25 N.J.R. 1516(b)
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)		
13:30-8.18	Continuing dental education	25 N.J.R. 1344(a)		
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.J.R. 4010(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:33-1.41, 1.43 13:35-6.13, 9 13:35-6.13, 10.9	Licensed ophthalmic dispensers: continuing education Acupuncture Examining Board: practice of acupuncture Board of Medical Examiners: fee schedule; athletic trainer registration fee	25 N.J.R. 57(b) 24 N.J.R. 4013(a) 25 N.J.R. 1058(a)	R.1993 d.173	25 N.J.R. 1771(c)
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10 13:37	Practice of athletic trainers Certification of homemaker-home health aides: open public forum	25 N.J.R. 265(a) 24 N.J.R. 1861(a)		
13:37 13:37-13.1, 13.2 13:38-1.2, 1.3, 2.5 13:39-7.14	Board of Nursing rules Nurse anesthetist: conditions for practice Practice of optometry: permissible advertising Board of Pharmacy: patient profile record system and patient counseling by pharmacist	25 N.J.R. 455(b) 24 N.J.R. 4020(a) 24 N.J.R. 4237(a) 25 N.J.R. 266(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)	R.1993 d.125	25 N.J.R. 1222(b)
13:40A-6.1, 7 13:41-2.1	Board of Real Estate Appraisers: apprentice program Board of Professional Planners: professional misconduct	25 N.J.R. 267(a) 24 N.J.R. 3221(a)	R.1993 d.177	25 N.J.R. 1773(a)
13:45A-24 13:45A-24 13:46-23.5, 23A	Toy and bicycle safety Toy and bicycle safety: extension of comment period State Athletic Control Board: standards of ethical conduct	24 N.J.R. 3019(b) 24 N.J.R. 3666(a) 24 N.J.R. 4489(a)		
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:70-12.4 13:70-14A.8	Thoroughbred racing: claimed horse Thoroughbred racing: possession of drugs or drug instruments	25 N.J.R. 1059(a) 25 N.J.R. 1060(a)		
13:71-23.3A	Harness racing: pre-race blood gas analyzing machine testing program	25 N.J.R. 269(a)	R.1993 d.174	25 N.J.R. 1775(a)
13:71-23.9 13:75-1.7	Harness racing: possession of drugs or drug instruments Violent Crimes Compensation Board: minimum compensable losses	25 N.J.R. 1061(a) 24 N.J.R. 4491(a)	R.1993 d.133	25 N.J.R. 1224(a)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for funeral expenses	25 N.J.R. 674(a)		
13:75-1.12	Violent Crimes Compensation Board: attorney's fees requiring affidavit of service	25 N.J.R. 674(b)		
13:75-1.31	Violent Crimes Compensation Board: injury from crime of burglary	24 N.J.R. 4491(b)	R.1993 d.134	25 N.J.R. 1224(b)
13:76 13:81-1.2, 2.1	Arson investigators: training and certification Statewide 9-1-1 emergency telecommunications system	25 N.J.R. 896(a) 24 N.J.R. 4493(a)		

Most recent update to Title 13: TRANSMITTAL 1993-2 (supplement February 16, 1993)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		
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)		
14:6-5	Natural gas service: inspection and operation of master meter systems	24 N.J.R. 4494(a)		
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)	R.1993 d.95	25 N.J.R. 999(a)
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)		
14:11-8	Natural gas pipelines	25 N.J.R. 897(a)		
14:12-1.2, 3.6, 4.1-4.3, 5.3	Demand side management	24 N.J.R. 2804(a)	R.1993 d.96	25 N.J.R. 1000(a)
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-9.2, 10.1-10.5	Cable television: testing of service and technical standards for system operation	24 N.J.R. 4497(a)		

Most recent update to Title 14: TRANSMITTAL 1993-2 (supplement February 16, 1993)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1993-1 (supplement February 16, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
STATE—TITLE 15				
15:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1347(a)		
15:2	Commercial recording filing and expedited service	25 N.J.R. 901(a)		
Most recent update to Title 15: TRANSMITTAL 1993-1 (supplement January 19, 1993)				
PUBLIC ADVOCATE—TITLE 15A				
Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)				
TRANSPORTATION—TITLE 16				
16:1-2.2	Records management: appraisal review analyses	25 N.J.R. 59(a)	R.1993 d.117	25 N.J.R. 1225(a)
16:1B	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1478(a)		
16:13	Rural Secondary Road Systems Aid: repealed	25 N.J.R. 59(b)	R.1993 d.149	25 N.J.R. 1517(a)
16:20	Federal Aid Urban Systems: repealed	25 N.J.R. 60(a)	R.1993 d.150	25 N.J.R. 1517(b)
16:25A	Soil erosion and sediment control standards	25 N.J.R. 1479(a)		
16:28	Speed limits for State highways	25 N.J.R. 1479(b)		
16:28-1.36	Speed limit zone along Route 24 in Morris, Essex, and Union counties	25 N.J.R. 270(b)	R.1993 d.121	25 N.J.R. 1225(b)
16:28-1.44, 1.83	Speed limit zones along Route 27 in North Brunswick and Franklin townships, and Route 71 in Monmouth County	25 N.J.R. 274(b)	R.1993 d.123	25 N.J.R. 1225(c)
16:28-1.72	School zones along U.S. 206 in Lawrence Township	24 N.J.R. 4499(a)	R.1993 d.100	25 N.J.R. 1004(a)
16:28-1.108	School zone along Route 82 in Union Township	25 N.J.R. 1061(b)		
16:28A	Restricted parking and stopping	25 N.J.R. 1479(b)		
16:28A-1.6, 1.9, 1.38	Restricted parking along Route 7 in Belleville, Route 17 in North Arlington, and Route 71 in Bradley Beach	25 N.J.R. 1062(a)		
16:28A-1.7	Restricted parking and stopping along U.S. 9 in Cape May, Atlantic, Burlington, Ocean, Monmouth, and Middlesex counties	25 N.J.R. 271(a)	R.1993 d.119	25 N.J.R. 1227(a)
16:28A-1.13	Restricted parking and stopping along U.S. 22 in Clinton Township	25 N.J.R. 273(a)	R.1993 d.120	25 N.J.R. 1227(b)
16:28A-1.18, 1.65	Parking restrictions along Route 27 in Linden and Route 15 in Dover	25 N.J.R. 675(a)	R.1993 d.168	25 N.J.R. 1776(a)
16:28A-1.19, 1.45, 1.57	Restricted parking and stopping zones along Route 28 in Roselle Park, Route 94 in Hardyston, and U.S. 206 in Lawrence Township	24 N.J.R. 4499(b)	R.1993 d.99	25 N.J.R. 1004(b)
16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	25 N.J.R. 274(a)	R.1993 d.122	25 N.J.R. 1228(a)
16:28A-1.41	No stopping or standing zones along Route 77 in Bridgeton	25 N.J.R. 1063(a)		
16:29	No passing	25 N.J.R. 1479(b)		
16:29-1.71	No passing zones along Route 41 in Camden County	25 N.J.R. 60(b)	R.1993 d.101	25 N.J.R. 1005(a)
16:30	Miscellaneous traffic rules	25 N.J.R. 1479(b)		
16:31	Turns	25 N.J.R. 1479(b)		
16:31-1.31	Turning restrictions along U.S. 1 Business in Lawrence Township	25 N.J.R. 1064(a)		
16:31A	Prohibited right turns on red	25 N.J.R. 1479(b)		
16:47-1.1, 3.16, 4.3, 4.4, 4.6, 4.11, 4.13, 4.15, 4.18, 4.20, 4.30, 4.32, 4.40, 5.2, 5.3, 5.4, 6.5	State Highway Access Management Code: administrative changes	_____	_____	25 N.J.R. 1005(b)
16:47-3.8, 3.16, 4.3, 4.6, 4.7, 4.13-4.16, 4.19, 4.27, 4.30, 4.33, 4.41, 5.2, App. B, C, D, E, N, N-1, N-2	State Highway Access Management Code: access standards; permits	25 N.J.R. 903(a)		
16:49-1.3, 1.5, 2.1, App.	Transportation of hazardous materials	25 N.J.R. 1065(a)		
16:53-3.2	Autobus dimensions	25 N.J.R. 459(a)		
16:53-7.25, 7.26, 7.27	Autobus trolleys: safety standards	24 N.J.R. 4500(a)		
16:53C	Rail freight program	25 N.J.R. 1481(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)		
16:55	Licensing of aeronautical activities	25 N.J.R. 1483(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:60	Office of Aviation: issuance of summons and designation of law enforcement officer	25 N.J.R. 1484(a)		
16:61	Aircraft accidents	25 N.J.R. 1485(a)		

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TREASURY-GENERAL—TITLE 17

17:1-1.10	PERS and TPAF pension systems: minimum adjustments	24 N.J.R. 4501(a)	R.1993 d.114	25 N.J.R. 1228(b)
17:1-10, 11	State Prescription Drug Program; Dental Expenses Program (recodify to 17:9-8, 9)	25 N.J.R. 675(b)		
17:2-4.3	Public Employees' Retirement System: school year members	25 N.J.R. 908(a)		
17:9-1.5	State Health Benefits Program: local employer reentry	25 N.J.R. 460(a)		
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)	R.1993 d.57	25 N.J.R. 1518(a)
17:16-33.1	State Investment Council: repurchase agreement of securities broker	25 N.J.R. 909(a)		
17:16-42.2	State Investment Council: dividend requirement for eligible stock issuers	25 N.J.R. 909(b)		
17:20	Lottery Commission rules	25 N.J.R. 1347(b)		
17:32	State Planning Rules	25 N.J.R. 461(a)		

Most recent update to Title 17: TRANSMITTAL 1993-2 (supplement February 16, 1993)

TREASURY-TAXATION—TITLE 18

18:2-3	Payment of taxes by electronic funds transfer	25 N.J.R. 1078(a)		
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)	R.1993 d.167	25 N.J.R. 1776(b)
18:9	Business Personal Property Tax	25 N.J.R. 1485(a)		
18:12-6, 6A	Tax exemptions and abatements for rehabilitated properties	24 N.J.R. 4335(a)	R.1993 d.130	25 N.J.R. 1228(c)
18:12-10.1, 10.2, 10.3	Local property tax: classification of real and personal property	25 N.J.R. 61(a)		
18:24	Sales and Use Tax	25 N.J.R. 1486(a)		
18:26	Transfer Inheritance Tax and Estate Tax	25 N.J.R. 1498(a)		
18:26-3.7	Interest rate on late payments of estate taxes	24 N.J.R. 4240(b)	R.1993 d.131	25 N.J.R. 1229(a)
18:35	Gross Income Tax; setoff of individual liability	25 N.J.R. 1500(a)		
18:35-1.14, 1.25	Gross Income Tax: partnerships; net profits from business	25 N.J.R. 677(a)		
18:35-1.17	Gross income tax credit for excess contributions to Workforce Development Partnership Fund	25 N.J.R. 62(a)	R.1993 d.136	25 N.J.R. 1518(b)
18:35-1.27	Gross Income Tax: interest on overpayments	24 N.J.R. 2419(a)		
18:38	Litter Control Tax	24 N.J.R. 4502(a)	R.1993 d.102	25 N.J.R. 1008(a)
18:38	Litter Control Tax: correction to proposal Summary	25 N.J.R. 462(a)		

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TITLE 19—OTHER AGENCIES

19:3, 3B, 4, 4A	Hackensack Meadowlands District rules	24 N.J.R. 4503(a)		
19:8	Use and administration of Garden State Parkway	25 N.J.R. 1500(b)		
19:8-11.2	Organization of Highway Authority	Exempt	R.1993 d.161	25 N.J.R. 1518(c)
19:9-1.9	Turnpike Authority: double bottom trailer permits	25 N.J.R. 684(a)		
19:9-2.7	Turnpike Authority construction contracts: withdrawal of bid for unilateral mistake	25 N.J.R. 62(b)		
19:25-1.7	Election Law Enforcement Commission: administrative correction to definition of "expenditure"	_____	_____	25 N.J.R. 1229(b)
19:25-15.3-15.6, 15.10, 15.11, 15.12, 15.14, 15.16, 15.17, 15.21, 15.22, 15.24, 15.27-15.32, 15.35, 15.43, 15.45, 15.48, 15.49, 15.50, 15.54, 15.64, 15.65	ELEC: public financing of general election candidates for Governor	25 N.J.R. 910(a)		
19:30-6.4	Economic Development Authority: fee for modifying or restructuring loan payment terms	25 N.J.R. 916(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-2.5	Delegation of Commission authority	24 N.J.R. 2348(a)		
19:40-2.6	Post-employment restrictions on former Commission and Division of Gaming Enforcement employees	25 N.J.R. 1501(a)		
19:40-6	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1503(a)		
19:41	Applications	25 N.J.R. 916(b)		
19:41-1.3, 14.3	Renewal of employee licenses	25 N.J.R. 276(a)	R.1993 d.163	25 N.J.R. 1778(a)
19:41-9.1, 9.4	Fee policy	25 N.J.R. 1080(a)		
19:42	Hearings	25 N.J.R. 1082(a)		
19:42-5.3	Professional practice: multiple party representation	25 N.J.R. 1082(b)		
19:45	Accounting and internal controls	25 N.J.R. 277(a)	R.1993 d.147	25 N.J.R. 1519(a)
19:45-1.1, 1.2, 1.11, 1.12, 1.14, 1.15, 1.16, 1.20, 1.24, 1.24A, 1.24B, 1.25, 1.25A-1.25I, 1.26, 1.27, 1.27A, 1.28, 1.29, 1.33, 1.34	Authorized financial statements: acceptance and processing	24 N.J.R. 3232(a)		
19:45-1.1, 1.10, 1.32, 1.36, 1.37, 1.38, 1.42, 1.43, 1.44	Use and operation of drop buckets in slot machines	25 N.J.R. 1503(b)		
19:45-1.1, 1.11A, 1.38, 1.42	Internal casino controls: administrative corrections	_____	_____	25 N.J.R. 1519(b)
19:45-1.1, 1.40	Jackpot payouts not paid directly from slot machine	24 N.J.R. 3251(a)		
19:45-1.1, 1.46	Complimentary distribution program	24 N.J.R. 4570(a)	R.1993 d.144	25 N.J.R. 1520(a)
19:45-1.4	Casino records of ownership	25 N.J.R. 63(a)	R.1993 d.126	25 N.J.R. 1229(c)
19:45-1.8	Records retention schedules	24 N.J.R. 3694(b)	R.1993 d.110	25 N.J.R. 1008(b)
19:45-1.9, 1.9B, 1.9C, 1.46	Complimentary services and items	24 N.J.R. 4505(a)	R.1993 d.145	25 N.J.R. 1521(a)
19:45-1.9B	Complimentary cash and noncash gifts: administrative correction	_____	_____	25 N.J.R. 1778(b)
19:45-1.10, 1.11, 1.46A	Location and surveillance of automated coupon redemption machines	25 N.J.R. 278(a)	R.1993 d.142	25 N.J.R. 1522(a)
19:45-1.16, 1.33, 1.42, 1.44	Replacement slot cash storage boxes	25 N.J.R. 279(a)	R.1993 d.143	25 N.J.R. 1523(a)
19:45-1.40	Jackpot payout slips	25 N.J.R. 917(a)		
19:45-1.41	Filling of slot machine hopper: administrative correction	_____	_____	25 N.J.R. 1230(a)
19:46	Gaming equipment	25 N.J.R. 918(a)		
19:46-1.5, 1.17	Gaming chips and plaques; cards: administrative corrections	_____	_____	25 N.J.R. 1778(b)
19:46-1.6	Storage of gaming chips and plaques	25 N.J.R. 1083(a)		
19:46-1.7	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:46-1.18, 1.19	Pai gow poker: dealing from the hand	24 N.J.R. 4247(a)		
19:46-1.25, 1.26, 1.33	Use and operation of drop buckets in slot machines	25 N.J.R. 1503(b)		
19:47	Rules of the games	25 N.J.R. 919(a)		
19:47-1.2, 1.4	"Craps-Eleven" wager	25 N.J.R. 63(b)	R.1993 d.127	25 N.J.R. 1230(b)
19:47-2.3	Implementation of mid-shoe options in blackjack	25 N.J.R. 1508(a)		
19:47-2.3, 2.5	Blackjack rules: administrative corrections	_____	_____	25 N.J.R. 1519(b)
19:47-2.17	Over/Under 13 wagers in blackjack	25 N.J.R. 1084(a)		
19:47-5.2	Quadrant wager in roulette	24 N.J.R. 1871(a)		
19:47-8.3	Rules of the games: administrative correction regarding casino notice of changes	_____	_____	25 N.J.R. 1230(c)
19:47-11.2, 11.5-11.8A, 11.10, 11.11	Pai gow poker: dealing from the hand	24 N.J.R. 4247(a)		
19:50	Casino hotel alcoholic beverage control	25 N.J.R. 1085(a)		
19:51-1	Persons doing business with casino licensees	24 N.J.R. 3225(a)	R.1992 d.500	24 N.J.R. 4563(a)
19:51-1.3, 1.4	Service industry and junket enterprise qualification: administrative corrections	_____	_____	25 N.J.R. 1778(b)
19:53	Equal employment opportunity	25 N.J.R. 684(b)		
19:53	Equal employment opportunity: public hearing	25 N.J.R. 1509(a)		
19:54	Tax obligations of casino licensees	25 N.J.R. 280(a)	R.1993 d.146	25 N.J.R. 1524(a)

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