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THE JOURNAL OF STATE AGENCY RULEMAKING

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See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 17, 1995

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **April 5, 1995.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Disclosures and Advertising of Accounts

Proposed Repeal: N.J.A.C. 3:7-4

Proposed Amendments: N.J.A.C. 3:2-1.2, 1.3 and 1.4

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1 and 17:16H-1.

Proposal Number: PRN 1995-131.

Submit comments by April 5, 1995 to:
Rule Comments
Attn: Elaine Ballai
Regulatory Officer
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department proposes to amend regulations concerning advertising and disclosure requirements on accounts to conform these rules with Federal requirements and to eliminate redundant and unnecessary rules. Most of these State rules were adopted before there was Federal regulation in these areas.

In particular, the Federal Truth in Savings Act, 12 U.S.C. 4301 et seq., and Federal Regulation DD, 12 CFR 230.1 et seq., as adopted in 1993 set forth detailed disclosure and advertising requirements for deposit accounts. These laws require disclosures to a consumer before an account is opened, 12 CFR 230.4, upon a change in terms, 12 CFR 230.5, on a periodic statement, 12 CFR 230.6, and in advertising, 12 CFR 230.8. In light of these detailed requirements and in an effort to reduce regulatory burden, the Department has amended its rules to require compliance with the Federal Truth in Savings Act and Regulation DD.

For example, these Federal rules now require prior disclosure of the amount or type of any bonus or gift, when it will be provided and any minimum balance and time requirements to obtain the gift or bonus. In light of these provisions, it is no longer necessary to disclose whether a gift is in lieu of, in addition to, or in reduction of interest otherwise payable to the account. Accordingly, it is proposed that this provision be repealed.

In addition, the Department's rules now require that the advertisement of the yield on a deposit account of less than one year include the basis of the compounding. If the yield is based upon the assumption that principal and interest will be redeposited upon maturity at the same interest rate, the advertisement must indicate that fact. Since Regulation DD in Appendix A to the rule sets forth a uniform method to compute the annual percentage yield, it is proposed that the Department's disclosure requirements be repealed.

Finally, N.J.A.C. 3:7-4 requires disclosure on time deposits payable one year or more after the date of deposit. 12 CFR 230.5 of Regulation DD also requires periodic disclosures of long term time accounts. Accordingly, the Department proposes to repeal subchapter 4.

Social Impact

Since the substance of most of the advertising provisions and disclosure requirements in the rules proposed for amendment and repeal are already required by Federal law, the proposed amendments and repeal has no discernible social impact.

Economic Impact

The proposed amendments and repeal will eliminate compliance differences between State and Federal law regarding disclosure and advertising of accounts. This should have a positive economic impact on regulated institutions subject to the rules. It is not expected that the amendments and repeal will have any economic impact on the Department or on consumers.

Executive Order No. 27 Statement

The proposed amendments and repeal represent an easing of State requirements to match those under Federal law. Therefore, an Executive Order No. 27 analysis is not required.

Regulatory Flexibility Statement

Most depositories are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments require that advertisements of deposit accounts comply with Federal Truth in Savings and Regulation DD. However, since all depositories including small businesses are already required to comply with these regulations, no differentiation based on business size is made.

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

3:2-1.2 Definitions

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

. . .

"Deposit account" means an account that is held by or offered to a consumer, and includes time, demand, savings, and negotiable order of withdrawal accounts.

. . .

3:2-1.3 Disclosure of interest rates

(a) The advertising [by a financial institution] of maximum interest rates and yield on time and savings deposits must comply with [the advertising rule established by either the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System, whichever is applicable] **the requirements of the Federal Truth in Savings Law, 12 U.S.C. 4301 et seq., and Federal Reserve Regulation DD, 12 CFR 230.**

[(b) All gift offerings must fully disclose whether the gift is in lieu of, in addition to, or in reduction of interest otherwise payable to the account.]

[(c)]**(b)** (No change in text.)

3:2-1.4 Violations of the Act

(a) (No change.)

(b) Without limiting (a) above, the following conduct shall be deemed deceptive or misleading:

1.-6. (No change.)

7. The advertisement of a [yield on a deposit account for a term of less than one year without reference to the basis of the compounding. If the yield is based upon the assumption that principal and interest will be redeposited upon maturity at the same interest rate, the advertisement shall indicate that fact, along with a statement indicating whether the same interest rate is guaranteed to be available on the renewal date] **deposit account which does not comply with the requirements of the Federal Truth in Savings Law, 12 U.S.C. 4301 et seq., and Federal Reserve Regulation DD, 12 CFR 230.**

SUBCHAPTER 4. [NOTICE OF MATURITY ON LONG-TERM TIME DEPOSITS] **(RESERVED)**

[3:7-4.1 Time of notice

Every bank and savings bank shall give written notice of the date on which a time deposit, payable one year or more after the date of deposit or one year or more after the date of the instrument evidencing the deposit, will mature to each depositor not less than 15 and not more than 45 days prior to the expiration of the term of the time deposit. The notice shall be directed to the last known address of the depositor.

3:7-4.2 Content of notice

Such notice shall clearly inform the depositor of the time deposit options anticipated to be available to him at that institution as of the maturity date, including the various types of accounts and terms

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applicable thereto. The depositor should be advised to contact the bank prior to the maturity date to determine the specific rate applicable to a particular type of account.

3:7-4.3 Variable maturity accounts

(a) In the case of any single time deposit account which contains deposits which were deposited at varying times and therefore mature and are payable on varying times and therefore mature and are payable on varying maturity dates the notice required by this subchapter shall be given on:

1. The maturity date of the first deposit in such account; and

2. Any succeeding maturity date which occurs one year or more after the immediately preceding maturity date or annually thereafter, provided such notice lists the dates of each deposit in such account and indicates the maturity date of each deposit along with the anticipated options that will be available to the depositor at each such maturity date as called for in N.J.A.C. 3:7-4.2.]

(a)

DIVISION OF REGULATORY AFFAIRS

Lending Limits

Proposed Amendment: N.J.A.C. 3:11-7.8

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:9A-62H.

Proposal Number: PRN 1995-128.

Submit comments by April 5, 1995 to:
Rule Comments
Attn: Elaine Ballai
Regulatory Officer
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend its rules concerning the lending limitations of banks. Current rules provide that the total liabilities of any person which are not fully secured by collateral may not exceed 15 percent of the capital funds of the bank. N.J.A.C. 3:11-7.8(a). However, the total amount of investment securities of any one person may not exceed 10 percent of the capital funds of the bank. N.J.S.A. 17:9A-62(F). The Department sees no policy reason to have differing standards for these two types of investments. Accordingly, the Department proposes to increase the permissible amount of investment securities of any one person to 15 percent.

Social Impact

It is not expected that this proposed amendment increasing the permissible amount of investment securities of any one person will have any social impact.

Economic Impact

The proposed amendment will allow banks more flexibility in their investments. Specifically, it will permit banks to invest in the investment securities of one person up to 15 percent of the capital funds of the bank. This will have a positive economic impact on banks that have an opportunity to invest to this degree at an attractive yield. The Department in this amendment has not in any way relaxed the standards for reviewing the appropriate nature of an investment.

Executive Order No. 27 Statement

The proposed amendment represents an easing of State requirements to match those under Federal law. Therefore, an Executive Order No. 27 analysis is not required.

Regulatory Flexibility Analysis

Most banks are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. These rules concern the compliance requirements imposed on banks in the form of limitations of investments. No differentiation is made based on business size because concentrations of liabilities to one person can compromise the safety and soundness of the institution regardless of the size of the institution.

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

3:11-7.8 General lending limitations

(a) The total liabilities, **including investment securities,** of any person which are not fully secured, as determined in a manner consistent with (b) below, by collateral having a market value at least equal to the amount of the liability shall not exceed 15 percent of the capital funds of a bank. The 10 percent limitiations prescribed in N.J.S.A. 17:9A-62A **and 17:9A-62F** [is] **are** increased pursuant to N.J.S.A. 17:9A-62H.

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

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Exemptions from Taxation

Proposed New Rules: N.J.A.C. 5:22

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 54:4-3.141.

Proposal Number: PRN 1995-123.

Submit written comments by April 5, 1995 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX # (609) 633-6729

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules entitled "Exemptions from Taxation," N.J.A.C. 5:22, expired on February 5, 1995. The Department has examined these rules and finds that they continue to be necessary and appropriate for the implementation of P.L. 1989, c.207, which authorizes municipalities that contain urban enterprise zones to allow five-year tax abatements, in areas deemed to be "in need of rehabilitation," for new residential construction, improvements to existing residential properties, and conversion of nonresidential buildings to residential use. Therefore, the expired rules in N.J.A.C. 5:22 are proposed for adoption as new rules. The only change made to the text of the expired rules is the recodification of the rules in N.J.A.C. 5:22-3 to N.J.A.C. 5:22-1.

Section 3 of P.L. 1989, c.207 requires the Commissioner of Community Affairs to promulgate rules by which municipalities may determine if areas are in need of rehabilitation and if buildings or structures within such areas could be advantageously converted to "qualified residential property" or if vacant land within such areas could advantageously be used for the construction of such "qualified residential property." The rules are required by statute to take into account the existence of blighted areas in the municipality, the deterioration of housing stock, the age of housing stock, the supply and demand for housing in the municipality, and arrearages in real property taxes due on residential properties.

The rules provide that an area may be deemed to be "in need of rehabilitation" if it has previously been declared to be blighted, or if there are substantial housing or health code violations in at least 25 percent of the dwelling units, or if at least 25 percent of the dwelling units are in buildings that are at least 40 years old, or if at least 25 percent of the dwelling units are in buildings having at least one year's property tax arrearages, or if at least 10 percent of the land that is either tax-foreclosed or privately-owned is vacant or has unoccupied buildings. There must be a finding that the demand for housing in the municipality exceeds the supply and the housing to be created through improvement, conversion or new construction in the designated area will help to meet that demand by increasing the supply of safe, decent and sanitary housing that is affordable to people needing housing in the municipality. The

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rules also make it clear that the relocation statutes will be applicable in the event of any displacement due to improvement, conversion or new construction.

Social Impact

The rules are necessary in order to further the positive social impact of the statute, which is to encourage the creation of safe, decent, affordable housing in some of the more distressed municipalities in the State. The criteria for designation of an area as "in need of rehabilitation" should not be difficult for an area within an urban enterprise zone to meet.

Economic Impact

When a municipality allows a five-year tax abatement on "qualified residential property," it foregoes tax revenue that it would otherwise have received. If, however, the construction would not have occurred in the absence of an abatement, the municipality will receive revenue, in the form of payments in lieu of taxes, that it would not otherwise have received, and will have a fully-taxable ratable, at the end of the five-year period, that it would not otherwise have had.

The reference to relocation assistance is intended to make it clear that N.J.S.A. 20:4-2, which refers to a "program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision" is applicable. In the judgment of the Department, this relocation assistance obligation would exist even if it were not specifically mentioned in these rules.

Executive Order No. 27 Statement

These rules are not being proposed under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Regulatory Flexibility Statement

To the extent that these rules help to bring new investment into urban enterprise zone municipalities, they help "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14-16B et seq., that are located in those municipalities by providing housing for potential customers and workers. The standards do not relate in any way to small businesses per se and there is no basis for any differential treatment of them. The reference to the relocation statute may help protect any small businesses that have to be relocated as a result of construction undertaken under P.L. 1989, c.207 and these rules.

Full text of the proposed new rules follows:

CHAPTER 22
EXEMPTIONS FROM TAXATION

SUBCHAPTER 1. RESIDENTIAL NEW CONSTRUCTION, IMPROVEMENT AND CONVERSION IN URBAN ENTERPRISE ZONE MUNCIPALITIES

5:22-1.1 Purpose

This subchapter is adopted pursuant to section 3 of P.L. 1989, c.207 for the purpose of setting forth standards by which municipalities that are deemed to be "qualified municipalities" under the statute may determine that one or more areas within the municipality are in need of rehabilitation and that one or more buildings in any such area could be advantageously converted to "qualified residential property," as defined in section 2 of the statute, or that vacant land in any such area could be advantageously used for the construction of such "qualified residential property."

5:22-1.2 Standards for municipal determinations

(a) In any municipality that is a "qualified municipality" as defined in Section 2 of P.L. 1989, c.207, a determination may be made by the municipal governing body that an area within the municipality is in need of rehabilitation only if at least one of the following criteria is satisfied:

1. The area has been previously declared, pursuant to N.J.S.A. 40:55-21.1 et seq., to be blighted;

2. There is evidence of substantial housing or health code violations in at least 25 percent of the dwelling units in the area;

3. At least 25 percent of the dwelling units in the area are in buildings at least 40 years old;

4. At least 25 percent of the dwelling units in the area in buildings having real property tax arrearages in at least the amount of one year's taxes; or

5. At least 10 percent of the land within the area, including both privately-owned property and property that is municipally-owned as a result of tax foreclosure but excluding other public property, is vacant or has only unoccupied buildings on it.

(b) No area shall be deemed to be in need of rehabilitation unless the demand for housing in the municipality exceeds the supply and the improvement or conversion of one or more existing buildings in the area, or new residential construction in the area on one or more vacant lots, or lots that might be made vacant through demolition of existing substandard structures, is determined by the governing body to be likely to increase the overall supply of safe, sanitary and decent housing affordable to those in need of it.

5:22-1.3 Relocation assistance

The improvement, conversion or demolition of any building in conjunction with any tax abatement granted under P.L. 1989, c.207 shall be deemed to be part of a "program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision" within the meaning of N.J.S.A. 20:4-2.

ENVIRONMENTAL PROTECTION

(a)

DAM SAFETY SECTION

Dam Safety Standards

Proposed Readoption with Amendments: N.J.A.C. 7:20

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:4-1 et seq. and 13:1D-1 et seq.

DEP Docket Number: 02-95-02/318.

Proposal Number: PRN 1995-148.

Submit written comments, identified by the Docket Number given above, by April 5, 1995 to:

Kimberly A. Hunter, Esq.
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, NJ 08625-0402

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 7:20 expires on May 2, 1995. As required by the Executive Order, the Department of Environmental Protection (Department) 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 this chapter with amendments.

N.J.A.C. 7:20 implements the Safe Dam Act, N.J.S.A. 58:4-1 et seq., and governs the design, construction, inspection, modifications and repair of dams in New Jersey which raise the water height of a stream by more than five feet. Certain small structures in the pinelands area are exempt from these rules so long as they do not pose a security or safety concern (see N.J.S.A. 58:4-1). The primary objective of these rules is to ensure the protection of areas below dams from the consequences of their failure. Dams and their appurtenant structures are required to be inspected and maintained on a regular basis in order to determine if repairs or modifications are necessary to protect life and property.

The Department regulates dams based upon their hazard classification, as identified in N.J.A.C. 7:20-1.8, and size. Hazard potential is divided into three classes: Class I, high hazard; Class II, significant hazard; and Class III, low hazard. The hazards pertain to potential harm to human beings or to property in areas downstream of any dam. The hazard classifications dictate the design requirements which applicants must meet: the higher the hazard the more stringent the design criteria. These

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rules also establish requirements for Class IV dams, which are defined as small dams. The construction of Class IV dams is generally regulated by local government entities.

A summary of N.J.A.C. 7:20 follows:

N.J.A.C. 7:20-1.1 and 1.2 set forth the scope of this subchapter (which constitutes the entirety of N.J.A.C. 7:20), and the definitions for N.J.A.C. 7:20.

N.J.A.C. 7:20-1.3 sets forth the requirements for a dam permit-by-rule. A permit-by-rule is established for small impoundments and agricultural ponds.

N.J.A.C. 7:20-1.4 outlines the general requirements and prohibitions for a dam construction permit and describes the standards for granting emergency repair approvals.

N.J.A.C. 7:20-1.5 sets forth the procedures for applying for a dam construction, modification or repair permit. The appeal procedures for denials of a permit are also contained in this section.

N.J.A.C. 7:20-1.6 describes the information to be submitted as part of the preapplication report for the construction of a new dam.

N.J.A.C. 7:20-1.7 describes the documentation and information that must be submitted to the Department for the type of project proposed. The information that must be submitted includes a design report, construction drawings and specifications.

N.J.A.C. 7:20-1.8 describes the Department's guidelines for establishing dam classifications based upon downstream hazard. Hazard potential is broken into three classes: Class I, high hazard; Class II, significant hazard; and Class III, low hazard.

N.J.A.C. 7:20-1.9 describes the hydrologic design criteria for designing spillways and provides technical design criteria for pipe conduits, monitoring devices and freeboard.

N.J.A.C. 7:20-1.10 sets forth the construction quality control requirements and outlines the Department's conditions for approval of construction activities.

N.J.A.C. 7:20-1.11 sets forth the owner's responsibilities for periodic dam safety inspections, operation and maintenance, and emergency action planning.

A summary of the proposed amendments follows:

The definition of "Division" in N.J.A.C. 7:20-1.2 was modified to reflect the transfer of the Dam Safety Section from the Division of Coastal Resources to the Division of Engineering and Construction. The definitions of "principal spillway" and "auxiliary spillway" were added to distinguish the difference between types of spillways.

N.J.A.C. 7:20-1.3(a)1iii was added to clarify that a New Jersey licensed professional engineer is required to design Class IV dams.

N.J.A.C. 7:20-1.4(h) was deleted since the Dam Safety Standards establish guidance for the safe operation of dams and not the design of stormwater facilities.

N.J.A.C. 7:20-1.4(n) was added to ensure that the stability of dam embankments is not weakened by the growth of trees.

N.J.A.C. 7:20-1.7(f) was modified to require applicants to submit an Operation and Maintenance Manual with the permit application.

The word "restoration" was deleted and replaced with the word "stabilization" at N.J.A.C. 7:20-1.7(h)2 to clarify that when dams are removed the lake bed must be stabilized rather than restored to its pre-dam condition.

N.J.A.C. 7:20-1.7(h)4 was modified to incorporate specific storms to be analyzed to document no downstream flooding will occur when a dam is removed.

N.J.A.C. 7:20-1.7(h)7 was modified to provide notification to the municipality by an applicant that an application to remove a dam is being submitted to the Department and to require the applicant to provide notice of the dam removal application in the local newspaper.

N.J.A.C. 7:20-1.9(b) was revised to identify the minimum design storm (100 year) for which a dam should be modified.

N.J.A.C. 7:20-1.9(h) was revised to clarify the design of auxiliary spillways.

N.J.A.C. 7:20-1.9(i)4 was added to provide a minimum drawdown time for draining a reservoir.

Social Impact

The readopted rules with the proposed amendments will have a positive social impact on the people of the State by continuing to protect the public from the consequences of dam failures. The dam safety standards will continue to avoid property damage by requiring dam owners and/or operators to meet specific design criteria and perform periodic dam inspections. The amendments have been proposed to clarify existing engineering requirements of the rules to ensure that proposed and existing dams continue to provide water for drinking, flood protection, irrigation, swimming, fishing and boating. The Safe Dam Act N.J.S.A. 58:4-5, 9 and 10 was amended on August 3, 1994 concerning the decommissioning of dams. As a result, the rules were amended to provide notification to the municipality that a dam may be removed. This charge will have a positive social impact by allowing the residents in the community an opportunity to provide input on the project.

Economic Impact

Dam failures which result in the loss of water supply, wildlife habitat, and recreational facilities and which can cause considerable flood damage have a major negative economic impact on the economy of New Jersey. The resultant costs associated with failure of a single large dam, based on documented past occurrences, can exceed one billion dollars. This figure does not include public costs related to rescue, relief and emergency preparedness nor does it include the value of the loss of human life or the costs associated with lost wages, sales, and production.

The existing rules have had a positive economic impact on the economy of the State by providing a safe environment downstream of water dependent dam structures essential for the needs and economic well-being of the State's residents. The readopted rules with amendments will continue to provide the safety needed for a sound social and business environment and will thus have a positive economic impact.

Owners and operators should not face additional construction and operation costs as a result of the proposed amendments. The amendments have been proposed to clarify certain aspects of the rules. For example, N.J.A.C. 7:20-1.4(n) prohibits trees from growing on dam embankments; currently, as part of the dam owners' maintenance procedures, trees are to be removed from embankments.

Executive Order No. 27 Statement

This readoption with amendments is not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. The proposed readoption with amendments also is not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

Environmental Impact

These rules proposed for readoption with amendments will continue to prohibit a dam owner or operator from allowing dam deterioration which could lead to dam failure. They have a positive impact by compelling the maintenance of the dams which create lakes and reservoirs, therefore preserving existing wetlands, recreation, and fish and wildlife habitat.

Since construction of a new dam may potentially be disruptive to a riverine environment, the Department may require the applicant to submit an Environmental Impact Statement and will consider the environmental impacts in the permit application. The statement or application is carefully reviewed by the staff and additional mitigation is recommended where feasible. In developing the existing rules, the Department has balanced the need to protect the public from dam failures while protecting the environment from the negative effects of construction and operation of dam projects.

Regulatory Flexibility Analysis

These rules apply to owners and operators of dams. It is estimated that of the total number of approximately 1,600 owners and operators affected by these rules, approximately 50 are "small business" as defined in the New Jersey Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. In order to comply with the rules, the small businesses will have to comply with the requirements set forth in the Summary above. In so doing, it is likely that small businesses will need to engage the services of professional engineers. It is expected that the costs for performing inspections for small business owners or operators could range from $500.00 to $5,000. The proposed amendments should not add any additional costs to small business owners or operators. The amendments were proposed to clarify existing engineering requirements of the regulations. In developing the rules the Department has balanced the need to protect the environment, property and life against the economic impact of the rules on owners and operators and has determined that to minimize the impact of the rules on "small business" owners and operators would endanger the public health and safety and, therefore, no exemption from coverage is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:20.

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

7:20-1.2 Definitions

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

...

"Auxiliary spillway" means the second used spillway during flood flows which is not the emergency spillway.

...

"Division" means the Division of [Coastal Resources] **Engineering and Construction** in the Department of Environmental Protection.

...

"Principal spillway" means the primary or first used spillway during normal inflow and flood flows.

...

7:20-1.3 Permit-by-rule

(a) All dams must be designed, constructed, operated, maintained or removed in compliance with the rules in this subchapter except as set forth below:

1. Owners and operators of Class IV dams (see N.J.A.C. 7:20-1.8, Dam classification) are not required to file documents with nor obtain a permit from the Department, but must meet the following requirements, in addition to those set forth elsewhere in this subchapter:

i. (No change.)

ii. All necessary local approvals must be obtained[.]; **and**

iii. A New Jersey licensed professional engineer must design the Class IV Dam to meet all technical requirements of this subchapter.

7:20-1.4 General requirements and prohibitions

(a) No person may construct or operate a new dam or modify or repair an existing dam without first having obtained a permit from the Department, unless subject to the permit-by-rule provision in N.J.A.C. 7:20-1.3. Where emergency circumstances justify, repairs of a dam may be undertaken prior to obtaining a permit, in accordance with [j]**(i)** below.

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

[(h) Retention and detention basins for stormwater management must be constructed in accordance with criteria of the State Stormwater Management Regulations, N.J.A.C. 7:8.]

Recodify existing (i)-(m) as **(h)-(l)**. (No change in text.)

[(m)]**(l)** Utilities crossing[s] within dam embankments are prohibited unless demonstrated to the satisfaction of the Department that such utilities will not jeopardize the safety of the dam.

[(n)]**(m)** (No change in text.)

(n) Unless otherwise approved by the Department, no trees shall be permitted to grow on the dam embankment.

7:20-1.7 Application stage

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

(f) All applicants **must submit an Operation and Maintenance Manual in accordance with N.J.A.C. 7:20-1.11 and applicants** for Class I and II dams (see N.J.A.C. 7:20-1.8) shall prepare and submit an Emergency Action Plan which shall at least include a Dam Breach Analysis, Inundation Maps and Emergency Notification and Evacuation Plans.

(g) (No change.)

(h) The application to remove or breach a dam shall include the following:

1. (No change.)

2. Plans and computations for [restoration] **stabilization** of the lake bed including the channel upstream of the breach, and for the control of sediment within the lake downstream of the breach during and after the breach has been effected;

3. (No change.)

4. Computations detailing the effects of the breach on the downstream channel and demonstrating that the project will not adversely affect flooding conditions downstream **during the 10, 50 and 100 year storms**;

5.-6. (No change.)

7. Evidence that all adjoining property owners of the impoundment **and the municipality where the reservoir or dam is located** have received notification that an application has been submitted to the Department to remove or breach a dam **and proof of publication of notice of the proposed removal application in at least one newspaper of general circulation in the municipality where the reservoir or dam is located**;

8.-9. (No change.)

7:20-1.9 Design criteria

(a) (No change.)

(b) For existing dams, it is recognized that the relationships between valley slope and width, total reservoir storage, drainage area, and other hydrologic factors have a critical bearing on determining the safe spillway design flood. When appropriate, based on the design of the dam, rationale selection of a safe, reduced spillway design for specific site conditions based on quantitative and relative impact analysis is acceptable. The spillway should be sized so that the increased downstream damage resulting from overtopping failure of a dam would not be significant as compared with the damage caused by the flood in the absence of a dam overtopping failure. **The minimum design storm for the dam shall be the 100 year storm.**

(c)-(g) (No change.)

(h) Should a vegetated or unlined [secondary (emergency)] **auxiliary** spillway, approved by the Department, be installed, it must be able to pass the design storm without jeopardizing the safety of the structure and that has a predicted average frequency of use less than:

1.-3. (No change.)

(i) Drawdown requirements are as follows:

1.-3. (No change.)

4. Dams shall include a means to allow the reduction of the reservoir water surface elevation five feet in 10 days at a rate not to exceed one foot per day. For existing dams which satisfactorily meet Department safety and operating criteria, the applicant may, with prior approval of the Department, present alternative reservoir drawdown plans.

(j)-(o) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Endangered, Nongame and Exotic Wildlife

Endangered and Nongame Species Advisory Committee

Proposed Amendment: N.J.A.C. 7:25-4.18

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3(f), 13:1D-9(h) and 23:2A-7(e).

DEP Docket Number: 03-95-02/511.

Proposal Number: PRN 1995-149.

Submit written comments by April 5, 1995 to:

Kimberly A. Hunter
Department of Environmental Protection
Office of Legal Affairs
CN 402
Trenton, N.J. 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:25-4.18 by deleting the term limitations requirement imposed on committee members of the Endangered and Nongame Species Advisory Committee, provided for by N.J.S.A. 23:2A-7(e). The criteria for membership, the numerical make-up, quorum, duties and length of term of the committee members will remain unchanged.

Social Impact

In deleting the term limitations for members of the advisory committee, it is contemplated that the proposed amendment will better enable the Commissioner to carry out the legislative intent embodied in the

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Endangered and Nongame Species Conservation Act. The intent of the Act is to accord special protection to endangered species or subspecies of wildlife indigenous to the State, in order to ensure their continued participation in the ecosystem.

Economic Impact

No direct economic impact upon the Department or the public is contemplated as a result of the proposed amendment since it simply strengthens the composition of the committee.

Environmental Impact

By adding a degree of certainty to the composition of the advisory committee, it is contemplated that a more dedicated and environmentally knowledgeable membership will serve on the committee. Such result should yield only the most positive environmental impact.

Executive Order No. 27 Statement

The proposed amendment is not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. The proposed amendment is not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq. The basis of the amendment is to enable the Committee to advise and assist the Commissioner in matters of policy related to the intent of "The Endangered and Nongame Species Act."

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

7:24-4.18 Endangered and Nongame Species Advisory Committee

(a) The Endangered and Nongame Species Advisory Committee (committee) shall consist of 11 members appointed by the Commissioner. Prior to the making of any said appointments, the Commissioner shall consult with the committee as to their recommendations.

1.-2. (No change.)

[3. No person shall be appointed to the committee for more than two consecutive four-year terms, and no person, once appointed to the committee for a three-year term, shall be appointed to the committee to consecutively serve for more than one four-year term.]

Recodify existing 4. and 5. as **3. and 4.** (No change in text.)

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

(a)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Oysters

Proposed Readoption: N.J.A.C. 7:25A

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 50:1-5, 50-1-23, and 50:1-27.

DEP Docket Number: 04-95-02/494.

Proposal Number: PRN 1995-150.

Submit written comments by April 5, 1995 to:

Janis Hoagland
Attn: DEP Docket 04-95-02/494
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 7:25A expires on April 23, 1995. As required by the Executive Order, the Department of Environmental Protection (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the management of the oyster fishery in Delaware Bay. This management scheme was originally developed by the Department in cooperation with participants in the Oyster Industry, the Delaware Bay Shellfish Council (Council) and research personnel from the Haskin Shellfish Research Laboratory-Rutgers University to provide an orderly procedural process for protecting the oyster resource from excessive harvest pressure; provide the oyster planters with planting grounds beyond the effective range of known predators and disease; and provide the means for the oyster planter to improve his economic viability without negatively impacting the resource. Although the intervention of adverse environmental factors (that is, drought and abnormally mild winter temperature) has led to an expansion in the range of influence for diseases causing a decline of oyster stocks in Delaware Bay, this Department, Council and industry members still consider these rules necessary for the long-term economic and biological maintenance of the fishery. Since the Delaware Bay Shellfish Council has unanimously supported these rules, the Department proposes to readopt this chapter without change.

The rules at N.J.A.C. 7:25A govern the management and harvest of oysters from the State's resource in the Delaware Bay. N.J.A.C. 7:25A is divided into two subchapters: Subchapter 1, Oyster Management, and subchapter 4, Oyster Cultch Program. The current format of the rules is the result of a 1985 revision intended to combine several previously disjointed subchapters regulating the oyster fishery in Delaware Bay. These subchapters included rules regarding oyster dredge boat licenses, oyster management in Delaware Bay and the harvest of seed oysters. The subchapters were consolidated under the general heading of Oyster Management, thus improving the clarity and readability of the regulations governing the oyster fishery. Subchapter 4, containing the rules on the oyster cultch program, was promulgated by the Department in 1983. This program was initiated at the urging of the industry to ensure that adequate supplies of shell material (cultch) were maintained on the oyster seed bed. The cultch provides a stable surface for oyster spat settlement. Shell planting is considered to be a cornerstone management tool for improving the biological potential of an oyster resource. The importance of this concept was the impetus for the oyster industry's request that a regulatory program be developed in order to provide a continuing funding source for the cultch program.

N.J.A.C. 7:25A-1, Oyster Management, provides orderly procedures for the issuance and renewal of oyster dredging licenses, the leasing of oyster grounds in Section E of Delaware Bay, and the taking of seed oysters from the State's natural seed beds. Section E was established in 1981 to provide the oyster industry with a planting area which was beyond the effective salinity range of the oyster disease, MSX. This area was established above the Southwest Line, the traditional line of demarcation between the planting grounds and seed beds, and adjacent to several of the lower natural seed beds. This subchapter also regulates the opening of the State's oyster seed beds between May 1 and June 30, the period prescribed for oyster harvest in this area by N.J.S.A. 50:3-8. Under N.J.A.C. 7:25A-1.9, the Division of Fish, Game and Wildlife (Division), in consultation with the Delaware Bay Section of the New Jersey Shellfisheries Council (Council) and the Haskin Shellfish Research Laboratory of Rutgers University, determines the extent of the season for taking oysters from the State's Natural Seed Beds within the prescribed period. The Natural Seed Beds are located above the Southwest Line in Delaware Bay. The Division also decides which of these seed beds will be open to harvest. This mechanism allows the Division and the Council to closely monitor and protect the productivity of the oyster seed beds. This scenario has been very effective in limiting the effects of fishing pressure on the resource. A recent analysis of the long-term data set compiled by the Department and Rutgers University for the oyster fishery has indicated that harvest pressure has had a negligible effect on the condition of the stocks. This data suggests that the management scheme developed for the oyster fishery has at least in principal been effective for this resource.

The maintenance of this management program has become even more critical given the fact that oyster stocks have been severely depleted due to unfavorable climatic conditions during the past several years. From 1984 to 1988 drought conditions permitted the intrusion of disease (MSX) and predators (oyster drills) into seed bed areas which were formerly protected by low salinities. The mild winter temperatures of the past several years are also suspect in permitting the insidious development of a new oyster disease, Dermo, in the bay. Prior to 1991, Dermo was not considered to be a problem beyond the southern reaches of Chesapeake Bay. The spread of this latter disease throughout New Jersey's oyster-producing areas of Delaware Bay requires that the

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management program continue to closely monitor the biological condition of the stocks, prudently regulate the harvest of the seed stocks, and improve the economic viability of the industry.

These rules provide the procedural mechanisms for limiting unreasonable harvest pressure through the licensing of the oyster dredge boats and control of the seed beds. Because the seed stocks were considered to be severely depleted due to these adverse factors, the Department has not allowed a harvest from the State's Natural Oyster Seed Beds since 1991 under this rule. This decision was based on the best biological assessment of the seed stocks and disease prevalence available and recommendations provided by the Council.

These rules also provide the industry with alternatives for marketing harvested seed oysters. Seed oysters may be harvested when it is deemed that harvest pressure will not have an adverse effect on the seed beds. Prior to these rules, whenever the industry was permitted to harvest seed oysters, it was required to transplant these oysters to the planting grounds below the Southwest Line. The previous rules required this transplant regardless of environmental or market conditions. The rules now provide the oyster industry with the flexibility of developing business strategies based on contemporary environmental and economic data.

N.J.A.C. 7:25A-1 also allows the Division, with the advice of the Council, to designate times, manner and section(s) of the State's Natural Seed Beds from which seed oysters may be taken for market, barter or other trade during any period when these beds are legally opened. This provision was adopted on September 6, 1994 to permit the oyster industry a level of discretion as whether to market seed oysters immediately from the seed beds or continue the more traditional practice of transplanting the oysters to the leased areas of the Bay. Formerly, oysters transplanted to the leased grounds would improve both in meat quality and size during the course of the summer growing season. With the entrenchment of the oyster diseases MSX and Dermo in the bay (especially in the higher salinity areas), this practice has become a high risk venture because of excessive mortality among the transplants.

The rules at N.J.A.C. 7:25A-4 govern the Oyster Cultch Program administered by the Division. This program was initiated at the request of the industry to provide a funding source for the periodic addition of cultch material (shell or other suitable hard substance) to the seed beds. The quality and quantity of this material is critical to improving the biological potential of an oyster bed. During its terminal larval stage, the developing oyster will begin to search for clean, hard substrate upon which to permanently settle. Without adequate substrate to settle upon, the oyster larvae will be lost to the fishery. It is therefore critical to ensure that the substrate on the seed beds is maintained. This subchapter provides for the feasibility of this management strategy. The subchapter requires that all oyster landings in the State from Delaware Bay be reported and a fee be paid on each bushel landed. The monies collected under this program are used to finance the oyster cultch program and to provide support for shellfish research as directed by the Commissioner after consultation with the Council. This section also provides the Council with the mechanism to alter the landing fees, if warranted.

The Department, after consultation with the Delaware Bay Shellfish Council, has determined that these rules currently are necessary for the protection of the oyster resource in Delaware Bay. The rules are also necessary to provide the industry with a more dynamic opportunity for improving its economic well-being. In addition, the rules are necessary to ensure that the resource enhancement program and selective shellfish research programs have a reasonable funding source. Failure to readopt these rules would likely result in intensified and uncoordinated harvest from the State's oyster seed beds. Unrestricted harvest could decimate the remaining seed stocks and the bed's substrate, thus eliminating any long-term vitality that an appropriate management scheme could offer an already depressed industry.

Social Impact

The Department anticipates that the proposed readoption will have a benign social impact on participants in the oyster industry and, also, the general public. Readoption of these rules will sustain the Department's management program for the oyster fishery in Delaware Bay. This program was initiated in 1981 and has evolved for the past 13 years. This program is designed to: control harvest pressure on the State's natural oyster beds, establish procedures for licensing and replacing oyster dredge boats, provide for the leasing of bay bottom above the Southwest Line, and establish a funding program, the Oyster Cultch Program, for seed bed enhancement and shellfish research programs. These rules are continuously reviewed and discussed by the Delaware Bay Shellfish Council, an advisory group to the Commissioner. The Council is primarily composed of individuals involved with the oyster industry. The Council also considers these rules to be necessary for the regulation of the fishery. The Council has provided the impetus for the development of many facets of the rules such as: the cultch program, limiting vessel replacement, and changes in the harvest and marketing strategies for seed oysters. Under the readopted rules, the Department will continue these programs as well as setting the annual season (Bay Season) for harvesting oysters from the State's seed beds and monitoring the impact of this harvest on the beds. These rules will therefore permit the Department to monitor, protect and initiate management strategies to improve the long-term productivity of the seed beds.

The proposed readoption will also continue the concept of allowing the oystermen to sell seed oysters, which are 2½ inches or larger, from the seed beds during Bay Season. The rules indicate that this activity is approved by the Council and has the consent of the Commissioner. Although this concept has previously been incorporated into the rules and adopted, restrictions on seed harvest during the past few years have delayed the implementation of the program prior to this readoption. This strategy will permit the oystermen to capitalize immediately on the marketability of the oysters from seed harvest instead of having to initially transfer the seed to the planting grounds. This latter practice required the reharvest of the oysters for market, adding substantially to the operating costs of the harvester. Also, because of the relative inefficiency of the oyster dredge, large quantities of oysters would have to be planted in order to ensure the recovery of adequate quantities of oysters to recoup operating expenses. Additionally, if the oysters remained on the planting grounds for a period of several weeks, significant mortality may result from disease and predation. The ability to market oysters immediately after harvest from the seed beds would therefore minimize overhead costs to the harvester. This capability will also provide for the prudent utilization and conservation of the existing resource. With consideration of present biological factors, disease, and predators affecting the growth and development of the oyster on the traditional planting grounds below the Southwest Line, the Department's role in management of this fishery and resource users should benefit from the readoption of this regulatory scheme.

The proposed readoption will also perpetuate the Oyster Cultch Program, which provides a funding source for both maintenance and enhancement of the State's oyster seed beds, and selected research programs which benefit the fishery. In general, readopting the rules in this chapter will help the Department continue the long-term management program for the State's oyster resource. The continuation of this program should benefit the oyster industry by maximizing the long term sustainable yield of oysters, improve the economic well being of the industry and support communities, improve the employment environment, and provide the public with a high quality, safe oyster for consumption.

If these rules are not readopted, it could bring about increased harvest pressure on the seed beds. This increase in harvest pressure would come at a time when these stocks may be extremely sensitive to this increased pressure as a result of stock depletion caused by the oyster diseases MSX and Dermo. The Department and Council's ability to select prudent management strategies and controls would also be affected. The lack of prudent management strategies, while bringing about short-term economic rewards, would also cause long-term consequences for the industry. The lack of long-term planning has been attributed to the demise of many coastwide fisheries. In addition, the industry's ability to realize the immediate economic benefits of marketable oysters, without superfluous overhead costs, would not be achieved. Individuals, who may have otherwise been active, may not be able to participate in the seed harvest because of the loss of this economic potential. Transplanting oysters has become a high risk, cost-constrained activity for the independent oysterman. The lack of participation in the fishery results in the deterioration of the dredge boats and industry support facilities because of a lack of funds for maintenance. It will also reduce employment opportunities in the support communities.

Economic Impact

These rules provide a systematic scheme for managing the oyster fishery in Delaware Bay. The rules provide the potential for the fishery to operate at near maximum sustainable yield both economically and biologically (discounting abnormal disease pressure). The program is designed so that the Council, after careful consideration of the most current biological and physical data, can make reasonable decisions on harvest strategies, including the marketing of oysters from the seed beds without the necessity of first transplanting them. This flexibility in the

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decision making process can help reduce the additional expense of reharvesting the oysters and culling for market quality stock. The direct market concept eliminates this additional effort and expense. Since it usually takes several days to recover all the oysters transplanted on a single day, the economic benefit of the direct market program to the planter can be considerable. The direct market program generates an immediate cash flow for the planter. This cash flow can be converted into wages, equipment and debt maintenance, and operating capital. By providing this option, the resource will also benefit since the planter will most likely concentrate on culling his catch for marketable oysters rather than transplanting large volumes of various sized oysters for later reharvest. Because of the diseases prevalence on the planting grounds, many of these oysters would die before recapture. Theoretically, under the direct market program, small oysters would be quickly returned to their bed of origin for further growth. This would have a longterm benefit for the fishery by minimizing harvest pressure on the seed beds and ensuring that the oyster stocks are not artificially reduced to compensate for recapture inefficiency and losses to disease.

The proposed regulations will continue the landing fee program. This program currently charges a fee of $0.35 per bushel for seed oysters transplanted to the leased grounds and subsequently harvested for market. The fee for oysters taken for market, barter or other trade from the seed beds without first being transplanted is $1.25 per bushel. These fees are minimums and are subject to change after a review by the Council and set by the Commissioner. These fees are used to maintain the State's oyster seed beds and fund selected research programs which would benefit the industry and resource.

The readoption proposal also continues the penalty provisions of N.J.S.A. 23:2B-14. These penalties have assisted the Department in deterring poaching from the seed beds and leased grounds, enforcing the oyster cultch program, and ensuring compliance with the harvesting strategies developed for the seed beds. Continuing these provisions will have a direct economic benefit on the oyster industry by protecting the resource and the private investments of the oyster industry.

Failure to readopt these rules will result in the loss of a systematic scheme for controlling harvest pressure on the seed beds and flexibility in harvest strategies of seed oysters for the industry. The inability to market oysters from the seed beds will cause significant additional expense for the harvester since the oysters will have to be reharvested from the planting grounds for market. By transplanting oysters, the harvesters incur additional operating, maintenance, fuel and wage expense. Also, because of disease pressure, the movement of oysters between the seed beds and planting grounds is not considered to be the most prudent course of action at present. These rules provide the flexibility necessary to develop seed harvest strategies given the most current biological and physical data available for the resource. Failure to readopt the rules would eliminate the Council's ability to use this information to recommend seed harvest strategies to the industry participants.

Environmental Impact

The proposed readoption is expected to have a positive environmental impact on the State's oyster resource in Delaware Bay. The existing rules contain several provisions designed to encourage prudent oyster culture practices and to protect the State's resource from over-harvesting. In particular, these rules allow the Department to set the annual season for harvest from the State's oyster seed beds (Bay Season) and to determine which of the seed beds will be open to harvest. Provisions of these rules also permit the Department to monitor the seed harvest and alter conditions of the oyster harvest during Bay Season. Without these provisions, the unrestricted harvest from the seed beds could severely deplete the seed beds in a relatively short period of time. These provisions have been the cornerstone of the management strategy for the oyster resource in Delaware Bay for several decades.

The proposed readoption will allow the Division, with the advice of the Council, to continue to require oystermen who wish to harvest from the seed beds to transplant seed oysters from one bed to another. This provision permits the transfer of the slow-growing, underutilized stocks of the uppermost seed beds to intermediate beds in the bay. These stocks, and the industry, would benefit from accelerated growth rates and improved meat quality which normally occur among these transplanted stocks when moved to higher salinity areas. In addition, the brood (spawning) stock on a bed which has been depleted due to excess harvest could be improved by such a transfer program. Healthy oyster stocks help improve the quality of the environment by continuously filtering the water column, removing contaminants, and by serving as habitat for numerous other species. These species include sponges, polychaetes, crustaceans, gastropods, enchinoderms and finfish such as porgies, sea bass, tautog, flatfish, and others.

Management strategies that are capable of maintaining viable oyster stocks not only provide benefits to those individuals with parochial resource interests but have ancillary benefits to the environment and other estuarine organisms and fisheries as well.

Failure to readopt these rules will have a deleterious impact to the resource. Without the flexibility in available harvest strategies, the oystermen will have to transplant large quantities of oysters from the seed beds to the planting grounds to compensate for low recovery rates and losses due to disease and predation. This will have the effect of further reducing seed stocks, which are increasingly being affected by disease and poor recruitment. The loss of this regulatory scheme may also lead to increased harvest pressure on the seed beds due to an increase in the number of participants in the fishery and the size of the fleet. Substantial increases in harvest pressure will contribute to further reductions in the oyster population of the bay. The loss of oysters will contribute to the demise of the numerous benthic assemblages that are associated with active oyster reefs. A diminishment of these assemblages will probably impact the fish stocks which feed upon them, thus contributing further in a shift in the production of the estuary. Water quality would also suffer since oysters are capable of filtering large volumes of water, up to 30 liters/hour, and removing several grams of suspended material per day from the water column.

Failure to readopt these rules would also result in the loss of the Oyster Cultch Fund which provides money for improving the biological potential of the oysters beds via the collection of landing fees for oysters landed for market. Oyster larvae are dependent on availability of a higher quality substrate, usually oyster shell, upon which to settle. Without an adequate substrate, the larvae will be lost and the biological potential for the resource will be negatively effected.

The proposed readoption should provide additional positive environmental impacts through the oyster cultch program. The objective of this program, which is funded by the landing fees on oysters harvested for market, is to improve the quality and quantity of the substrate available for settling oyster larvae. The practical value of this program, if successful, is an increase in the abundance of oysters on the treated area and the resultant ancillary benefits to the estuary, industry and support communities. The program also supports selected research programs to improve oyster culture practices and harvest methods.

Executive Order No. 27 Statement

This proposed readoption is not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. The proposed readoption also is not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27(1994) does not require a comparison with Federal law.

Regulatory Flexibility Analysis

Although most oyster harvesters are "small businesses" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the paperwork involved in the oyster dredge licenses, oyster lease, and oyster cultch programs is minimal. Likewise, the Department has determined that compliance with the harvest requirements imposed by the rules in this chapter has not been burdensome to small business oyster harvesters. Since the rules are being proposed for readoption without change, the Department anticipates that small businesses affected by the proposed readoption will not need additional professional services or incur additional capital costs in order to comply with the rules in this chapter. Costs of compliance are discussed in the Economic Impact. Because of the de minimus nature of the compliance requirements, the existing rules being proposed for readoption do not contain exemptions or special provisions for affected small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at 7:25A.

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(a)

DIVISION OF SOLID WASTE MANAGEMENT

Intermodal Container Facilities

Proposed New Rules: N.J.A.C. 7:26-3.6 and 4.7
Proposed Amendments: N.J.A.C. 7:26-1.4, 3.4 and 4.3

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq.

DEP Docket Number: 01-95-02/507.

Proposal Number: PRN 1995-151.

A public hearing concerning this proposal will be held on:
Wednesday, March 22, 1995 at 10:00 A.M.
Public Hearing Room, First Floor
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625

Submit written comments by April 5, 1995 to:
Janis E. Hoagland, Esq.
Attn: DEP Docket Number 01-95-02/507
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, NJ 08625-0402

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing new rules and amendments to the solid waste management rules at N.J.A.C. 7:26 to allow licensed solid waste transporters to operate intermodal container facilities where sealed solid waste containers can be moved from one mode of transportation to another (for example, from truck to rail), or between vehicles using the same mode of transportation.

At present, facilities that transfer solid waste containers must be fully permitted as solid waste transfer stations. See N.J.A.C. 7:26-1.4. Otherwise, transporters must move waste containers out-of-State for exchange between vehicles or different transport systems. The regulation of solid waste transfer stations has traditionally been in the context of transferring garbage from collection vehicles to vehicles suitable for transporting the waste long distances for disposal. These traditional transfer operations can, if not properly managed, result in the production of odors, litter and vermin that may harm the public. The rules governing such facilities are appropriate and necessary to protect human health and the environment from these potential nuisances and the hazards inherent in the operation of these facilities. However, the permitting requirements and the stringent operating procedures for solid waste transfer stations are not necessary for intermodal container facilities because solid waste is never exposed to the environment. Sealed solid waste containers are off-loaded, staged and then reloaded onto another vehicle. The Department does not expect the handling of such closed sealed containers to produce the odors, litter or other environmental problems that may occur during traditional transfer activities.

The establishment of intermodal container facilities will foster the safe and efficient transportation of solid waste by allowing licensed transporters to exchange sealed waste containers between similar or different modes of transportation such as, but not limited to, truck to truck, truck to rail car, or truck to ship or barge. Numerous companies involved in the transportation of solid waste have requested that the Department adopt special operating rules for intermodal container facilities because the full permitting process would be much more costly and burdensome than necessary to regulate these facilities which conduct only limited activities. The proposed rules and amendments allow transporters more flexibility in the transportation of containerized solid waste into, out of and through New Jersey. The authorization process in the rules safeguards the public safety and protects human health and the environment without placing more regulatory burden than necessary on transporters.

Proposed N.J.A.C. 7:26-3.6 allows intermodal container facilities to manage waste types ID 10, 12, 13, 25, 27, 72, 73 and 74 as defined at N.J.A.C. 7:26-2.13. The intermodal containerized transport of regulated medical waste (RMW) and hazardous waste is not allowed under the proposed rule. In order to transfer RMW or hazardous waste, a transporter must comply with the applicable requirements established elsewhere in N.J.A.C. 7:26 for the transfer of such wastes.

New definitions are proposed at N.J.A.C. 7:26-1.4 to precisely describe the function and nature of intermodal container facilities. The definition for "containerized solid waste" requires that containers be completely sealed and not opened in any way at any time at the facility or during the transfer process. The Department is modifying the definition of "solid waste facility" to specify that it is excluding intermodal container facilities authorized pursuant to N.J.A.C. 7:26-3.6 from that type of facility. The Department does not believe that intermodal container facilities operated in accordance with the requirements at N.J.A.C. 7:26-3.6 will pose the same potential hazards to human health and the environment as traditional solid waste facilities. Intermodal container facilities are specifically limited to transportation activities related to transferring sealed containers of solid wastes from one type of vehicle to another within a short 72-hour time period.

The Department is also proposing amendments to establish application, modification of letter of authorization and reporting fees for intermodal container facilities at N.J.A.C. 7:26-4.7, and an inspection fee for such facilities at N.J.A.C. 7:26-4.3.

Proposed N.J.A.C. 7:26-3.4(k) specifies that a solid waste transporter utilizing an unauthorized intermodal container facility shall be subject to penalties for violating the waste flow rules at N.J.A.C. 7:26-6, including possible revocation of the transporter registration and license.

The proposed new rule at N.J.A.C. 7:26-3.6 contains the following subsections:

Proposed N.J.A.C. 7:26-3.6(a) states that the rule applies only to facilities handling "containerized solid waste" of specific listed types, ID 10, 12, 13, 23, 25, 27, 72, 73 and 74. Such facilities may not handle containerized regulated medical waste and hazardous waste.

Proposed N.J.A.C. 7:26-3.6(b) and (c) set forth the application requirements for a New Jersey-licensed transporter seeking authorization from the Department to operate an intermodal container facility. Applicants will be required to send copies of their application at the same time to the Department, the host municipality in which the facility is planned to operate and the host county solid waste plan implementation agency. The application review process will verify whether the location and physical layout of the proposed facility are adequate for the facility's intended use and whether the facility poses an environmental threat. The applicant will be required to state the maximum amount of each type of solid waste the facility will receive and transfer each day, and the types of equipment and means of storing and staging containers that will be utilized at the facility. The applicant must also describe the sources of solid waste managed at the facility and the anticipated disposal locations both in-State and out-of-State. The applicant must also demonstrate that the facility is consistent with the solid waste management plan in the county where the facility is to be located by obtaining a letter of consistency from the solid waste plan implementing agency of the appropriate county. An application fee and yearly report handling fee will cover agency costs for application review, report handling and recordkeeping. Persons authorized to operate intermodal container facilities must also pay the fees at N.J.A.C. 7:26-4.4 for solid waste transporters and any other applicable fees established in N.J.A.C. 7:26.

Proposed N.J.A.C. 7:26-3.6(d) through (f) describe the Department's application review process that requires the Department to act within 45 days of receipt of the application. If the information submitted with the application is complete and meets the regulatory requirements, the Department will issue a letter of authorization to operate an intermodal container facility. The letter of authorization cannot be transferred to any other person. In the event the application is incomplete or does not meet the regulatory requirements, the Department will notify the applicant of the deficiencies in the application. The applicant will have 30 days to submit the missing or corrected information to the Department. Thereafter, the Department will grant the authorization if the application meets the regulatory criteria, or deny the authorization if it does not. The applicant may reapply for an authorization for the same facility by submitting a complete application and paying the application fee. The Department shall notify the host municipality and county of actions taken pursuant to N.J.A.C. 7:26-3.6(d).

Proposed N.J.A.C. 7:26-3.6(g) describes the technical operating requirements for intermodal container facilities and delineates which activities the facilities will be allowed to conduct. Only "containerized solid waste" in registered solid waste containers may be brought into the facility and the containers may remain at the facility for no more than

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72 hours. ID 72 liquid solid wastes may be stored for a period of up to 180 days so long as the containers remain sealed. The Department believes that the storage of nonmalodorous or nonreactant liquid solid wastes in sealed containers such as drums for 180 days will not pose an environmental threat. While at the facility, the containers are not to be opened and the employees of the facility, the public or the environment are not to be exposed to the solid waste therein. ID 72 liquid solid wastes in sealed drums, totes, or other sealed containers may be opened briefly solely for sampling purposes; they must be immediately resealed. The containers must be of sufficient structural integrity to be moved safely and they must not leak or emit odors. The intermodal container facility operators will be required to implement security procedures to prevent unauthorized access to the facility and to implement maintenance procedures to ensure cleanliness.

Further, this subsection provides for Department access at any time to all parts of the intermodal container facility for the purposes of inspection and review of records. The facility must comply with all requirements of other agencies, including the Federal Occupational Safety and Health Administration, concerning operation of such facilities and for maintenance of the health and safety of employees or other persons. Routine housekeeping measures must be implemented at the facility to maintain general cleanliness throughout the facility and in its working environment. The facility operator will be required to designate an emergency coordinator, and if an emergency does arise, the facility operator most notify the Department immediately. All solid waste accepted at the facility from New Jersey sources shall be disposed of in accordance with the Interdistrict and Intradistrict Solid Waste Flow rules at N.J.A.C. 7:26-6. The facility shall not accept mixed solid waste generated from more than one New Jersey district or county, or out-of-State source. Any out-of-State solid waste accepted at an intermodal container facility shall be disposed of in accordance with the approved Solid Waste Management Plans or at facilities out-of-State permitted to receive such wastes. The operator of the facility will be required to develop and maintain at the facility an operations and maintenance (O&M) manual, in accordance with N.J.A.C. 7:26-2.10(b)(9), describing all operating conditions and procedures at the facility. The operator of an authorized facility is required to notify the Department, host municipality and county, when it seeks Department authorization in order to modify any aspect of the facility's operation as set forth in the application or any subsequent modifications thereof.

Proposed N.J.A.C. 7:26-3.6(h) sets out the recordkeeping requirements for the facility. Daily records must be maintained that record the source, destination and quantity, by vehicle, in tons and cubic yards, and gallons for liquid wastes, by amounts received, transferred and shipped to and from the facility, from all in-State and out-of-State sources. The daily records must be compiled into quarterly reports that must be submitted to the Department within 20 days of the end of each calendar quarter. Recordkeeping requirements are necessary for three reasons. The records ensure that the Department can effectively monitor the movement of solid waste throughout the State. The records help ensure that only waste from licensed transporters is transferred at the facility and that the movement of solid waste is consistent with the Interdistrict and Intradistrict Solid Waste Flow rules at N.J.A.C. 7:26-6 as applicable. Finally, the records help the Department in case of emergency at a facility.

Each facility must maintain on-site a daily log of the waste going through the facility. The facility must include in the log the type and amount of containerized solid waste accepted by container volume and weight in tons. The facility must also log the time-in, time-out and identification of all vehicles transporting containerized solid waste in or out of the facility. All entries in this log must be summarized and sent to the Department for review on a quarterly basis, using the same forms established for the origin and disposal reporting system at N.J.A.C. 7:26-2.13.

Proposed N.J.A.C. 7:26-3.6(i) through (k) outline the enforcement actions the Department may take against an intermodal container facility operator for noncompliance with these rules. The rules specify that enforcement action will be taken against the facility operator if a facility accepts waste from or transfers waste to an unlicensed transporter or violates the Interdistrict and Intradistrict Solid Waste Flow rules at N.J.A.C. 7:26-6. Any intermodal container facility operator that does not comply with the requirements will be considered to be operating an illegal solid waste transfer station and will be subject to all the penalties permitted by statute and the solid waste management rules (see N.J.A.C. 7:26-5).

Proposed N.J.A.C. 7:26-3.6(l) specifies that the Department may revoke an intermodal container facility authorization if the facility operator does not comply with the requirements for the operation of the intermodal facility or the Department determines that cause for such revocation is justified by the conditions specified at N.J.A.C. 7:26-3.6(m).

Proposed N.J.A.C. 7:26-3.6(m) specifies that the Department may at any time and at its discretion modify an authorization. The criteria on which the Department will base such modifications will include, but not be limited to, changes or additions made to the facility after the Department issued the letter of authorization; new information that would have caused the Department to issue a letter of authorization containing different conditions for operation; changes to standards, rules or Department policies pursuant to which the authorization was issued, such as the facility's conformance with the District Solid Waste Management Plan, regulatory compliance record and other factors determined by the Department; and any relevant judicial decisions subsequent to the issuance of the letter of authorization.

Proposed N.J.A.C. 7:26-3.6(n) states that the Department must give 30-day prior notice to the operator of an intermodal container facility if it determines that modification to the facility's authorization is warranted pursuant to N.J.A.C. 7:26-3.6(m). The Department must specify the modification and its reasons for determining that modification is warranted, and also notify the host municipality and county of this information.

Based on the petitions and testimony of numerous organizations, including transporters of solid waste and associations representing these companies, the Department believes the proposed regulations are necessary to provide for more efficient, safe and cost effective transportation of containerized solid waste in New Jersey. The rules will provide environmental oversight for intermodal container facilities without imposing overly burdensome regulatory requirements that are more appropriate for transfer stations.

Social Impact

These proposed new rules and amendments will have a positive social impact. The waste at the intermodal container facilities will be in sealed containers at all times. The public and the environment will not be exposed to any solid wastes. These facilities are designed to ease traffic congestion by allowing for varied methods of transportation using containers that maximize waste compression. Train transport of waste will generate less air pollution than truck transport, lessening the potential health impacts of such pollution. The expected decrease in vehicle emissions also will contribute to improving the aesthetic air quality in New Jersey and the northeast region, to some extent, reducing visible smog and associated air pollution impacts.

Economic Impact

The economic impact of the proposed new rules and amendments will fall primarily on the licensed transporters of solid waste that apply for and receive authorization to operate an intermodal container facility pursuant to these rules. Solid waste transporters filing an application will incur a $500.00 application fee, and a $150.00 annual recordkeeping fee if they receive authorization to operate an intermodal container facility (see proposed N.J.A.C. 7:26-4.7). In addition, pursuant to the proposed amendment to N.J.A.C. 7:26-4.3, operators of the facilities will incur an annual inspection fee of $260.00 for an annual Departmental inspection for compliance monitoring. An authorization modification fee of $250.00 will also be charged when the Department modifies a letter of authorization pursuant to N.J.A.C. 7:26-3.6(m). These fees are far lower than those required for other solid waste facilities and transfer stations.

Under the current rules, transporters moving containerized solid waste from one mode of transportation to another are required to obtain permits to operate solid waste transfer stations. This application and permitting process can cost in excess of $100,000, not including the costs incurred and time expended by the applicant going through the county plan inclusion process, in designing the facility and preparing the application. The full application and permit approval process is very time consuming and significantly more expensive than the authorization process proposed herein for intermodal container facilities.

The Department is confident that intermodal container facilities do not require the same level of regulation and agency oversight as do solid waste transfer stations. The possibility for environmental damage is minimal. The proposed rules are designed to allow the solid waste industry to operate more cost efficiently while maintaining proper safeguards for the environment.

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The proposed fees imposed are necessary to provide adequate staffing to administer the intermodal container facility authorization program. A discussion of the Department's staffing needs for the administration of the program and an analysis of the basis of the fees follow.

Based on the Department's records, it is anticipated that approximately five solid waste transporters will seek authorization to operate intermodal container facilities, pursuant to proposed N.J.A.C. 7:26-3.6, during the fiscal year 1996, and each year thereafter. The Division of Solid Waste Management (Division) will have the responsibility for administering intermodal container facility authorizations. The administrative work will mostly involve the review of application submittals. The Division will evaluate the written narratives detailing the facility's operations and will determine whether this plan is sufficient to ensure the facility will comply with the requirements of the rules. Also, the Division will confirm that the appropriate site plan map, the USGS Quadrangle Map and the Deed of Record are submitted. It will confirm the submission of the Operations and Maintenance Manual and the security controls to be implemented at the facility. It will also confirm whether the facility is consistent with the approved solid waste management plan for the county where it is located. On review of the application, the Division must either issue a letter of authorization, deny the application or send the applicant written notification regarding missing or unacceptable information. The Department estimates that less than five percent of one staff person's workload will be devoted to reviewing intermodal container facility applications.

The Department will also inspect the facilities and enforce the program. The cost of the annual inspections will be borne directly by the operators of the facilities. The inspection fee is proposed at N.J.A.C. 7:26-4.3. The fee schedule provides for a $260.00 fee for each annual site visit. Other enforcement-related activities include reviewing the quarterly reports submitted by the facilities and determining whether any enforcement action should be initiated for noncompliance with the regulations. If the Department determines to take enforcement action, then the facility's file must be reviewed again and a penalty assessment prepared.

The Division of Law will assist the Division in preparing any amendments to these rules that may be needed and may be called on to evaluate legal aspects of the authorization applications as appropriate. The Division of Law will also advise staff on any enforcement action that arises in connection with violations of the regulations or the conditions of the facility approval and litigate cases involving violations of the proposed regulations. The Division of Law also may render day-to-day legal advice to Department staff.

The operator of an intermodal container facility will pay a one-time application fee of $500.00, an annual fee of $260.00 for an annual compliance inspection and an annual recordkeeping fee of $150.00. When the Department issues a modification to a letter of authorization it will charge a fee on issuance of the authorization of $250.00 for the costs of reviewing and modifying the authorization. These fees will cover the total estimated cost to the Department the first year of $4,550 associated with the administration of the intermodal container facility application review process and the general administration of the program for the five transporters expected to seek authorization. The Department projects that up to five transporters may seek authorization to operate intermodal container facilities each year. This estimate encompasses the amount of time the Department and the Division of Law will expend on the authorization application process, maintenance of records and enforcement activities, calculated by multiplying the numbers of working hours a Department staff member will spend administering and implementing these regulations by the per-hour rate earned by that staff member. The breakdown of the estimated costs for the first year of intermodal container facility regulation is as follows:

TOTAL DEPARTMENT COSTS
FOR FIRST YEAR OF INTERMODAL
CONTAINER FACILITY PROGRAM

Department	Total Hours	Salary Rate Per Hour	Total Cost
Division of Solid Waste Management	52	$55.55	$2900
Enforcement	25	$52.00	$1300
Division of Law	5	$70.00	$ 350
Total	82		$4550

The hourly rate reflects the average annual salary for the staff reviewing the applications and administering the program, plus the Department's annually calculated 31.18 percent indirect cost factor, the 24.25 percent fringe benefit factor and a 15 percent operating cost factor, which are based on the Department's actual costs. These numbers were then divided by the Department's 1,560 standard work hours per year to arrive at the hourly rates.

Overall, the expected economic impact of the proposed regulation is positive. The authorization process is simpler and less costly than the full-scale permitting process for transfer stations or other types of solid waste facilities. Furthermore, the companies involved in the transportation of solid waste have stated that the requirements and fees in the proposed regulations will be cost efficient for them.

Environmental Impact

The proposed rules and amendments will have a positive impact on the environment because they will encourage safe and efficient transportation of containerized solid waste in the State by allowing New Jersey-licensed solid waste transporters greater flexibility in employing different modes of transportation. It is important that the State encourage the use of varied transportation options. Under these rules, licensed transporters will be able to choose the most efficient mode of transportation as appropriate and thereby increase energy efficiency during transportation, reduce air pollution and decrease reliance on the current industry norm of transporting solid waste by truck.

The use of railroads to transport containerized solid waste will allow transporters to ship solid waste in larger volumes, thereby decreasing the number of vehicles needed. The net effect of decreased truck usage will be a decrease in traffic on the roads and a significant decrease in the associated air pollution. A review of both Department and United States Environmental Protection Agency data for emissions rates for diesel trucks versus trains shows that train transport of freight produces on average, for all pollutants, only about 20 percent of the total air pollution discharges produced by trucks transporting freight. Pollutants such as particulates may be reduced by a factor of up to 29, and carbon monoxide by a factor as high as 17. While these factors were computed from available data concerning standard train and truck emissions rather than direct measure of the emissions in New Jersey, and some amount of uncertainty remains concerning the exact degree of difference between the sources, the Department believes sufficient data exist to predict significantly lower rates of emissions to the atmosphere per ton of freight transported by train.

The environmental risks associated with less stringent requirements for intermodal container facilities, will be minimal. The application review process, operating requirements and recordkeeping requirements will all ensure that containerized solid waste is transported in an environmentally safe manner in New Jersey. The authorization process provides necessary Department oversight to ensure that these facilities handle only completely sealed containerized waste and that adequate safeguards are in place in the event of an accidental spill.

The operating, reporting and recordkeeping requirements will ensure that only sealed waste is transferred at these facilities and that the facilities are maintained and operated safely. The enforcement provisions will help ensure compliance with the proposed rules and amendments. If operated pursuant to these proposed rules and amendments, these facilities will not pose any significant risk to the environment.

Executive Order No. 27 Statement

The proposed new rules and amendments are not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. The proposed new rules and amendments also are not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27(1994) does not require a comparison with Federal law.

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 and amendments will have a negligible impact on small businesses. Only five businesses are expected to apply for an authorization to operate an intermodal container facility each year, and it is not expected that any of these applicants will be small businesses as defined by the Act. The rules and associated fees are applicable only to those businesses that apply for an authorization and will have no ancillary impacts on the rest of the solid waste transportation industry.

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

7:26-1.4 Definitions

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

. . .

"Containerized solid waste" means solid waste as defined at N.J.A.C. 7:26-2.13 that is completely sealed, locked, or otherwise enclosed in containers of sufficient structural integrity to prevent unauthorized access to the container's contents, spillage and leakage. Containerized solid waste shall not be enclosed by use of a tarp or other cover that does not form a complete seal around the waste, or be accessed in any way while at the facility, or be allowed to emit any contaminants or odors to the air that may reasonably result in citizen complaints, or be in violation of N.J.A.C. 7:27-5.1.

. . .

"Intermodal container facility" means a facility where containerized solid waste is transferred from one mode of transportation, such as trucks, rail cars, ships and barges, to another, or from one vehicle to another within one mode of transportation.

. . .

"Solid waste facility" means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include a recycling center **or intermodal container facility authorized by the Department pursuant to N.J.A.C. 7:26-3.6**.

7:26-3.4 Transporter requirements (General)

(a)-(j) (No change.)

(k) Any transporter that transports solid waste to or from an intermodal container facility operating without authorization pursuant to N.J.A.C. 7:26-3.6 shall be subject to all applicable penalties for violation of New Jersey waste flow rules at N.J.A.C. 7:26-6, including revocation of transporter registration, certification and transporter license.

7:26-3.6 [(Reserved)] **Intermodal container facility**

(a) This section contains the regulations of the Department governing the authorization and operation of intermodal container facilities. Such facilities shall handle only containerized solid waste as defined at N.J.A.C. 7:26-1.4 and limited to the following solid waste types identified and listed at N.J.A.C. 7:26-2.13 as ID 10, 12, 13, 23, 25, 27, 72, 73, and 74. Such facilities shall not accept or in any manner handle regulated medical waste or hazardous waste, as defined at N.J.A.C. 7:26-1.4 and 3A.6 respectively.

(b) A person registered and licensed in accordance with N.J.A.C. 7:26-3, 16 and 16A to transport solid waste in the State of New Jersey that seeks to operate an intermodal container facility shall submit an application containing all of the following information. Three copies of the entire application and all accompanying documents shall be submitted to the Department at the address specified in (c) below, and at the same time one copy each to the host municipality and county solid waste plan implementation agency:

1. The name, address and telephone number of the person or persons seeking to operate the proposed facility;

2. Photocopies of documents as evidence of the applicant's registration and licensing as a solid waste transporter pursuant to N.J.A.C. 7:26-3, 16 and 16A;

3. Photocopies of documents as evidence of all authorizations for siting, construction and operation, and conformance with all local, regional, State or Federal requirements of any governmental agency, or other body with jurisdiction over any aspect of the proposed facility;

4. A description of the geographical location of the facility, identifying the name of the municipality in which the facility is located and the address of the facility;

5. A copy of the tax map showing the lot and block numbers of the facility site and of all adjoining properties;

6. A description of the current use of the facility site and of all adjoining properties;

7. A letter of consistency with the district solid waste management plan from the district solid waste management plan implementing agency, established pursuant to N.J.S.A. 13:1E-21b(1), of the county where the facility is proposed to be located. The Department may issue an authorization in the absence of a county letter of plan consistency should it determine, at its discretion, that the intermodal container facility is needed to help fulfill the objectives of the adopted and approved Statewide Solid Waste Management Plan or individual district solid waste management plans. In the event of such a determination, the Department shall notify the host county and municipality of its determination and reasons justifying facility authorization in writing prior to any approval of operations;

8. A list of all solid wastes by waste type as defined at N.J.A.C. 7:26-2.13, to be received and transferred at the facility;

9. A description of the maximum amount of each type of solid waste to be received and transferred at the facility each day, expressed in tons per day and cubic yards per day, or gallons where applicable;

10. A description of the sources of the containerized solid waste and the anticipated disposal locations of the waste, both in-State and out-of-State;

11. A description of the type(s) and number of containers that will be used at the facility and the type and means of storage and staging of the containers;

12. Three copies of a site plan, prepared, signed, and sealed by a licensed New Jersey professional engineer or surveyor. The site plan must:

i. Identify the placement of all equipment, buildings, activities and areas related to the receipt, loading, unloading and temporary storage of containerized solid waste;

ii. Be drawn to a scale no greater than one inch equals 100 feet;

iii. Indicate the routing of vehicles between the facility and all nearby roadways serving the site, as well as the traffic flow within the site. Such routing must ensure safe and efficient vehicular and pedestrian circulation, parking, and loading and unloading of containers;

iv. Delineate floodplains as defined at N.J.A.C. 7:13-1.2;

v. Delineate the location of State-designated wetlands, New Jersey Pinelands, existing or suitable agricultural lands, Federal or New Jersey-registered historic sites and other environmentally sensitive areas such as State parks, wildlife management areas and National Wildlife Refuges;

vi. Identify the direction of water runoff both on-site and off-site and the screening and landscaping on the site;

vii. Indicate topographic contours, drawn at three-foot intervals; and

viii. Indicate all site access controls to be employed at the facility;

13. An original current 7.5 minute USGS Quadrangle map with the boundary of the facility plotted thereon. The map shall delineate any public access roads to the site and any streams, ponds or other potential sensitive receptors such as, but not limited to, hospitals, schools, and shopping areas within a one-half mile radius of the site;

14. A copy of the deed of record establishing ownership of the facility property or, if the applicant is a person other than the landowner, a legal agreement (for example, a lease) to use the real property for the purpose of operating the facility;

15. A description of the design capacity of the facility, setting forth the number and types of all vehicles arriving at the facility and the number and types of all vehicles leaving the facility on a daily basis, stating the maximum number of vehicles per hour that will arrive at and leave the facility;

16. A copy of any New Jersey air pollution control permit application as applicable, in accordance with N.J.A.C. 7:27; and

17. A narrative describing the facility operations from the receipt of containerized waste through the point of transfer to destination. The narrative must clearly demonstrate that containers will not be

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opened and that employees, the public or the environment will not be exposed to solid waste except as allowed in accordance with this section.

(c) The application described in (b) above shall be submitted in triplicate, along with the application fee set forth in N.J.A.C. 7:26-4.7, to:

Bureau of Registration
Division of Solid Waste Management
New Jersey Department of Environmental Protection
CN 414
Trenton, New Jersey 08625-0414

(d) Within 45 days after the Department receives the application submitted pursuant to (b) above, the Department will take one of the following actions:

1. Issue a letter of authorization to operate the intermodal container facility, or a denial of the application, to the applicant, with a copy to the host municipality and county solid waste plan implementation agency. A letter of authorization shall not be transferred to any other person;

2. Notify the applicant in writing of missing information, with a copy of the notice sent to the host municipality and county solid waste plan implementation agency; or

3. Notify the applicant in writing of any information that does not satisfy the requirements of (b) above, with a copy of the notice sent to the host municipality and county solid waste plan implementation agency.

(e) An applicant shall submit to the Department and to the host municipality and county solid waste plan implementation agency any additional or corrected information required pursuant to (d)2 or 3 above within 30 days of receipt of the notification from the Department of missing and/or insufficient information.

(f) The Department will deny without prejudice the application of any applicant that fails to submit the additional or corrected information required pursuant to (d)2 or 3 above or that otherwise fails to meet the application criteria of these regulations. The applicant may thereafter submit a new application for authorization to operate an intermodal container facility at the same location pursuant to the requirements of this section.

(g) All intermodal container facilities authorized by the Department pursuant to this section shall operate in accordance with the following standards:

1. Solid waste shall not remain at any intermodal container facility for more than 72 hours, except that ID 72 liquid solid waste may be stored for up to 180 days in sealed containers. An intermodal container facility at which solid waste is staged or stored for more than 72 hours, or at which ID 72 liquid solid waste is stored for more than 180 days, shall be deemed to be an illegal solid waste transfer station, and shall be subject to all penalties authorized pursuant to applicable statutes and rules.

2. Solid waste received, stored or transferred at any intermodal container facility shall at all times be contained in sealed containers registered as solid waste containers with the Department in accordance with N.J.A.C. 7:26-3 that do not leak any liquids or solid materials and are not opened for any purpose at the facility, except that an ID 72 liquid solid waste container may be opened briefly for the purpose of sampling the liquid provided the container is immediately resealed.

3. Solid waste contained in solid waste containers at any intermodal container facility shall not emit odors that are detectable at the facility or in the vicinity of the facility.

4. Access to any intermodal container facility shall be restricted to facility operators, solid waste vehicle operators and authorized visitors only. Effective security procedures shall be implemented to control entry and exit at all times. All solid waste containers staged or stored at the facility shall be secured at all times in a manner that prevents unauthorized access to the containers and their contents.

5. The Department's designated representatives and inspectors shall have the right to enter and inspect any building or any other portion of any intermodal container facility, at any time. This right to enter and inspect includes, but is not limited to:

i. Observing and sampling any materials on site;

ii. Photographing any portion of the facility, solid waste vehicles, containers, and container contents;

iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules, regulations, or policies of the Department, including conditions of the facility's letter of authorization or any other permit or certificate issued by the Department; and

v. Reviewing and copying all applicable records described in this section, which shall be maintained at the facility at all times and shall be made available on request to Department representatives and inspectors at all reasonable times for review and inspection.

6. Intermodal container facilities shall comply with the requirements of the Federal Occupational Safety and Health Administration and all other applicable standards of any agency for the operation of the facility and the maintenance of the health and safety of the employees or other persons.

7. Routine housekeeping and maintenance procedures shall be implemented at the facility to prevent the accumulation of dust, debris and to maintain general cleanliness throughout the facility and in the working environment.

8. Any release or discharge of any solid waste at the intermodal container facility must be immediately reported by the facility operator or its designee to the DEP Emergency Response 24-hour Hot Line at (609)292-7172. The report must specify the type of substance discharged in estimated quantity, the nature of the discharge, the location of the discharge, any action being taken or proposed to be taken in order to mitigate the discharge, and any other information concerning the incident the Department may request at the time of notification.

9. The intermodal container facility operator shall designate an on-site emergency coordinator who will be available during all hours of operation for the purpose of handling emergency situations, such as, but not limited to, spills, discharges or releases of solid wastes at the facility.

10. Unless exempted under N.J.A.C. 7:26-6.3, all containerized solid waste accepted at the intermodal container facility from New Jersey sources shall be disposed of in accordance with the Interdistrict and Intradistrict Solid Waste Flow rules at N.J.A.C. 7:26-6. An intermodal container facility shall not accept containers containing mixed solid waste generated from more than one New Jersey district or county, or out-of-State source. Any out-of-State solid waste accepted at an intermodal container facility shall be disposed of consistent with the provisions set forth in the approved District Solid Waste Management Plan for the district in which the facility is located, or at permitted out-of-State disposal facilities authorized by the receiving state.

11. The intermodal container facility operator shall develop and maintain at the site an operations and maintenance (O&M) manual that shall describe all operating conditions and procedures of the facility. The O&M manual shall be made available to all facility personnel. The O&M manual shall be prepared in accordance with N.J.A.C. 7:26-2.10(b)9.

(h) An intermodal container facility operator shall maintain the following records at the facility site at all times and shall file reports as follows:

1. Daily records shall be maintained on forms supplied by the Department, in accordance with N.J.A.C. 7:26-2.13. These reports shall note the source, destination and quantity, by vehicle, of all solid waste received, transferred and shipped at the facility. The records shall specify the source for every shipment of waste received and the destination of every shipment of waste out of the facility. Quantities of solid waste shall be listed in tons and cubic yards. Quantities of liquid solid wastes shall be listed in gallons.

2. The daily records shall be compiled into standard quarterly reports, which shall be submitted to the following address within 20 days of the end of each calendar quarter:

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Bureau of Medical Waste and Technical Assistance
Division of Solid Waste Management
New Jersey Department of Environmental Protection
CN 414
Trenton, NJ 08625-0414

3. Records that document all violations of any local, State or Federal requirements including violations of the intermodal container facility authorization issued by the Department.

4. Records that document all incidents in which a transporter not registered and licensed pursuant to N.J.A.C. 7:26-3, 16 and 16A, or container not registered pursuant to N.J.A.C. 7:26-3, was denied transfer privileges at the facility. These records shall specify the vehicle driver's name, the vehicle license number, the vehicle registration number, the name of the company operating the vehicle, the solid waste registration number of the company, the date and time of the denial, the size of the vehicle or container, and the type of solid waste in the container. These incidents shall also be reported within 24 hours to the Department's Office of Enforcement field office nearest the facility.

(i) Any person that conducts any of the activities of an intermodal container facility as defined in this section without authorization from the Department, or without a solid waste transfer station permit issued pursuant to N.J.A.C. 7:26-2A, shall be deemed to be operating an illegal solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E, and N.J.A.C. 7:26-5.

(j) Any authorized intermodal container facility that accepts unauthorized waste, or fails to operate in compliance with the requirements of this section, shall be deemed an illegal solid waste facility and shall be subject to all applicable penalties pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E, and N.J.A.C. 7:26-5.

(k) Any authorized intermodal container facility that accepts containerized solid waste from a transporter not registered and licensed pursuant to N.J.A.C. 7:26-3, 16 and 16A shall be subject to penalties for violation of New Jersey waste flow rules at N.J.A.C. 7:26-6, including, but not limited to, revocation of transporter registration, certification and licensing, and revocation of intermodal container facility authorization.

(l) The Department may revoke the authorization of an intermodal container facility if that facility fails to comply with the requirements for such facilities or any law in any way related to the operation of an intermodal container facility pursuant to New Jersey statute or the Department determines that any of the causes for modification in (m) below are sufficient cause for revocation in order to protect human health, safety and the environment.

(m) The Department may modify an intermodal container facility authorization for the following reasons. The operator shall pay a fee as specified in N.J.A.C. 7:26-4.7(e) on issuance of any intermodal facility authorization modification:

1. The Department determines that there are material and significant alterations or additions to the authorized facility or operation that occurred after the Department issued the existing letter of authorization that warrant the imposition of conditions different from or lacking in the existing authorization;

2. The Department receives information that was not available at the time it issued the letter of authorization that would have warranted the issuance of conditions in the authorization different from those imposed in the existing authorization. This information may include, but not be limited to, information concerning the effects of the facility on the properties surrounding the facility or the effects of the facility on the environment;

3. A change in Federal or State laws, regulations or policies governing solid waste management;

4. The regulatory compliance record of the intermodal container facility operator;

5. A relevant judicial decision after the authorization was issued; or

6. An operator of an intermodal container facility shall request a modification of its authorization whenever the operator proposes to change any aspect of the operation as originally described in the application. Such changes include, but are not limited to, changes in the amount and type of solid waste managed at the facility, and changes in the sources of waste and waste disposal location.

(n) The Department shall provide 30-day prior notice of a modification to an authorization to operate an intermodal container facility pursuant to N.J.A.C. 7:26-3.6(m) and its reasons for determining a modification is warranted. This notice shall be sent to the operator of the facility and the host municipality and county solid waste plan implementation agency.

7:26-4.3 Fee schedule for solid waste facilities

(a) (No change.)

(b) The permittee of a solid waste facility shall pay the annual fees listed in the following table for compliance monitoring services. The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year. **The operator of an intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6 shall pay the annual fee listed below on January 1 of each year.**

Type of Facility	Compliance Monitoring Fees
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	$ 39,087
Sanitary Landfill—operating at less than 31,200 tpy	$ 6,013
Transfer Stations and Materials Recovery Facilities—operating at 31,200 tpy or more	$ 12,027
Transfer Stations and Materials Recovery Facilities—operating at less than 31,200 tpy	$ 4,510
Thermal Destruction Facilities—operating at 100 tons per day or more	$ 26,058
Thermal Destruction Facilities—operating at 9.6 tons per day or more, but less than 100 tons per day	$ 13,029
Thermal Destruction Facilities—operating at less than 9.6 tons per day	$ 6,013
Intermodal Container Facilities	**$ 260**

(c)-(h) (No change.)

7:26-4.7 [(Reserved)] **Fee schedule for intermodal container facilities**

(a) Each person authorized by the Department pursuant to N.J.A.C. 7:26-3.6 to operate an intermodal container facility shall:

1. Pay an application fee of $500.00. Such fee shall be submitted with the application required pursuant to N.J.A.C. 7:26-3.6(b);

2. Pay an annual fee of $150.00 on January 1 of each year for the costs of reviewing and maintaining the quarterly reports submitted pursuant to N.J.A.C. 7:26-3.6(e);

3. Pay the compliance monitoring fee set forth at N.J.A.C. 7:26-4.3(b);

4. Pay the costs of any other inspections or activities conducted by the Department as related to the authorization, inspection, and revocation of authorization to operate an intermodal container facility. Such costs shall be in accordance with the fee schedule set forth at N.J.A.C. 7:26-4.3; and

5. Pay a fee of $250.00 for an authorization modification issued pursuant to N.J.A.C. 7:26-3.6(m), which shall be paid on issuance of the authorization modification.

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HEALTH

(a)

PARENT AND CHILD HEALTH SERVICES

Newborn Screening Program

Newborn Hearing Screening and Newborn Biochemical Screening

Proposed Readoption: N.J.A.C. 8:19

Authorized By: Len Fishman, Commissioner, Department of Health.

Authority: N.J.S.A. 26:2-101 et seq. and 26:2-110 and 111.

Proposal Number: PRN 1995-145.

Submit comments by April 5, 1995 to:
Barbara Kern, Director
Special Child Health Services
New Jersey State Department of Health
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:19, Newborn Screening, expires on May 11, 1995. The Department of Health (hereafter, the Department) reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Subchapter 1 sets forth the requirements for Newborn Hearing Screening, while subchapter 2 sets forth the rules for Newborn Biochemical Screening. The Department proposes to readopt N.J.A.C. 8:19 without change. However, it is expected that the implementation of the Electronic Birth Certificate system will affect how newborn screening is reported to the Department. Therefore, it is anticipated that amendments will be proposed separately in the near future.

Subchapter 1 specifies the rules for the implementation of N.J.S.A. 26:2-101 et seq., the statutory basis for New Jersey's Newborn Hearing Screening Program. The Newborn Hearing Screening Program has been in operation since the rules were originally adopted in July 1980. The program requires a screening of the medical history of all newborns in New Jersey to detect risk factors for possible hearing loss which will have a significant impact on speech and language development. Early identification of severe to profound bilateral sensorineural hearing loss is the goal of the Newborn Hearing Screening Program. National data indicate that the expected prevalence rate of children with hearing loss is between 1.5 to 6.0 per 1,000 live births. Using this range of rates, between 180 to 720 New Jersey infants would be expected to have some hearing loss.

Subchapter 2 specifies the rules for the implementation of N.J.S.A. 26:2-110 and 111 (P.L. 1988, c.24) the statutory basis for New Jersey's Newborn Biochemical Screening Program. Newborns in New Jersey are presently tested for disorders which, if not treated very early in life, can cause mental retardation or death. Irreversible damage may occur even before there is any clinical evidence of a problem. The purpose of the Newborn Biochemical Screening Program is to identify affected infants through special tests, and assure that they receive appropriate treatment. The Newborn Biochemical Screening Program is effective. Each year, approximately 125 New Jersey newborns are saved from mental retardation, death, or serious illness because of early identification and timely referral for appropriate care.

Two of the diseases, phenylketonuria (PKU) and galactosemia, are treated by diet. Cogenital hypothyroidism is treated by medication. Testing newborns for hemoglobinopathies, including sickle cell disease, was initiated on April 1, 1990. Studies have demonstrated that morbidity and mortality of sickle cell disease can be reduced by prophylactic care.

While the Newborn Biochemical Screening Program in New Jersey dates from 1964, the present rules, which became effective as of March 5, 1990, were the first to describe the responsibilities of all the involved health care providers. Newborn screening for inborn errors of metabolism is a system that includes primary medical practitioners, hospital staff, laboratory personnel, administrative and follow-up personnel, tertiary care centers, specialists, and parents. This system must be designed to function smoothly and efficiently, insuring that all newborns are appropriately tested, retested (if needed), and followed if found to be abnormal. For children with presumptive abnormal results, the Newborn Biochemical Screening staff maintains communication with the appropriate physician to insure a repeat test is obtained. If the child's results are confirmed to be abnormal, then the staff follows the child until appropriate treatment is received.

Under the current rules, hospitals have the primary responsibility for obtaining a satisfactory specimen, unless the birth occurs outside of the hospital and the infant is not admitted to the hospital, then the responsibility is that of the birth attendant. With the changing health care environment, and the emergence of early discharge, increasing numbers of infants are being discharged before 24 hours of age. This impacts the procedures used by hospitals to obtain a completely satisfactory specimen.

However, if multiple agencies or parties are designated as being responsible for obtaining a satisfactory specimen, then a fragmented system would exist for tracking biochemical screening of newborns. Such a system would more easily miss an affected child. Pending full development of an Electronic Birth Certificate system, which will provide a timely tracking system for all newborns, the hospitals or birth attendants shall remain the responsible parties for collecting satisfactory specimens.

Social Impact

The impact of a newborn screening program for both hearing and inborn errors of metabolism is great, since it directly affects all newborns, parents of newborns, hospitals with maternity units, birthing centers, pediatric health care providers and the Department. Identification of a hearing impairment during the first year of life allows for early intervention during the critical language learning period, from birth to three years. Research shows that early detection and initiation of treatment reduces the degree of handicap a child will experience, socially, educationally and eventually vocationally. Early identification and treatment of children with an inborn error of metabolism prevents the severe consequences of mental retardation or death. The positive social impact of both the Newborn Hearing Screening Program and the Newborn Biochemical Screening Program is clearly evident for the affected children, their families, and society as a whole.

The screening process consists of a system between parents/guardians, health care providers and the Department. To conduct the hearing screening, the birthing facility informs the parent or legal guardian of the purpose and need for newborn hearing screening, and obtains consent for the screening. The medical history of the newborn is then reviewed for risk factors specific to known causes of hearing impairment. The Newborn Hearing Screening Report and Parental Informed Consent Form is filled out prior to discharge from the birthing facility. If one or more risks are present, the original form is sent to the Newborn Hearing Screening Program, Special Child Health Services, Division of Family Health Services. The birthing facility and parents each retain a copy of the form. The Newborn Hearing Screening brochure is also given to the parent/guardian. A letter is sent to the parent/guardian approximately five months after the infant's birth, reminding them of the findings and recommending a formal hearing screening. A follow-up form is also sent to be completed and returned. With the parent's/guardian's cooperation, the child is then followed until hearing loss is ruled out or confirmed. Approximately 6,000 children are determined to be "at risk" for hearing impairment each year.

To conduct the biochemical screening, unless a parent objects for religious reasons, a small blood specimen (via a heel stick) is taken from every newborn in New Jersey and sent to the Inborn Errors of Metabolism Laboratory (IEM), Public Health and Environmental Laboratories, Department of Health, for analysis. Over 115,000 initial specimens were received and assayed in 1993. Repeat specimens were requested from nine percent of these newborns because of some problem with the specimen or an abnormal test result. Infants with abnormal results reported by IEM are followed until written confirmation of case disposition is received by the follow-up unit, Special Child Health Services, Division of Family Health Services, Department of Health. Medical specialists are available for assistance with diagnosis and management.

The collection, handling, analysis and recordkeeping for over 115,000 initial specimens, the collection of specimens from over 10,000 infants for requested repeats, the follow-up of all abnormal reports, the ongoing care of a cohort of identified children now numbering over 1,000, plus a supporting education program, presents a significant effort for the health care community, the Department and parents. The result of this

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effort has a demonstrable positive effect; these affected children, now identified and treated, can live with minimized adverse effects of their conditions.

Economic Impact

Newborn screening programs are effective in saving children from death or lifelong severe disability. The cost in dollars of early identification and treatment of affected infants is less than the cost of maintaining untreated children in institutions, special education programs and sheltered care settings.

The Department provides the forms and literature and maintains a registry for the Newborn Hearing Screening Program. The birthing facilities provide postage for weekly mailing of screening report forms to Special Child Health Services and staff time to complete the reports. This expense will decrease as the data is increasingly transferred electronically via the Electronic Birth Certificate system.

Some costs may be incurred by parents or guardians of high risk infants identified through the program for the recommended six month screening or subsequent assessment. Auditory screening services may be covered by third party payers. Special Child Health Services provides partial support to various agencies throughout the State to provide auditory screening, assessment and treatment services on a sliding fee basis to individuals who do not have third party coverage and do not have the personal financial resources to pay for such services.

Before 1988, the newborn biochemical screening statute spoke only to early detection. The law was amended in 1988 to include both screening and the treatment of affected individuals. It directed the Commissioner of Health to ensure that treatment services are available to all identified, affected individuals. The amended law further requires that all revenues collected from the IEM fees be applied to the testing and treatment procedures performed pursuant to the law. Hospitals and birthing centers collect and mail the specimens to the IEM Laboratory. All costs for the testing, follow-up and treatment are covered fully by the fee charged for the IEM test. (See N.J.A.C. 8:45-2.1, Fees.)

Executive Order No. 27 Statement

Currently, there are no Federal standards or requirements which mandate the testing of newborns for inborn errors of metabolism or screening newborns to detect risk factors for possible hearing loss, therefore, an Executive Order No. 27 analysis is not required. N.J.S.A. 26:2-110 and 111 require the Department to test newborns for the purpose of early detection and treatment of biochemical disorders. N.J.S.A. 26:2-101 requires all newborns in New Jersey to be screened for risk factors for possible hearing loss. Within the discussion of the Summary, Social Impact, and Economic Impact, the reasons for such testing and screening have been explained, and the impact discussed. If affected infants are not identified early and treated appropriately, they may suffer lifelong severe disabilities or death. Current technology can identify and treat affected infants before signs and symptoms occur, thereby preventing the severe negative health effects associated with some of the disorders.

Regulatory Flexibility Analysis

While these rules impose considerable reporting, recordkeeping and other compliance requirements, over 97 percent of the in-State births take place in hospitals, where the regulatory flexibility requirements are not applicable, since such hospitals employ more than 100 employees. Currently, the two birthing centers that have fewer than 100 employees, and could, therefore, be considered small businesses, as defined in the Regulatory Flexibility Act, comply with the rules. Approximately 200 infants are born each year at these birthing centers. The requirements and costs of compliance with these rules are discussed in the Summary and Economic Impact above. The Department believes that the requirements of this chapter must be uniformly applied in order to provide all newborns in the State, and their families, with the benefits of the programs. In the interest of public health, therefore, the Department does not believe that any exemption or differentiation should be made for these two small businesses.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:19.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Office of Emergency Medical Services
Mobile Intensive Care Programs
Proposed Amendments: N.J.A.C. 8:41-10.1
Proposed Repeal and New Rule: N.J.A.C. 8:41-8.1

Authorized By: Len Fishman, Commissioner, Department of Health.

Authority: N.J.S.A. 26:2K-17.

Proposal Number: PRN 1995-138.

Submit comments by April 5, 1995 to:
George Leggett, Director
Office of Emergency Medical Services
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

The agency proposal follows:

Summary

The proposed repeal and new rule seeks to amend the drug formulary that is approved for use on all approved mobile intensive care units (MICUs) in the State. The new rule restructures the approved drug list into two separate lists. The first list (N.J.A.C. 8:41-8.1(a) and (b) identifies those medications which must be carried on each approved MICU in the State, and are considered essential in order to provide prehospital advanced life support to meet the standard of care required in New Jersey. The second list (N.J.A.C. 8:41-8.1(c)) identifies agents which are approved and may be of benefit in the provision of prehospital advanced life support, but are not considered essential. These agents are not mandatory; each program's medical director shall determine which, if any, of the elective agents will be carried on the program's MICUs. This list includes the addition of new medications, based upon the recommendations of the State Mobile Intensive Care Advisory Council. This Council includes the medical director of each MICU program in the State, and is responsible for advising the Commissioner of Health on MICU program activities pursuant to the State MICU law (N.J.S.A. 26:2K-16). Not included in this new rule are the medications Nitroglycerine (intravenous), Vercuronium Bromide and Succinylcholine Chloride. These medications were also recommended to the Department by the Council; however, the Department has not completed studies on these medications at this time, and is not prepared to include them in the approved formulary. Finally, the intravenous fluids of Dextrose, five percent in water, Normal Saline, and Ringer's Lactate Solution are all included in the mandatory list. The Council recommended that programs be required to carry only two of the three solutions listed above. After review of the current standard of care, it has been determined that all three solutions shall remain on the mandatory list.

The standing order for cardiac arrest found at N.J.A.C. 8:41-10.1 is also proposed for amendment. This rule currently requires that prehospital advanced life support providers check the patient's pulse after each individual shock. The protocols for the American Heart Association have changed since this order was initially adopted, and no longer require pulse checks in this manner. The rule is amended to reflect that a pulse check should occur after the last shock in the sequence of three that are to be administered. Also, there is a concern that after the prehospital advanced life support providers make contact with the base station physician, ventricular fibrillation may recur. Unless the base station physician is speaking with the MICU crew when this occurs, there may be a delay in obtaining the order to deliver the needed countershock. The rule is amended to permit the crew to defibrillate recurrent ventricular fibrillation on standing orders, if the defibrillation would be delayed by calling the base station physician back to the radio. Finally, the rule is amended to reflect the current dosage recommendations for epinephrine, when it is administered endotracheally. In the current rule, the dosage is the same as the intravenous dosage. Current standards suggest that medications given via the endotracheal route should have their dose increased. The rule is amended to reflect this new standard.

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Social Impact

The proposed new rule and amendment are designed to standardize the medications which are deemed essential for the provision of prehospital advanced life support to the residents and visitors of the State and to allow 2.0 mg of epenephrine to be administered endotracheally. The amendments to N.J.A.C. 8:41-10.1(b) which allow the MICU crew to defibrillate recurrent fibrillation on standing orders may save time which could be lost obtaining specific approval for each sitution. These rules attempt to ensure that the population of the service area of an MICU receive a consistently high level of care. As a component of the emergency medical services system, MICU programs can effectively reduce the mortality and morbidity associated with certain types of prehospital emergencies. Virtually all citizens of the State are potential patients of these programs. These rules seek to protect the health and safety of the public by establishing a minimum standard of care that applies to all parts of the State.

Economic Impact

It has been suggested in studies that rapid, appropriate intervention in certain types of life-threatening emergencies can be a major determinant in both survival and rehabilitation of patients. The rapid delivery of therapy by mobile intensive care units can help reduce unnecessary hospital admissions and decrease the need for more costly in-hospital management techniques. These interventions can, in certain cases, also have a direct impact on the length of stay in the hospital if a patient is admitted. A uniform list of mandatory medications and agents assists programs in identifying costs related to equipping a vehicle. As the list does not mandate brand names, generic drugs can be used for cost savings. Additionally, this list has an elective component which allows the program's medical director to opt for additional medications, but does not mandate that all of the elective medications be carried. As most of the core medications are currently carried on MICUs, there is no appreciable cost associated with these amendments. There is also no cost associated with the amendments to N.J.A.C. 8:41-10.1, since they do not require additional staff, services or material.

Executive Order No. 27 Statement

The proposed amendment and new rule do not impose standards on mobile intensive care programs or their sponsoring hospitals which exceed any Federal standards, since there are no Federal standards. The authority for these changes arises from State statutes, specifically N.J.S.A. 26:2K-17. The proposed amendment and new rule reflect local standards of care, as developed by the Department in conjunction with an advisory board, and are not incorporated in any existing Federal rule or regulation. Therefore, an Executive Order No. 27 analysis is not required.

Regulatory Flexibility Statement

In accordance with New Jersey law, only hospitals specially authorized by the Commissioner may develop and maintain mobile intensive care units and provide advanced life support services in New Jersey. N.J.S.A. 26:2K-12(a). None of the hospitals which are approved (or have the potential to request approval) to operate MICU programs are small enough to be considered a small business, as the term is defined in the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.). Therefore, a Regulatory Flexibility Analysis is not required.

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

[8:41-8.1 Approved drug list for mobile intensive care units

(a) The following is an alphabetical list of generic therapeutic agents authorized for administration by prehospital advanced life support providers:

Adenosine
Acetylsalicylic acid
Aminophylline
Albuterol
Atropine sulfate
Bretylium tosylate
Calcium chloride
Dextrose in water
Dextrose, 50 percent
Dextrose, five percent in water
Dextrose, five percent in water and normal saline 0.45 percent
Dexamethasone sodium phosphate
Diazepam
Diphenhydramine HCL
Dopamine HCL
Epinephrine
Flumazenil
Furosemide
Glucagon
Ipecac syrup
Isoetharine HCL
Isoproterenol HCL
Lidocaine HCL
Magnesium sulfate (with Commissioner's approval only)
Metaproterenol sulfate
Morphine sulfate
Naloxone HCL
Nifedipine
Nitroglycerin (excluding intravenous administration)
Normal saline
Oxygen
Procainamide HCL
Ringer's lactate
Sodium bicarbonate
Terbutaline sulfate
Thiamine HCL
Verapamil HCL]

8:41-8.1 Medications and therapeutic agents

(a) The following medications and therapeutic agents are approved for use by prehospital advanced life support providers. Each operating mobile intensive care unit shall carry the following medications and therapeutic agents in sufficient quantities to allow for the administration of therapeutic doses of the medication or agent:

Adenosine
Atropine Sulfate
Calcium Chloride
Dextrose, 50 percent
Dextrose, 5 percent in water
Diazepam
Diphenhydramine Hydrochloride
Dopamine Hydrochloride
Epinephrine 1:1000 solution
Epinephrine 1:10000 solution
Furosemide
Lidocaine Hydrochloride
Magnesium Sulfate
Morphine Sulfate
Naloxone Hydrochloride
Nifedipine
Nitroglycerin (excluding intravenous administration)
Oxygen
Thiamine

(b) The following medications and therapeutic agents are approved for use by prehospital advanced life support providers. Each operating mobile intensive care unit shall carry the following medications as described in each category:

Category I: Bretylium tosylate and/or Procainamide Hydrochloride.

Category II: Dextrose, 10 percent in water and/or Dextrose, 25 percent in water.

Category III: at least one of the following:

Albuterol solution for inhalation
Isoetharine solution for inhalation
Metaproterenol solution for inhalation

(c) The following medications and therapeutic agents are approved for use by prehospital advanced life support providers. Each mobile intensive care program's medical director may choose to have the MICUs operating in the program carry any of the following medications. The mobile intensive care program shall initially notify OEMS as to which medications will be carried by the program's MICUs, and also prior to changing medications carried by the program.

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Activated charcoal
Aminophylline
Acetylsalicyclic acid
Bumetanide
Dexamethasone sodium phosphate
Dextrose, 5 percent in water and normal saline 0.45 percent
Diltiazem hydrochloride
Dobutamine hydrochloride
Flumazenil
Glucagon
Haloperidol
Heparin sodium
Ipecac syrup
Isoproterenol hydrochloride
Lorazepam
Metoprolol tartrate
Methylprednisolone sodium succinate
Norepinephrine bitartrate
Sodium bicarbonate
Terbutaline sulfate
Verapamil hydrochloride

8:41-10.1 Standing orders for cardiac arrest

(a) The following cardiac dysrhythmias and treatment protocols shall be considered standing orders in cardiac arrest:

1. For ventricular fibrillation or ventricular tachycardia (without pulse):

i.-v. (No change.)

vi. Administer Epinephrine 1.0 mg[, either] intravenously or **2.0 mg** endotracheally.

2. For asystole:

i.-iv. (No change.)

v. Administer Epinephrine 1.0 mg[, either] intravenously or **2.0 mg** endotracheally.

3. For Pulseless Electrical Activity (PEA):

i.-iii. (No change.)

iv. Administer Epinephrine 1.0 mg[, either] intravenously or **2.0 mg** endotracheally.

(b) General guidelines are as follows:

1. Check [pulse and] rhythm after each shock. **Check the patient's pulse after the final shock in the sequence, or if the patient's cardiac rhythm should change.** If ventricular fibrillation recurs after transiently converting to another rhythm, use whatever energy level was previously successful on the patient and defibrillate again.

2.-5. (No change.)

6. Should ventricular fibrillation recur after contact is made with the base station physician, the prehospital advanced life support provider may deliver a shock at the energy level that was previously successful, without contacting the base station physician, if such contact would significantly delay the delivery of the shock.

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek, Secretary.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1995-135.

A **public hearing** concerning these proposed amendments will be held on Monday, March 27, 1995, at 2:00 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by April 5, 1995 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed isosorbide monohydeate could be used as a less expensive substitute for ISMO, a branded prescription medicine. Similarly, the proposed cefaclor, could be substituted for the more costly branded product, Ceclor.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Executive Order No. 27 Statement

The proposed amendments to N.J.A.C. 8:71 impose a standard of practice in New Jersey for licensed pharmacists and prescribers concerning generic drug substitution. The Federal government does not license practitioners to dispense, administer, or prescribe drugs. State law fixes the scope and standards of these authorized practices. The purpose of N.J.A.C. 8:71 was to encourage the substitution of cheaper, but therapeutically equivalent, generic drugs for more expensive brand name drugs. N.J.A.C. 8:71 does require that the pharmaceutical manufacturer demonstrate compliance with "Good Manufacturing Practices" of Title 21 of the United States Code and evidence of a satisfactory inspection by the Food and Drug Administration. These requirements do not exceed the Federal Food, Drug, and Cosmetic Act, Public Law 75-717.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., specifically, over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

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However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendment follows:

The following products are proposed for **ADDITION** to the List of Interchangeable Drug Products:

ATARAX
Hydroxyzine HCl
10 mg/5 ml
Syrup
Hi-Tech

ATROPINE
Atropine
1%
Ophth oint
Bausch & Lomb

BELLERGAL-S
Belladonna alkaloids/ ergotamine tartrate/ phenobarbital
0.2/0.6/40 mg
Tablet
Amide

CAPOTEN
Captopril
12.5 mg
Tablet
West-ward

CAPOTEN
Captopril
25 mg
Tablet
West-ward

CAPOTEN
Captopril
50 mg
Tablet
West-ward

CAPOTEN
Captopril
100 mg
Tablet
West-ward

CECLOR
Cefaclor
250 mg
Capsule
Biocraft

CECLOR
Cefaclor
500 mg
Capsule
Biocraft

CLEOCIN
Clindamycin HCl
150 mg
Capsule
Greenstone

DOLOBID
Diflunisal
250 mg
Tablet
Purepac

DOLOBID
Diflunisal
500 mg
Tablet
Purepac

DOLOPHINE
Methadone HCl
10 mg/ml
Concentrate
UDL Labs

ENTEX PSE
Pseudoephedrine/guaifenesin
120/600 mg
Tablet
Lini

FIORINAL
Aspirin, butalbital and caffeine
325/50/40 mg
Capsule
Creighton

FIORINAL
Aspirin, butalbital and caffeine
325/50/40 mg
Tablet
Creighton

FIORICET
Acetaminophen, butalbital and caffeine
325/50/40 mg
Tablet
Creighton

FLEXERIL
Cyclobenzaprine
10 mg
Tablet
Royce

FULVICIN P/G
Griseofulvin ultramicrosize
125 mg
Tablet
Warrick

FULVICIN P/G
Griseofulvin ultramicrosize
250 mg
Tablet
Warrick

FULVICIN P/G
Griseofulvin ultramicrosize
330 mg
Tablet
Warrick

ISMO
Isosorbide mononitrate
20 mg
Tablet
Schwarz

LANOXIN
Digoxin
0.125 mg
Tablet
Lini

LANOXIN
Digoxin
0.25 mg
Tablet
Lini

LASIX
Furosemide
10 mg/ml
Solution
Pennex/Morton Grove

LEVSIN
L-hyoscyamine sulfate
0.125 mg/ml
Solution
Hi-Tech

LEVSIN
L-hyoscyamine sulfate
0.125 mg
Tablet
Amide

MATERNA
Prenatal vitamin
Per tablet
Tablet
KV Pharm

MONISTAT
Miconazole
200 mg
Suppository
Able

MOTRIN
Ibuprofen
400 mg
Tablet
Greenstone

MOTRIN
Ibuprofen
600 mg
Tablet
Greenstone

MOTRIN
Ibuprofen
800 mg
Tablet
Greenstone

NATALINS
Prenatal vitamin
Per tablet
Tablet
KV Pharm

OCUFEN
Flurbiprofen sodium
0.03%
Ophth solution
Bausch & Lomb/Sight

ORNADE
Chlorpheniramine maleate/ phenylpropanolamine
12/75 mg
Capsule, ER
D.M. Graham

PANCREASE MT-16
Pancrelipase
16,000 units
Capsule
Lini

PHENERGAN
Promethazine HCl
6.25 mg/5 ml
Syrup
Morton Grove

PHENERGAN VC/CODEINE
Promethazine HCl 6.25 mg, phenylephrine HCl 5 mg, codeine phosphate 10 mg
Per 5 ml
Syrup
Morton Grove

PHENERGAN/CODEINE
Promethazine HCl 6.25 mg, codeine phosphate 10 mg
Per 5 ml
Syrup
Morton Grove

PHENERGAN VC
Promethazine HCl 6.25 mg, phenylephrine HCl 5 mg
Per 5 ml
Syrup
Morton Grove

PHENERGAN DM
Promethazine HCl 6.25 mg, dextromethorphan HBr 15 mg
Per 5 ml
Syrup
Morton Grove

PRED-FORTE
Prednisolone acetate
1%
Ophth suspension
Alcon

PROLIXIN
Fluphenazine HCl
0.5 mg/ml
Elixir
Copley

PROPINE
Dipivefrin HCl
0.1%
Ophth solution
Alcon

SELDANE
Terfenadine
60 mg
Tablet
Mutual

SYMMETREL
Amantadine HCl
50 mg/5 ml
Syrup
Hi-Tech

TOBREX
Tobramycin
0.3%
Ophth solution
Alcon

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TYLENOL WITH CODEINE
Acetaminophen with codeine
#2
300/15 mg
Tablet
Royce

TYLENOL WITH CODEINE
Acetaminophen with codeine
#3
300/30 mg
Tablet
Royce

TYLENOL WITH CODEINE
Acetaminophen with codeine
#4
300/60 mg
Tablet
Royce

VERMOX
Mebendazole
100 mg
Tablet
Copley

VISKEN
Pindolol
5 mg
Tablet
Royce

VISKEN
Pindolol
10 mg
Tablet
Royce

ZENATE
Prenatal vitamin
Per table
Tablet
KV Pharm

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS EDUCATIONAL OPPORTUNITY FUND

Administrative Procedures and Policies Program Support

Proposed Recodification with Amendments: N.J.A.C. 9:11 to 9A:11 and 9:12 to 9A:12

Authorized By: Board of Directors of the Educational Opportunity Fund, Ernest Jolly, Chairperson.
Authority: N.J.S.A. 18A:71-33.
Proposal Number: PRN 1995-153.

Submit comments by April 5, 1995 to:
Dr. Jeanne Oswald
Administrative Practice Officer
Commission on Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund (EOF) Program serves students from educationally disadvantaged backgrounds; program participants are eligible for financial aid and other support services while attending institutions of higher education in New Jersey. The Board of Directors of EOF is responsible for maintaining a Statewide system to identify and recruit potential college students from backgrounds of historical poverty; for developing eligibility criteria for EOF financial assistance based on students' need and their potential for success in college; for establishing procedures to determine the amount of each award according to the total financial need of each student; and for advising (in cooperation with public and independent institutions of higher education in the State) on the development, organization, and coordination of a wide range of educational support and enrichment activities.

This proposal is designed to implement the EOF Board of Directors policy recommendation to make more realistic the income eligibility criteria, which have become increasingly exclusionary, rather than inclusive, as the original statutes intended. The proposed changes would begin to align the program's pool of potentially eligible students with the original spirit and intent of the legislation.

The proposed amendments to N.J.A.C. 9:11-1.2(a) add language to define historical poverty; most of this new language has been moved from the current N.J.A.C. 9:11-1.6(f)1 through 5, which deals with financial eligibility, to emphasize the poverty background requirement for EOF student eligibility.

A proposed new subsection at N.J.A.C. 9:11-1.2(b) states that eligibility is determined only once, at initial enrollment; it also suggests some of the materials that colleges should examine in assessing candidates for the program.

The proposed amendments to N.J.A.C. 9:11-1.2(c), which is currently N.J.A.C. 9:11-1.2(b), creates a new paragraph that starts with the beginning of the last sentence in the current paragraph (b)4. So, the proposed N.J.A.C. 9:11-1.2(c)5 begins, "An eligible student must exhibit potential for success in college, but:". It continues at subparagraph (c)5i, where the word "or" is changed to "and," further clarifying the characteristics of potential EOF students; additional language proposed for N.J.A.C. 9:11-1.2(c)5iii will permit institutions to consider applicants' need for extra preparation in their desired degree programs as an eligibility criterion. Language referring to historical poverty is deleted, because the agency has proposed it as an amendment to N.J.A.C. 9:11-1.2(a).

The current N.J.A.C. 9:11-1.6(a) is proposed for deletion. It will be replaced with amended language from the current N.J.A.C. 9:11-1.6(a)3, which states the practice of annually adjusting the EOF income eligibility criteria. Under the proposal, adjustments will be based on the national poverty threshold, instead of the Income Protection Allowance; in addition, they will be further adjusted by 200 percent, to reflect the higher cost of living in New Jersey.

Proposed for N.J.A.C. 9:11-1.6(a)1 is the new EOF Income Eligibility Scale (IES). The new scale has higher income cutoffs, in accordance with proposed amendments to N.J.A.C. 9:11-1.6(a). N.J.A.C. 9:11-1.6(b), which provides an adjustment for two wage earner households, is amended to reflect the use of the same IES for all EOF applicants, both dependent and independent; this change eliminates the need for a separate eligibility scale for independent students, which currently appears in N.J.A.C. 9:11-1.6(c).

Under the proposal, the current N.J.A.C. 9:11-1.6(c) would be replaced with language making financially eligible all applicants whose primary source of income is welfare.

In the proposed N.J.A.C. 9:11-1.6(d), the word "household" replaces "family"; the proposal also changes an internal code citation, in accordance with the proposed move of the historical poverty definition to the section on student eligibility.

N.J.A.C. 9:11-1.6(f) proposes the addition of language to clarify exceptions to the proposed N.J.A.C. 9:11-1.6(a)1, as well as to emphasize that students admitted under such exceptions must meet all other EOF eligibility provisions. The change proposed for N.J.A.C. 9:11-1.6(g) will delete the word "above" and add the word "discretionary" to clarify exactly what criteria are being referenced. The proposed change to N.J.A.C. 9:11-1.6(h) restates the current wording to emphasize that the discretionary waiver pertains to subsections (f) and (g) of N.J.A.C. 9:11-1.6.

The proposed amendments to N.J.A.C. 9:11-2.2(a) add language to define historical poverty, the same as is proposed for N.J.A.C. 9:11-1.2(a). (**Note:** This subchapter, 2, deals with graduate student eligibility; the preceding narrative refers strictly to proposed amendments to subchapter 1, which deals with undergraduate student eligibility.)

The current N.J.A.C. 9:11-2.5(a) is proposed for deletion. It will be replaced with the same language as is proposed for N.J.A.C. 9:11-1.6(a), which states the practice of annually adjusting the EOF income eligibility criteria. Under the proposal, adjustments will be based on the national poverty threshold, instead of the Income Protection Allowance; in addition, they will be further adjusted by 200%, to reflect the higher cost of living in New Jersey.

Proposed for N.J.A.C. 9:11-2.5(a)1 is the new EOF Income Eligibility Scale (IES). The new scale has higher income cutoffs, in accordance with proposed amendments to N.J.A.C. 9:11-2.5(a). A new subsection is proposed at N.J.A.C. 9:11-2.5(b); it parallels N.J.A.C. 9:11-1.6(b), which provides an adjustment for two wage earner households.

Proposed for N.J.A.C. 9:11-2.5(c) is language currently at N.J.A.C. 9:11-2.5(a)7, which makes financially eligible all applicants whose primary source of income is welfare.

A proposed amendment to N.J.A.C. 9:11-2.5(d), currently at N.J.A.C. 9:11-2.5(b), changes the word "family" to "household"; in addition, an internal code citation also is changed, in accordance with proposed move of the historical poverty definition to the section of the code that discusses eligibility.

N.J.A.C. 9:11-2.5(f) would be a revised and restated version of the current N.J.A.C. 9:11-2.5(d), which allows for "discretionary" admits, that is, students whose incomes may exceed eligibility cut-offs, while

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emphasizing that EOF graduate students admitted under such exceptions must meet all other EOF eligibility criteria.

In addition, all of N.J.A.C. 9:11 and 9:12 is being recodified to N.J.A.C. 9A:11 and 9A:12, respectively, to distinguish these new rules from those which were under the jurisdiction of the former Board/Department of Higher Education, which the Higher Education Restructuring Act of 1994 abolished.

Social Impact

The current EOF income eligibility criteria have not kept pace with income and demographic changes in New Jersey. If adopted, the proposed amendments will give institutional EOF programs the opportunity to select from a wider pool of needy students who demonstrate the potential for collegiate success, as the program did in its first decade, when the gap between the official poverty threshold and the EOF income ceiling was much greater, and the gap between the income eligibility ceiling and median income was much narrower.

Economic Impact

The EOF program is a collaborative effort of the Commission on Higher Education; the Educational Opportunity Fund, which administers the program; and New Jersey colleges and universities, which directly serve students. EOF is not an income entitlement, but a campus-based program that is designed to identify, enroll, and support students who demonstrate personal and intellectual promise for collegiate success. The proposed amendments do not have a direct economic impact on the total number of student grant awards or total cost associated with the program. If adopted by the EOF Board, the amendments will expand the potential pool of applicants to the program; this would not, however, necessarily increase the actual number of program participants, because maximum EOF program enrollment is based on the annual level of appropriation received.

Executive Order No. 27 Statement

The proposed amendments to N.J.A.C. 9:11-1.2, 1.6, 2.2, and 2.5 are not subject to the Federal exceedance standards because the Educational Opportunity Fund Program was created by the State of New Jersey, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments pertain to student participants and participating New Jersey colleges and universities.

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

(**Agency Note:** The numerous necessary changes to references to N.J.A.C. 9:11 and 9:12 in the recodified rules are not reflected as proposed changes below, but will be made upon incorporation of the adopted recodification into the New Jersey Administrative Code.)

[9:11-1.1]**9A:11-1.1** (No change in text.)

[9:11-1.2]**9A:11-1.2** Student eligibility

(a) The undergraduate EOF Program is designed to provide an opportunity for higher education to disadvantaged New Jersey residents who would not be able to attend and/or succeed academically in college without the financial assistance and special services that are part of this program. The program is geared toward the student who shows potential, and **who** traditionally has been unable to attend college because of poor high school preparation [coupled with a background of historical poverty.], **and whose economic background reflects a history of poverty as defined by:**

1. Having attended or graduated from a District Factor Group A or B school district or a special needs school district, as identified by the New Jersey Department of Education;

2. Having resided in a municipality known as a "high distress" area. Such a place is defined by the New Jersey Office of Management and Budget as one which, in comparison with the rest of the state, is characterized by old or substandard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families;

3. Having resided in an area that historically has been populated by low-income families; such an area, commonly called a "pocket of poverty", is characterized by the criteria outlined in (a)2 above, even if the larger area, or municipality, is not so characterized;

4. Having a sibling who was, or is currently, enrolled in an EOF Program; or

5. Being eligible (the student or the student's family) for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and being a first-generation college student. The term "first-generation college student" means an applicant whose parents or parent (in the case of an applicant who regularly resided with and received support from only one parent) did not complete a baccalaureate degree.

(b) Eligibility for EOF is determined at the time of initial application by the admitting institution. A broad assessment of motivation and talent (latent as well as demonstrated) based on interviews, recommendations, high school records, and other requisite application materials shall be made by the admitting institution in the context of its own selectivity.

[(b)]**(c)** To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1.-3. (No change except internal recodification.)

4. As an undergraduate student, is enrolled or intends to be enrolled [full-time] **full time** and matriculated in a curriculum leading to an undergraduate degree or certificate 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 Commission on Higher Education and participating in the EOF Program. Degree or certificate programs must have a minimum requirement equivalent to 24 semester hours and be at least one academic year in duration. [An eligible student must exhibit evidence for potential success in college, but:]

5. In addition, an eligible student must exhibit evidence of the potential to succeed in college, but:

i. Has not demonstrated [a] sufficient academic preparation to gain admission to an approved institution of higher education under its regular standards of admission (where applicable)[; or] **and** [ii. Has] **has** standardized test scores that are below the institutional norms; or

[iii.]**ii.** Has **not demonstrated sufficient academic preparation to gain admission to an approved institution of higher education under its regular standards of admission (where applicable) and has** an educational background that indicates a need for improvement [of] **in** basic skills[; and] **or for additional preparation for the applicant's desired degree program.**

[iv. Comes from an economic background which reflects a history of poverty as defined in N.J.A.C. 9:11-1.1 and 1.6(f)1 through 5.]

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

Recodify existing N.J.A.C. 9:11-1.3 through 1.5 as **9A:11-1.3 through 9A:11-1.5**. (No change in text.)

[9:11-1.6]**9A:11-1.6** Financial eligibility for undergraduate grants

[(a) A dependent student is financially eligible for an initial EOF undergraduate grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth in the EOF dependent student income eligibility scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. EOF Dependent Student Income Eligibility Scale:

Applicants with a Household of	Gross Income (Not to Exceed)
2 persons	$15,590
3	18,190
4	20,790
5	23,390
6	25,990
7	28,590

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2. For each additional member of the household, an allowance of $2,600 shall be added to this amount in order to determine eligibility for EOF for the 1994-95 Academic Year. This allowance shall be adjusted annually to reflect changes in the Income Protection Allowance as published in the Federal Register. In addition, the gross income level for each household size also shall be adjusted to reflect the change in the annual Income Protection Allowance.

3. The EOF Executive Director shall annually inform institutions of adjustments to the Income Eligibility Scale, in accordance with the Income Protection Allowance published in the Federal Register.]

(a) The EOF Executive Director shall annually inform institutions of adjustments to the EOF Income Eligibility Scale in accordance with the official national poverty threshold published in the Federal Register and adjusted by 200 percent to reflect the higher cost of living in New Jersey.

1. Dependent and independent students (as defined in N.J.A.C. 9:11A-1.5) are financially eligible for an initial EOF undergraduate grant if their gross household income does not exceed the applicable amounts set forth in the EOF Income Eligibility Scale, as follows:

Applicants with a Household size of	Gross Income (Not to Exceed)
1	$14,720
2	19,680
3	24,640
4	29,600
5	34,560
6	39,520
7	44,480
8	49,440

2. For each additional member of the household, an allowance of $2,480 shall be added to this amount in order to determine EOF eligibility for the 1995-96 academic year. This allowance shall be adjusted annually to reflect changes in the national poverty threshold as published in the Federal Register. In addition, the gross income level for each household size also shall be adjusted annually.

(b) [A dependent student] **An applicant** who comes from a [family with both parent(s) or guardian(s) working] **household with two wage earners (either both parents/guardians or both applicant and spouse)** whose combined incomes exceed the applicable amount set forth in the EOF [dependent student] Income Eligibility Scale above[,] may be eligible for EOF, only if:

1. The total income does not **still** exceed the applicable amount set forth in the EOF [dependent student] Income Eligibility Scale when 50 percent of the **smaller** income [of the smaller wage earner] is subtracted from the gross [combined] **household** income [of the two wage earners].

2. Documentation in each [student's] **applicant's** file includes the mathematical computation **described above** along with wage and tax statements (form W2) of both [parent(s) or guardian(s)] **wage earners.**

[(c) An independent student (as defined in N.J.A.C. 9:11-1.5) who demonstrates evidence of a background of historical poverty as defined in N.J.A.C. 9:11-1.1 or by meeting the criteria set forth in N.J.A.C. 9:11-1.6(f)1 through 5 is financially eligible for an EOF undergraduate grant if the student/or the student's spouse's gross income for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the applicable amount in the EOF independent student income eligibility scale:

1. $10,600 family size (including student) 1;
2. $13,490 family size (including spouse) 2;
3. $16,670 family size (including spouse) 3;
4. $19,660 family size (including spouse) 4;
5. $23,000 family size (including spouse) 5;

6. Add $2,600 for each additional dependent. This amount shall be adjusted annually to reflect changes in the Independent Student Income Protection Allowance as published in the Federal Register.

7. An independent student who received welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.]

(c) An applicant whose family receives welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.

(d) In determining financial eligibility for an EOF undergraduate grant, separation[,] **or** divorce[,] or **the** death of a wage earner in the calendar year prior to the academic year for which eligibility is being determined, with an accompanying decrease in [family] **household** income below the EOF Income Eligibility Scale[s], does not automatically satisfy the [family] characteristic of historical poverty (as stated in N.J.A.C. [9:11-1.1 and 1.6(f)] **9A:11-1.2(a)**1 through 5) expected of EOF students.

(e) (No change.)

(f) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the campus EOF director [may admit] **has the discretion to admit,** up to a maximum of 10 percent of the annual freshman class, [under a waiver pursuant to the provisions of this section. Students admitted under this provision must have family incomes that do not exceed 175 percent of the official national poverty threshold as published annually by the Federal Government adjusted to reflect New Jersey's cost of living and meet one of the following criteria:] **students with family incomes as high as, but no more than, 281 percent of the official national poverty threshold as published annually by the federal government. These discretionary admits, however, must also meet all other eligibility provisions of N.J.A.C. 9A:11-1.1 and 1.2.**

[1. The student attends(ed) a District Factor Group A or B school district as certified by the New Jersey Department of Education.

2. The student has resided in a municipality defined as a "high distress" area. A high distress area as defined by the New Jersey Office of Management and Budget is one which, in comparison to the rest of the state, is characterized by old or substandard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families.

3. The student has resided in an area of a municipality that is historically populated by low-income families; such an area is commonly known as a "pocket of poverty" as characterized by criteria outlined in (f)2 above.

4. The student has a sibling who was, or is currently, enrolled in an EOF Program.

5. The student (or family) is eligible for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and is a first generation college student.]

(g) The student's record must contain sufficient documentation [for verification of] **to verify** the [above] **discretionary** criteria. [All] **Every** effort[s] should be made to give priority to those students whose incomes are within the limits of N.J.A.C. [9:11-1.6] **9A:11-1.6.**

(h) [When making awards that exceed 10 percent of the annual freshman class, permission must be granted by the Executive Director of the EOF Program.] **Institutions must receive permission from the Executive Director of the EOF Program to exceed the 10 percent discretionary over-income waiver set forth in (f) and (g) above.**

Recodify existing N.J.A.C. 9:11-1.7 through 9:11-2.1 as **9A:11-1.7 through 9A:11-2.1.** (No change in text.)

[9:11-2.2]**9A:11-2.2** Student eligibility

(a) The academic deficiencies that serve to identify the undergraduate student as educationally disadvantaged are not applicable at the graduate level. The graduate EOF Program is designed to provide the opportunity for New Jersey residents whose undergraduate record reflects the potential for advanced study beyond the baccalaureate degree, and whose economic background reflects a history of poverty[.] **as defined by:**

1. Having attended or graduated from a District Factor Group A or B school district or a special needs school district, as identified by the New Jersey Department of Education;

2. Having resided in a municipality known as a "high distress" area; such a place is defined by the New Jersey Office of Manage-

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ment and Budget as one which, in comparison with the rest of the state, is characterized by old or substandard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families;

3. Having resided in an area that historically has been populated by low-income families; such as area, commonly called a "pocket of poverty", is characterized by the criteria outlined in (a)2 above, even if the larger area, or municipality, is not so characterized;

4. Having a sibling who was, or is, currently enrolled in an EOF Program; or

5. Being eligible (the student or the student's family) for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and being a first-generation college student. The term "first-generation college student" means an applicant whose parents or parent (in the case of an applicant who regularly resided with and received support from only one parent) did not complete a baccalaureate degree.

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

Recodify existing N.J.A.C. 9:11-2.3 and 2.4 to **9A:11-2.3** and **2.4**. (No change in text.)

[9:11-2.5]**9A:11-2.5** Financial eligibility for graduate grants

[(a) A graduate student who demonstrates evidence of a background of historical poverty as defined in N.J.A.C. 9:11-2.1 or by meeting the criteria set forth in (d)1 through 5 below is financially eligible for an EOF graduate grant if the student and/or the student's spouse's gross income for the base year prior to the academic year does not exceed the applicable amount set forth in the EOF graduate student income eligibility scale:

1. $10,600—family size (including student)1;
2. $13,490—family size (including spouse) 2;
3. $16,670—family size (including spouse) 3;
4. $19,660—family size (including spouse) 4;
5. $23,000—family size (including spouse) 5;
6. Add $2,600 for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Income Protection Allowance as published in the Federal Register; and
7. A graduate student who received welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.]

(a) The EOF Executive Director shall annually inform institutions of adjustments to the EOF Income Eligibility Scale in accordance with the official national poverty threshold published in the Federal Register and adjusted by 200 percent to reflect the higher cost of living in New Jersey.

1. Students are financially eligible for an EOF graduate grant if their gross household income does not exceed the applicable amounts set forth in the EOF Income Eligibility Scale, as follows:

Applicants with a Household size of	Gross Income (Not to Exceed)
1	$14,720
2	19,680
3	24,640
4	29,600
5	34,560
6	39,520
7	44,480
8	49,440

2. For each additional member of the household, an allowance of $2,480 shall be added to the last amount to determine EOF eligibility for the 1995-96 academic year. This allowance shall be adjusted annually to reflect changes in the national poverty threshold as published in the Federal Register. In addition, the gross income level for each household size also shall be adjusted annually.

(b) An applicant who comes from a household with two wage earners (both applicant and spouse) whose combined incomes exceed the applicable amount set forth in the EOF Income Eligibility Scale above may be eligible for EOF, only if:

1. The total income does not still exceed the applicable amount set forth in the EOF Income Eligibility Scale when 50 percent of the smaller income is subtracted from the gross household income.

2. Documentation in each applicant's file includes the mathematical computation described above along with wage and tax statements (form W2) of both wage earners.

(c) A graudate student who receives welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.

[(b)]**(d)** In determining [the] financial eligibility [of] **for an EOF** graduate [students] **grant**, separation[,] **or** divorce[,] or **the** death of a wage earner in the [base] **calendar** year prior to the academic year for which eligibility is being determined, with an accompanying decrease in [family] **household** income below the EOF [income eligibility scales] **Income Eligibility Scale**, does not automatically satisfy the characteristic of historical poverty (as stated in N.J.A.C. [9:11-2.1 and (d)1 through 5 below)] **9A:11-2.1 and 2.2(a)1 through 5**) expected of EOF students.

[(c)]**(e)** (No change in text.)

[(d) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the institution may submit a formal written request to the executive director for permission to admit students under a waiver pursuant to the provisions of this section. Students admitted under this provision must have incomes that do not exceed 175 percent of the official national poverty threshold as published annually by the Federal government adjusted to reflect New Jersey's cost of living and meet one of the following criteria:

1. The student attended high school in a district factor group a or b school district as certified by the New Jersey Department of Education;
2. The student has resided in a municipality defined as a "high distress" area. A high distress area, as defined by the New Jersey Office of Management and Budget, is one which, in comparison to the rest of the State, is characterized by old or sub-standard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families.
3. The student has resided in an area of a municipality that is historically populated by low-income families; such an area is commonly known as a "pocket of poverty" as characterized by the criteria outlined in (d)2 above;
4. The student has a sibling who was or is currently enrolled in an EOF Undergraduate Program; or
5. The student is or was eligible for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and was a first generation college student.]

(f) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the campus EOF director may seek permission from the Executive Director of the EOF Program to admit students with household incomes as high as, but not more than, 281 percent of the official national poverty threshold as published annually by the Federal government. However, these students must first meet all other eligibility provisions of N.J.A.C. 9:11A-2.1 and 2.2.

[(e)]**(g)** The student's record must contain sufficient documentation [for verification of] **to verify** the **discretionary** criteria [in (a) through (d) above]. [All] **Every** effort[s] should be made to give priority to those students whose incomes are within the limits of N.J.A.C. [9:11-2.5] **9A:11-2.5**.

Recodify existing (f)-(g) as **(h)-(i)** (No change in text.)

Recodify existing N.J.A.C. 9:11-2.6 through 4.3 as **9A:11-2.6 through 4.3**. (No change in text.)

Recodify existing N.J.A.C. 9:12-1.1 through 2.10 as **9A:12-1.1 through 2.10**. (No change in text.)

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INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Disclosure of Material Transactions

Proposed New Rules: N.J.A.C. 11:1-39

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6, 17:1-8.1, 17:17-10, 17:23-1, 17:23-20 et seq., 17:44A-1 et seq., 17:48-1 et seq., 17:48A-1 et seq., 17:48C-1 et seq., 17:48D-1 et seq., 17:48E-1 et seq., 17B:18-42, 17B:21-1 and 17:51A-1 et seq.

Proposal Number: PRN 1995-137.

Submit comments by April 5, 1995 to:
Donald Bryan
Assistant Commissioner
Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Insurance (Department) proposes new rules to require that domestic insurers file information with the Commissioner of Insurance (Commissioner) regarding material acquisitions and dispositions of assets, and nonrenewals, cancellations or revisions of ceded reinsurance agreements. These rules are substantially based on a model adopted by the National Association of Insurance Commissioners (NAIC). Adoption of this model is required for a state to satisfy the NAIC's Financial Regulation and Accreditation Standards beginning January 1, 1996.

Solvency is a major concern of the Department because it directly affects an insurer's ability to satisfy its contractual obligations to its policyholders. Various laws grant the Commissioner broad authority to examine the condition and affairs of an insurer to determine its condition and determine whether the insurer is in an unsafe or unsound financial condition and may be unable to satisfy its obligations to policyholders. The following statutes illustrate this point: N.J.S.A. 17:23-22a (provides that the Commissioner may conduct an examination of the assets and liabilities, method of conducting business and all other affairs of any company as often as the Commissioner in his or her sole discretion deems appropriate); N.J.S.A. 17:23-1 and 17B:21-1 (provide that every insurer transacting business in this State must file annual and quarterly statements in the NAIC format; the statements must contain any additional matters that the Commissioner prescribes; the Commissioner may also address any inquiries to the insurer in relation to its condition or affairs or any matter connected to its transactions; and the Commissioner has the power to make modifications and additions to this statement and matters contained therein as he or she deems desirable and necessary to ascertain the condition and affairs of the insurer); N.J.S.A. 17:17-10 and 17B:18-42 (provide that the Commissioner may not issue a certificate of authority to a domestic insurer until satisfied that its condition and method of operation will not be hazardous to the public or policyholders in this State); N.J.S.A. 17:51A-1 et seq. as implemented by N.J.A.C. 11:2-27 (provide that the Commissioner may place a domestic insurer in administrative supervision if he or she finds, among other things, that the insurer is in a hazardous financial condition); and N.J.S.A. 17:27A-4 (provides that domestic insurers which are members of an insurance holding company system may not enter into specific transactions without providing at least 30 days prior notification to the Commissioner and provided that the Commissioner has not disapproved of such action within those 30 days). In addition, various statutes grant the Commissioner authority to examine the condition, affairs, and method of conducting business of other entities subject to the Commissioner's regulatory oversight and approval (that is, fraternal benefit societies, hospital, medical, dental and health service corporations, and dental plan organizations). See N.J.S.A. 17:44A-1 et seq., 17:48-1 et seq., 17:48A-1 et seq., 17:48C-1 et seq., 17:48D-1 et seq. and 17:48E-1 et seq.

In furtherance of the legislative objective discussed above, the Department believes that it is reasonable and appropriate to propose these new rules to require domestic insurers and other entities set forth above (collectively hereinafter referred to as "insurers") to notify the Commissioner of any material acquisitions or dispositions of assets, or material nonrenewals, cancellations or revisions of ceded reinsurance agreements. Obviously, any material acquisition or disposition of an asset may have a significant impact on an insurer's financial condition depending on the kind of asset involved and the percentage of the insurer's admitted assets that the acquired or disposed asset represents. In addition, a series of acquisitions or dispositions may indicate an underlying problem with the insurer's financial condition (for example, the insurer's surplus as regards policyholders is decreasing and therefore the insurer is required to dispose of assets in order to maintain sufficient surplus to service its business).

Similarly, an insurer's reinsurance portfolio can have a substantial impact on its financial condition. A reinsurer takes all or a portion of the risk on policies issued by another insurer. Through reinsurance, a ceding insurer may increase its surplus by the amount of the liability ceded to a reinsurer. In addition, reinsurance permits insurers to spread the risk of loss to reduce the financial impact of heavy losses at one particular time. If a reinsurer fails or if the coverage was not included in the reinsurance agreement, the primary insurer is unable to limit its losses through the collection of reinsurance, and thus may not have the financial resources to survive. Therefore, material nonrenewals, cancellations or revisions of existing reinsurance agreements may substantially affect the primary insurer's financial condition.

Currently, the Department may not become aware of these material transactions for over one year after the date of such transaction (at the time of the filing of the annual statement) with the potential that the insurer's financial condition may have deteriorated during that period, possibly to a point where the Commissioner must place the insurer under administrative supervision, or in rehabilitation or liquidation. Through these proposed rules, however, the Commissioner will be notified of such material transactions within 15 days after the end of the calendar month in which those material transactions occur. This, in turn, will enable the Department to determine the impact, if any, such transactions would have on the insurer's financial condition and provide the Commissioner with sufficient time to take any remedial steps necessary to avoid the insurer being or becoming in a hazardous financial condition, or to eliminate any hazardous financial condition that may have resulted. This should reduce the likelihood that the Commissioner will be required to institute rehabilitation or liquidation proceedings against the insurer, and thereby reduce the likelihood of disruptions to policyholders and the market attendant to the institution of such proceedings.

The Department does not believe that these proposed rules will impose an undue burden on insurers. The Department notes that these rules do not provide for the approval or disapproval of such transactions, but rather merely provide for notification of such material transactions. The rules define a material transaction as: (1) in the case of acquisitions or dispositions of assets, any acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the insurer's total admitted assets as reported in its most recent statutory annual statement; and (2) for nonrenewals, cancellations or revisions of ceded reinsurance agreements, generally as one that affects, for property/casualty business, more than 50 percent of an insurer's ceded written premium, or more than 50 percent of an insurer's total ceded indemnity and loss adjustment reserves; and for life, annuity and accident and health business, more than 50 percent of the total reserve credit taken for business ceded, on an annualized basis as indicated in the insurer's most recently filed statutory annual statement. Moreover, notification of material transaction is not required if notification of such transactions has been submitted to the Commissioner for review, approval or information purposes pursuant to other provisions of law. Indeed, these rules eliminate a distinction between domestic insurers which are members of an insurance holding company system and those which are not. Pursuant to N.J.S.A. 17:27A-4, a domestic insurer which is a member of an insurance holding company system must notify the Commissioner before entering into material transactions, including any reinsurance agreement or acquisition or disposition of assets, at least 30 days prior to entering into such transaction, and may not enter into such transaction unless the Commissioner either has not disapproved of the transaction within the 30 day period or has approved it before the expiration of the 30 day period.

Proposed N.J.A.C. 11:1-39.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-39.2 sets forth the definitions of terms used in the subchapter.

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Proposed N.J.A.C. 11:1-39.3 sets forth general requirements for the disclosure of transactions pursuant to the rules.

Proposed N.J.A.C. 11:1-39.4 sets forth specific reporting requirements with respect to acquisitions or dispositions of assets.

Proposed N.J.A.C. 11:1-39.5 sets forth the reporting requirements with respect to the nonrenewals, cancellations or revisions of ceded reinsurance agreements.

Proposed N.J.A.C. 11:1-39.6 sets forth the penalties for violations of the subchapter.

Social Impact

The proposed new rules will require domestic insurers (including those entities as set forth in the proposal Summary above) to notify the Department of any material acquisition or disposition of assets, or nonrenewal, cancellation or revision to ceded reinsurance agreements, within 15 days after the end of the month in which such transaction occurred, unless such notification was otherwise submitted to the Department pursuant to other provisions of law. This will ensure consistency with the treatment of domestic insurers which are members of an insurance holding company system which are currently required to notify the Department before entering into certain transactions. Moreover, these rules will help the Department in its evaluation of an insurer's financial condition to determine whether such insurer is or may be in a hazardous financial condition before any such condition deteriorates to the point where the Commissioner may be required to institute delinquency proceedings against such insurer. This, in turn, may help the Commissioner avoid instituting delinquency proceedings, thereby avoiding the costs and disruptions to policyholders, the market, and the public associated with such proceedings.

Economic Impact

To the extent a domestic insurer is not otherwise required to provide notification of certain material transactions, the insurer will be required to notify the Department of any such material transaction within the time frames set forth in the rules. Since this information should be readily available and should generally otherwise be reported in an insurer's statutory annual statement filed with the Commissioner, the Department believes that any additional costs to insurers resulting from these rules should be minimal. The Department will be required to bear any costs associated with reviewing the information filed.

However, as noted in the Social Impact statement above, these rules will enable the Department to better evaluate an individual insurer's financial condition at any particular time and determine whether certain actions by the insurer may threaten its financial condition. This will better enable the Department both to take any necessary actions to prevent the insurer from being or becoming in a hazardous financial condition and to help eliminate any hazardous financial condition that may have resulted prior to substantial deterioration in the insurer's financial condition. This, in turn, will help reduce the likelihood that delinquency proceedings will have to be instituted against such insurers, thereby avoiding costs and attendant disruptions resulting from the institution of such proceedings. These costs include costs incurred by the New Jersey Property-Liability Insurance Guaranty Association and Life and Health Insurance Guaranty Association, which are primarily borne by policyholders and the public.

The Department, however, will experience an economic impact as a result of implementation of NAIC accreditation standards, which includes these proposed rules. The Department anticipates that compliance with the implementation of accreditaton standards will require additional staff and attendant costs. Some of these additional costs will be defrayed through the imposition of appropriate fees to help cover some of the costs of providing new services required to implement accreditation requirements.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because these rules implement various sections of the insurance laws of this State set forth in Title 17 and 17B of the Revised Statutes regarding oversight of the financial condition of insurers, and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

These proposed rules will apply to few, if any, "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules will apply to small businesses which are insurers domiciled in this State. To the extent that the proposed new rules apply to small businesses, they may impose a greater impact on small businesses in that they may be required to devote proportionately more staff and financial resources to comply with these rules. Insurers which are small businesses will be required to notify the Department of any material transactions as set forth in these proposed rules. However, the Department believes that the information required should be readily available and is otherwise required to be filed by the insurer in its statutory annual financial statement filed with the Commissioner. The Department, therefore, believes that any additional impact should be minimal.

The proposed new rules provide no exemption or different compliance requirements based on insurer size. The proposed rules require that insurers provide notification to the Department of material transactions as set forth in the rules to enable the Department to better evaluate an insurer's financial condition resulting from such transaction and to help determine whether such transaction will have an adverse effect on the insurer's financial condition. These rules, therefore, further implement the intent of the Legislature as set forth in the various insurance laws described in the Summary which require insurers to file specified information and grant the Commissioner broad authority to examine the assets, liabilities and methods of conducting business of various insurers so that the Commissioner may determine an insurer's financial condition and take remedial action if he or she deems it necessary. These statutes provide no differentiation in compliance requirements based on insurer size. Accordingly, for the reasons set forth above, and to ensure consistency and uniformity in the data submitted, as well as the evaluation of all domestic insurers in this State, no differentiation in compliance requirements is provided based on insurer size.

Full text of the proposed new rules follows:

SUBCHAPTER 39. DISCLOSURE OF MATERIAL TRANSACTIONS

11:1-39.1 Purpose and scope

(a) This subchapter requires that information be filed with the Commissioner by domestic insurers, fraternal benefit societies, dental plan organizations, hospital service corporations, medical service corporations, dental service corporations, and health service corporations regarding certain acquisitions and dispositions of assets, and nonrenewals, cancellations or revisions of ceded reinsurance agreements, and sets forth the specific information to be filed.

(b) This subchapter shall apply to all of the entities set forth in (a) above domiciled in this State.

11:1-39.2 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Insurer" means: any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance pursuant to subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the Revised Statutes; any hospital service corporation operating pursuant to N.J.S.A. 17:48-1 et seq.; any medical service corporation operating pursuant to N.J.S.A. 17:48A-1 et seq.; any dental service corporation operating pursuant to N.J.S.A. 17:48C-1 et seq.; any dental plan organization operating pursuant to N.J.S.A. 17:48D-1 et seq.; and any health service corporation operating pursuant to N.J.S.A. 17:48E-1 et seq.

"NAIC" means the National Association of Insurance Commissioners.

11:1-39.3 Disclosure of transactions

(a) Every insurer domiciled in this State shall file a report with the Commissioner disclosing material acquisitions and dispositions of assets, or material nonrenewals, cancellations or revisions of ceded reinsurance agreements, unless such acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the Commissioner for review, approval or information purposes pursuant to other provisions of the Title 17 or Title 17B of the Revised Statutes, Title 11 of the New Jersey Administrative Code, or other requirements.

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(b) The report required in (a) above shall be filed within 15 days after the end of the calendar month in which any of the transactions set forth in (a) above occur.

(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be separately filed with the Department and the NAIC.

1. Filings with the Department shall be mailed to the following address:

New Jersey Department of Insurance
Division of Financial Examinations
Attention: Disclosure of Transactions
20 West State Street
CN 325
Trenton, NJ 08625

2. Filings with the NAIC shall be made in the same manner as filings of financial statements with the NAIC.

(d) All reports obtained by or disclosed to the Commissioner pursuant to this subchapter shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Commissioner, the NAIC, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer who would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part thereof in such manner as he or she may deem appropriate.

(e) This subchapter shall not be construed as limiting the Commissioner's authority to require any insurer to file any specific information or documents pursuant to law, including, but not limited to, copies of any reinsurance agreements.

11:1-39.4 Acquisitions and dispositions of assets; reporting requirements

(a) Acquisitions or dispositions of assets are not required to be reported, as otherwise required pursuant to N.J.A.C. 11:1-39.3, if the acquisitions or dispositions are not material.

1. For purposes of this subchapter, a material acquisition (or the aggregate of any series of related acquisitions during any 30 day period) or disposition (or the aggregate of any series of related dispositions during any 30 day period) is one that is non-recurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory annual statement filed with the Department.

(b) Asset acquisitions subject to this subchapter include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

(c) Asset dispositions subject to this subchapter include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

(d) The following shall be disclosed and provided in any report of a material acquisition or disposition of assets required to be filed pursuant to this subchapter:

1. The date of transaction;
2. The manner of acquisition or disposition;
3. A description of the assets involved;
4. The nature and amount of the consideration given or received;
5. The purpose of, or reason for, the transaction;
6. The manner by which the amount of consideration was determined;
7. The gain or loss recognized or realized as a result of the transaction;
8. The name(s) of the person(s) from whom the assets were acquired or to whom they were disposed; and
9. A copy of all documents related to the acquisition or disposition (for example, purchase agreement, lease agreement, etc.).

(e) Insurers shall report material acquisitions and dispositions on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

11:1-39.5 Nonrenewals, cancellations or revisions of ceded reinsurance agreements; reporting requirements

(a) Nonrenewals, cancellations or revisions of ceded reinsurance agreements are not required to be reported, as otherwise required pursuant to N.J.A.C. 11:1-39.3, if the nonrenewals, cancellations or revisions are not material.

1. For purposes of this subchapter, a material nonrenewal, cancellation or revision is one that affects:

i. As respects property and casualty business, including accident and health business written by a property and casualty insurer:

(1) More than 50 percent of the insurer's total ceded written premiums; or

(2) More than 50 percent of the insurer's total ceded indemnity and loss adjustment reserves;

ii. As respects life, annuity and accident and health business, more than 50 percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement; and

iii. As respects both property and casualty, and life, annuity, and accident and health business, either of the following events:

(1) An authorized reinsurer representing more than 10 percent of a total cession is replaced by one or more unauthorized reinsurers; or

(2) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than 10 percent of a total cession.

(b) No filing pursuant to (a) above shall be required if:

1. As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than 10 percent of its total written premium for direct and assumed business; or

2. As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than 10 percent of the statutory reserve requirement prior to any cession.

(c) The following shall be disclosed and provided in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements required to be filed pursuant to this subchapter:

1. The effective date of the nonrenewal, cancellation or revision;
2. A description of the transaction with an identification of the initiator thereof;
3. The purpose of, or reason for, the transactions;
4. If applicable, the identity of the replacement reinsurers; and
5. A copy of the revised provisions of the reinsurance agreement.

(d) Insurers shall report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than $1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

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11:1-39.6 Penalties

Failure to comply with the requirements of this subchapter shall result in the imposition of penalties as authorized by law.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Certification of Promotional and Marketing Material

Proposed Amendments: N.J.A.C. 11:21-17.3 and Appendix Exhibit BB, Parts 1, 3 and 4

Proposed Repeal: N.J.A.C. 11:21, Appendix Exhibit BB, Part 2

Proposed New Rule: N.J.A.C. 11:21, Appendix Exhibit EE

Authorized By: New Jersey Small Employer Health Benefits Program Board, Kevin O'Leary, Executive Director.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L. 1994, c.11, and P.L. 1994, c.97.

Proposal Number: PRN 1995-134.

Submit written comments by April 5, 1995 to:

Kevin O'Leary
Executive Director
New Jersey Small Employer Health Benefits Program
20 West State Street, 10th Floor
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Small Employer Health Benefits Program (SEH) Board proposes amendments to N.J.A.C. 11:21-17.3 which would change the annual filing date of the Certification of Promotional and Marketing Material, which is currently set forth as Exhibit BB, Part 2 of the Appendix. Currently, carriers are required to file the certification on an annual basis, due on the one year anniversary of the carrier's original filing. The proposed amendments would change the filing date to on or before March 1 of each year.

The purpose of the amended rule is to provide carriers with a date certain by which to file the Exhibit BB, Part 2, and thus provide for easier coordination of the SEH Program filing requirements. The date chosen by the Board coincides with the annual Market Share Report, Exhibit CC of the Appendix, as required by N.J.A.C. 11:21-10.3. The proposed amendment is also designed to make administration of the filing easier for the Board's staff.

The Board also proposes redesignating Exhibit BB, Part 2 of the Appendix as new Exhibit EE in order to highlight that this is an annual filing and that the filing is distinct from the Certification of Compliance set forth as Exhibit BB, Part 1. This proposal would require the redesignation of Exhibit BB, Parts 3 and 4, filings required by the New Jersey Department of Insurance, as Exhibit BB, Parts 2 and 3 respectively. The proposed new rule also would amend the current Exhibit BB, Part 2 to reflect the new filing deadline required by the proposed amendment to N.J.A.C. 11:21-17.3. Additionally, the proposed amendments to the current Exhibit BB, Part 2, proposed new rule Exhibit EE, include a clarification that the certification is required for the standard health benefits plans only, and that the certification of the promotional and marketing material is based on standard health benefits plans properly filed with the SEH Board.

The Board proposes amendments to Exhibit BB, Part 1 to distinguish, where appropriate, between standard riders developed by the Board, and optional benefit riders as permitted by N.J.A.C. 11:21-3.2(d). The proposed amendments to Exhibit BB, Part 1 also include changes to reflect that the HMO "Health Statement" form has been changed and renamed "Preexisting Condition Statement," and the certification with respect to stop loss and excess risk insurance has been changed to reflect recent changes to the definition of "health benefits plans" and the creation of a definition of "stop loss and excess risk insurance" in N.J.A.C. 11:21-1.2 and changes to N.J.A.C. 11:21-7.4 regarding stop loss or excess risk insurance. The proposed changes also include clarifications to existing questions and move existing questions on the certification to more appropriate locations in the text.

Social Impact

The proposed amendments, repeal, and new rule will impact on carriers in the small group market. The amendment to N.J.A.C. 11:21-17.3 should result in reducing the administrative burden on carriers by changing the filing deadline to be consistent with the Market Share Report annual filing. The other changes in the proposal clarifying questions in Exhibit BB, Part 1 should make the completion of the certification easier.

Economic Impact

The proposed amendments, repeal, and new rule, providing clarifications and a filing deadline change, are not expected to have an economic impact on carriers in the small group market.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the composition of the certifications required by the SEH Board are dictated by N.J.S.A. 17B:27A-17 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments, repeal, and new rule will not impose additional reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In fact, the proposed changes are designed to streamline and clarify existing reporting requirements, in large part by having the Certifications filing date coincide with that for the Market Share Report.

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

11:21-17.3 Certification

(a) Each small employer carrier disseminating marketing and promotion material shall certify that its marketing and promotional material conforms with the requirements of this subchapter. The certification, set forth [in Part 2 of Exhibit BB] **as Exhibit EE** of the Appendix, incorporated herein by reference, shall be signed by a duly authorized officer of the small employer carrier. Each small employer carrier shall file its initial certification with the Board no later than the first day upon which the small employer **carrier** disseminates promotional or marketing material for the health benefits plans to consumers, producers or the public in general, or by February 15, 1994, whichever date is later.

(b) Small employer carriers shall continue to file a certification as required in (a) above on an annual basis **on or before March 1 of each year** following the filing of its initial certification.

EXHIBIT BB

PART 1

CERTIFICATION OF COMPLIANCE WITH [SMALL EMPLOYER HEALTH BENEFITS] **STANDARD** PLANS

In accordance with N.J.A.C. 11:21-4.2, submit this form in triplicate to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and to the New Jersey Department of Insurance as follows: Attn: SEH Form Certification of Compliance, Division of Life and Health Actuarial Services, New Jersey Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625-0325.

1. INFORMATION ABOUT THE CARRIER AND RESPONDENT

Carrier Name: _____

NAIC #: _____

If an HMO, is the Carrier federally-qualified?
_____ Yes _____ No

Respondent's
Name: _____

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Respondent's Title: _____

Respondent's Address: _____

_____

Respondent's Telephone: _____ FAX: _____

2. COMPLIANCE

Check the appropriate response(s):

_____ (a) Plans A, B, C, D and E comply fully with the SEH Board's small employer health benefits plans forms and Explanation of Brackets set forth at Exhibits A through F and Exhibit K, respectively, of the Appendix to N.J.A.C. 11:21.

_____ (b) Plans, A, B, C, D and E comply with the SEH Board's small employer health benefits plans forms and Explanation of Brackets set forth at Exhibits A through F and Exhibit K, respectively, of the Appendix to N.J.A.C. 11:21, BUT an alternative method of utilization review, as permitted at N.J.A.C. 11:21-4, is being submitted for review and approval.

_____ (c) HMO Plan complies fully with the SEH Board's small employer health benefits plans form and Explanation of Brackets set forth at Exhibit G and K, respectively, of the Appendix to N.J.A.C. 11:21.

_____ (d) All **standard** riders applicable to Plans A through E comply fully with the SEH Board's small employer health benefits plan rider forms and Explanation of Brackets as set forth at Exhibits H, and I and Exhibit K, respectively, of the Appendix to N.J.A.C. 11:21.

_____ (e) All **standard** riders applicable to HMO Plan comply fully with the SEH Board's small employer health benefits plan rider forms and Explanation of Brackets as set forth at Exhibit J and K, respectively, of the Appendix to N.J.A.C. 11:21.

_____ (f) All applications, certifications, enrollment forms, waiver forms, certificates or evidences of coverage comply with the SEH Board's form set forth in Exhibits N, O, Q, R, S, T, V, W, Y, Z and AA, and the Explanation of Brackets set forth at Exhibit X in the Appendix to N.J.A.C. 11:21.

3. PLAN OPTIONS AND VARIABLES

Complete each relevant section (please use "NA" to indicate when a section is not relevant). Attach additional pages as necessary.

(a) Plans A through E

(1) List all plans to be offered as a traditional contract, if any.

_____

_____

_____

_____

(2) List all plans to be offered in conjunction with a selective contracting arrangement (defined at N.J.A.C. 11:4-37), if any.

_____

_____

_____

_____

(3) For all plans to be offered in conjunction with a selective contracting arrangement, specify the coinsurance differentials and whether the plan requires election of a primary care physician.

_____

_____

_____

_____

(4) Do contracts provide for direct payment to health care practitioners without assignment? (Note: this option is available only on health service corporation contracts and other plans offered in conjunction with selective contracting arrangements.)

_____ Yes _____ No

(5) List the **standard and nonstandard** riders being offered, if any, and specify which plans with which they will be offered.

_____

_____

_____

_____

(6) If offering the Mental/Nervous and Substance Abuse rider, indicate the applicable copayments.

_____

_____

(7) Do the participation requirements comply with applicable statute and rules? [(Note: 75% participation.)] **(See N.J.S.A. 17B:27A-24 and N.J.A.C. 11:21-7.6)**

_____ Yes _____ No

If No, has the Board approved the carrier's use of an alternate participation requirements?

_____ Yes _____ No

(8) Do the plans include any of the following [as set forth by the SEH Board] **in accordance with SEH regulations**?

i. Utilization Review Features

_____ Yes _____ No

If No, is an alternative method of utilization review, filed in accordance with N.J.A.C. 11:21-4.2, included in the Plans?

_____ **Yes** _____ **No**

If Yes, is it included with this submission?

_____ **Yes** _____ **No**

ii. Required Hospital Stay Review

_____ Yes _____ No

iii. Required Pre-surgical Review

_____ Yes _____ No

iv. Alternate Treatment Features

_____ Yes _____ No

v. Centers of Excellence Features

_____ Yes _____ No

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[If No, to the Utilization Review Feature, is an alternate method of utilization review included in the Plans?

_____ Yes _____ No

If Yes, is it included with this submission?

_____ Yes _____ No]

(b) HMO Plan

(1) List the copayment options being offered.

_____

_____

_____

_____

(2) How is the in-plan prescription drug coverage being offered?

[_____]

$15 copay **50% coinsurance**

(3) List the riders being offered, if any, and specify the plan with which they will be offered.

_____

_____

_____

(4) Do the participation requirements comply with applicable statutes and rules? [(Note: 75% participation)] **(See N.J.S.A. 17B:27A-24 and N.J.A.C. 11:21-7.6)**

_____ Yes _____ No

If No, has the Board approved the carrier's use of an alternate participation requirement?

_____ Yes _____ No

(c) Additional Forms

(1) Is the [Health Statement form] **Preexisting Condition Statement**, Exhibit S, being used?

_____ Yes _____ No

(d) Additional Options

(1) Is payment by automatic bank withdrawal required?

_____ Yes _____ No

(2) Is payment by automatic bank withdrawal offered? (Note: If offered, must be offered on all plans to all small employers.)

_____ Yes _____ No

4. CERTIFICATION

I, the undersigned, certify that this completed form is true and accurate, and that I am an officer of the carrier duly authorized to submit this certification.

[I certify that, in accordance with N.J.A.C. 11:21-7.4, no stop loss or excess risk insurance shall be issued or renewed for any small employer for which the company provides administrative services, and further, that all small employers or groups of small employers for which this company may act as administrator utilize self-funded plans meeting the definition of 26 U.S.C. 1002(1), the specifications of 26 U.S.C. 1002(4)(B) if a group of small employers, and are not multiple employer welfare arrangements, in whole or in part, as defined at 26 U.S.C. 1002(40).]

I certify that any "stop loss or excess risk insurance," as defined in N.J.A.C. 11:21-1.2, issued or renewed by the carrier meets the retention limits set forth in the definition of "health benefits plans" in N.J.A.C. 11:21-1.2.

_____ Date _____ Signature

_____ Title

[PART 2
CERTIFICATION OF PROMOTIONAL
AND MARKETING MATERIAL

Submit this form pursuant to N.J.A.C. 11:21-17.3 and annually thereafter to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and to the Division of Life and Health Actuarial Services, New Jersey Department of Insurance, 20 W. State Street, CN 325, Trenton, NJ 08625-0325, Attn: SEH Promotional and Marketing Certification.

Carrier's Name: _____

NAIC #: _____

Respondent's Name: _____

Respondent's Title: _____

Respondent's Address: _____

Respondent's Phone: _____ FAX: _____

I, the undersigned, hereby certify that the promotional and marketing material to be disseminated regarding the small employer health benefits plans (Plans A, B, C, D, E and HMO), including all terms, definitions and text, are consistent with N.J.S.A. 17B:27A-17 et seq., and N.J.A.C. 11:21.

I certify that this completed form is true and accurate, and that I am an officer of the carrier duly authorized to submit this certification.

_____ Date _____ Signature

_____ Title]

Recodify Parts 3 and 4 as **Parts 2 and 3** (No change in text.)

EXHIBIT EE

CERTIFICATION OF PROMOTIONAL AND MARKETING MATERIAL FOR STANDARD PLANS

Submit this form pursuant to N.J.A.C. 11:21-17.3 and annually thereafter on or before March 1 to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and to the Division of Life and Health Actuarial Services, New Jersey Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625-0325, Attn: SEH Promotional and Marketing Certification.

Carrier Name: _____

NAIC #: _____

Respondent's Name: _____

Respondent's Title: _____

Respondent's Address: _____

Respondent's Phone: _____ **FAX:** _____

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I, the undersigned, hereby certify that the promotional and marketing material to be disseminated regarding the small employer health benefits plans (Plans A, B, C, D, E and HMO), including all terms, definitions and text, are consistent with N.J.S.A. 17B:27A-17 et seq., and N.J.A.C. 11:21 and all forms represented therein have been filed in accordance with N.J.A.C. 11:21.

I certify that this complete form is true and accurate, and that I am an officer of the carrier duly authorized to submit this certification.

Date Signature

Title

TRANSPORTATION

(a)

DIVISION OF RIGHT OF WAY
BUREAU OF ACQUISITIONS

Compensation of Condemnees for Income Loss Resulting from the Harvesting of Standing Crops

Proposed New Rules: N.J.A.C. 16:5

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-22, 27:7-44.6 and 20:3-29.1.

Proposal Number: PRN 1995-146.

Submit comments by April 5, 1995 to:

Renee Rapciewicz
Deputy Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
FAX (609) 530-5719

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:5, Acquisitions, expired on November 20, 1994.

These rules have been reviewed by staff from the Bureaus of Acquisition, Appraisal and Legislative Analysis at the Department, along with the Attorney General's Office, in compliance with Executive Order No. 66(1978). The rules were found to be reasonable, understandable and necessary for the purpose for which they were originally promulgated, but needed to be revised to clarify the intent of the rules and to incorporate current policies and procedures.

The updating of the chapter and clarification of its provisions in a plain language format necessitated the redrafting of extensive portions of the chapter. The new rules proposed at N.J.A.C. 16:5 by the Department is the first phase of this extensive redrafting. The proposed new rules outline the Department's policies and procedures concerning the compensation for loss of income resulting from harvesting of standing crops, in compliance with the provisions of N.J.S.A. 20:3-29.1.

The expired rules at N.J.A.C. 16:5 provided the general definitions used within the rules concerning real property acquisition (subchapter 1), the basic acquisition policy criteria for appraisals (subchapter 2), described the procedure to be followed in compensating owners of agricultural and horticultural lands for loss of income due to harvesting of standing crops (subchapter 3), and described the organization and procedures establishing the exercise and delegation of powers to be followed (subchapter 4).

The proposed new rules at N.J.A.C. 16:5 provide the general definitions used concerning agricultural and horticultural lands (subchapter 1), establish criteria for eligibility and valuation (subchapter 2), and outline the delegation of powers (subchapter 3).

The difference between the expired rules and the proposed new rules is that the expired rules outlined a program involving the acquisition of real property required for Department of Transportation projects; whereas the proposed new rules only outline the Department's policies and procedures concerning the compensation for loss of income resulting from harvesting of standing crops.

The expired rule at N.J.A.C. 16:5-4.1, Exercise of powers, has been deleted from this proposal. Upon review, it was found that N.J.S.A. 20:3-1 et seq. did not acknowledge this exercise of powers.

Once the Department has completed its extensive redrafting, amendments will be proposed incorporating the overall program involving the acquisition of real property required for Department of Transportation projects.

The chapter is summarized as follows:

Subchapter 1 provides the general definitions used within the rules concerning agricultural and horticultural lands.

Subchapter 2 establishes criteria for eligibility and valuation.

Subchapter 3 outlines the delegation of powers.

Social Impact

The proposed new rules at N.J.A.C. 16:5 will have a beneficial impact and will not have or cause any adverse impact on those persons affected by the rules. The rules are necessary and vital to the Department's acquisition operation since it provides an orderly and efficient procedure for providing compensation to owners for any loss of income resulting from the harvesting of standing crops. Those primarily affected by the rules have reacted very favorably because of the monetary compensation. If the chapter is not adopted by the Department, those persons eligible for compensation would be adversely affected financially.

Economic Impact

The proposed new rules will continue the payments mandated by State law. N.J.S.A. 20:3-29.1 requires the Department to compensate an owner of agricultural or horticultural land, for any loss of income resulting from interference with the harvesting of any standing crops or other agricultural commodities, in an amount determined according to their appropriate time of harvest, and for the remainder of their average productive life. Benefits provided to agricultural and horticultural land owners have resulted in modest increases in cost, which vary on a case-by-case basis.

The Department, State, and individuals affected will continue to incur direct and indirect costs involved in the arrangement and coordination of the formal appeal process before an Administrative Law Judge where contested cases are heard. Additionally, the individual so affected may elect to be represented by legal counsel or other representatives at that person's expense.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of this rulemaking are dictated by State statute and are not subject to Federal requirements or standards. The proposed new rules compensate owners for loss of income resulting from the harvesting of standing crops, in compliance with the provisions of N.J.S.A. 20:3-29.1.

Regulatory Flexibility Analysis

The proposed new rules do not place any reporting or recordkeeping requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do place compliance requirements on small businesses involved in the acquisition process, by limiting what may or may not be reimbursable and requiring an application for compensation. The contents of the application is informational and valuation determinations are made by the Department. Unless an appeal is made, no professional services (legal or valuation) should be needed. The limitation as to what may or may not be reimbursable is established by statute (N.J.S.A. 20:3-29.1), and the statute makes no differentiation based upon the size of business.

Full text of the proposed new rules follows:

CHAPTER 5
COMPENSATION OF CONDEMNEES FOR INCOME LOSS RESULTING FROM HARVESTING OF STANDING CROPS

SUBCHAPTER 1. GENERAL PROVISIONS

16:5-1.1 Purpose

The rules in this chapter govern compensation to owners for any loss of income resulting from the harvesting of standing crops.

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16:5-1.2 Definitions

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

"Condemnation" means the taking of private property for a public purpose under the power of eminent domain as prescribed by the Eminent Domain Act of 1971, N.J.S.A. 20:3-1, and the obtaining of title in fee or a lesser interest through a contract of sale or by the filing of a complaint under eminent domain.

"Department" means the New Jersey Department of Transportation.

"Owner" means the person or entity who holds title of record to the property or easement being condemned.

"Parcel" means the fee or lesser interest for which the Department has made an offer as reflected on a general property parcel map or an entire tract map as prepared by the Department.

"Property" or "real estate" means any interest in real estate including, but not limited to, the underlying fee interest, land, buildings, fixtures, leasehold, reparian rights and easements.

SUBCHAPTER 2. AGRICULTURAL OR HORTICULTURAL LAND

16:5-2.1 Authority

All provisions of this subchapter were adopted by the Commissioner of Transportation, pursuant to authority delegated at N.J.S.A. 20:3-29.1, which became effective July 17, 1986.

16:5-2.2 General provisions

The Department, in acquiring agricultural or horticultural land which is eligible for valuation, assessment and taxation under the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq., shall compensate the owner for any loss of income resulting from the interference of the acquisition with the harvesting of any standing crops or other agricultural commodities, in an amount determined according to their appropriate time of harvest and for the remainder of their average productive life, separate and apart from compensation for the fair market value of the land.

16:5-2.3 Eligibility requirements

To be considered eligible for compensation, a property must be eligible for valuation, assessment and taxation under the Farmland Assessment Act of 1964. Additionally, the property must be currently planted in crops and the condemnation proceedings must interfere with the harvesting of the crop. The Department, however, within its sole discretion, will allow the harvesting of a current annual crop or the current crop of a biannual or perennial crop, so long as such harvesting does not unreasonably interfere with or delay the construction of a project.

16:5-2.4 Valuation of standing crop income

The anticipated annual average income from the standing crop over its remaining average productive life will be developed for the Department by a qualified agricultural expert, as determined by the Department. The specialist will estimate the average remaining productive life of the crop, the average anticipated gross income from the impacted crop and the anticipated expenses related to harvest and sale of the produce. The net anticipated income from the crop over the average remaining productive life of the crop, if not an annual crop, will then be capitalized by the Department into a present value.

16:5-2.5 Procedure

(a) No compensation will be made where an annual crop has been harvested by the owner or anyone acting under contract with the owner, notwithstanding, that a declaration of taking has been filed and recorded.

(b) As to any claim for compensation under N.J.S.A. 20:3-29.1 for loss of crop income, the owner should file an application with the Division representative assigned to handle the negotiations for the parcel. The owner, at the time of application, shall provide all pertinent information regarding the claim, including photographs where available and a description of the crop.

(c) An inventory shall be taken before the Department takes possession of a parcel with standing crops or having agricultural commodities. The owner shall be afforded an opportunity to review the inventory prior to a value determination.

(d) Where the effect of the acquisition, if any, on the ability to harvest is known or can readily be ascertained, a crop valuation will be provided within 90 days of a completed application. However, where a determination as to crop loss cannot be reasonably made prior to execution of an agreement or the commencement of a condemnation proceeding, the owner's rights to such compensation, if any, shall be preserved until a determination can be made.

16:5-2.6 Condemnation

Offers of compensation tendered under this subchapter will not be considered a part of the valuation of the real property for the purpose of acquisition of the real property.

16:5-2.7 Appeals

The owner may appeal the Department's determination as to amount of, or eligibility for, payments under this subchapter, in accordance with N.J.A.C. 16:6-3.3.

SUBCHAPTER 3. ORGANIZATION AND PROCEDURES

16:5-3.1 Delegation of powers

The Division of Right of Way will be responsible for administering these rules and the attendant State law, on behalf of the Commissioner of Transportation.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 88
Lakewood Township, Ocean County
Proposed Amendment: N.J.A.C. 16:28A-1.44

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1995-119.

Submit comments by April 5, 1995 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.44 to establish no stopping or standing zones during certain times and certain hours on Route N.J. 88 in Lakewood Township, Ocean County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Township of Lakewood which brought to the Department's attention a mistake designating N.J.A.C. 16:28A-1.44(d) as no parking zones instead of no stopping or standing zones as requested in their Resolution adopted on April 21, 1994 (see 26 N.J.R. 3135(a) and 26 N.J.R. 4207(b)). As part of the Department's on-going review of current conditions, the traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the no stopping or standing zones during certain times and certain hours along Route N.J. 88 in Lakewood Township, Ocean County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

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Social Impact

The proposed amendment will change the no parking zones to no stopping or standing zones along Route N.J. 88 in Lakewood Township, Ocean County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the installation of appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Exeuctive Order No. 27 Statement

An Exeuctive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

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

16:28A-1.44 Route 88

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

(d) The certain parts of State highway Route 88 described in this subsection shall be designated as ["no parking"] **no stopping or standing** zones, where [parking] **stopping or standing** is prohibited at certain times and hours. In accordance with N.J.S.A. 39:4-199, permission is granted to erect the appropriate signs.

1. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Traffic and Parking: DOT Property

200 Stierli Court, Mount Arlington Borough and Roxbury Township in Morris County

Proposed New Rule: N.J.A.C. 16:30-5.4

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

Authority: N.J.S.A. 27:1A-1, 27:1A-5, 39:4-209 and 39:4-198.

Proposal Number: PRN 1995-120.

Submit comments by April 5, 1995 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes a new rule at N.J.A.C. 16:30-5.4 to establish parking and traffic regulations in the parking areas of the Region 1 Facility located at 200 Stierli Court in Mount Arlington Borough and Roxbury Township in Morris County. This property recently acquired to accommodate New Jersey Department of Transportation employees.

The new rule is being proposed at the request of Richard Dunne, Executive Assistant, at the Region 1 Facility in a memorandum dated July 14, 1994, and as part of the Department's review of the parking areas for the health, safety and welfare of pedestrians, bicyclists and the motoring public. A traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the parking and traffic restrictions were warranted. Provisions include that operators of vehicles cannot park in any portion of the lot unless the vehicle is registered with a permit issued by the Department's Division of Support Services, and the owners must conform to specific traffic regulations in parking areas "A" and "B" of the Region 1 Facility. These restrictions shall include: parking between the painted lines; handicapped parking; customer parking; stop and yield intersections; one-way designations; speed limits and crosswalks.

Signs are required to notify New Jersey Department of Transportation employees and the motoring public of the restrictions proposed herein.

Social Impact

The proposed new rule shall establish parking and traffic restrictions in the parking areas of the Region 1 Facility of the New Jersey Department of Transportation to improve traffic safety. Appropriate signs will be erected to advise the Department of Transportation's Region 1 Facility employees and the motoring public.

Economic Impact

The proposed new rule is expected to have no increased economic impact on the Department of Transportation's Region 1 Facility employees and the motoring public that utilize the parking area other than the payment of fines as stipulated by law when the regulations are violated. The proposed new rule does stipulate violators will be fined in accordance with N.J.S.A. 39:4-209 and any other Statute violated, whichever is applicable. All towing of vehicles will be performed as specified by the local police force, and costs will depend upon the towing service selected.

The New Jersey Department of Transportation will incur indirect and direct costs for the mileage, personnel and equipment required in traffic survey and placement of control devices.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the Department of Transportation's Region 1 Facility employees and the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows:

16:30-5.4 Department of Transportation's Region 1 Facility

(a) The operator of a vehicle shall not park the vehicle in any portion of parking lot "A" constructed, owned and maintained at the Region 1 Facility of the New Jersey Department of Transportation unless such vehicle is registered with a parking permit issued by the Division of Support Services.

1. Applications for registration and parking permits shall be denied unless the names of those submitted are New Jersey Department of Transportation employees or are connected with the New Jersey Department of Transportation, in some capacity at the Region 1 Facility.

2. Parking permits shall be serially numbered and shall indicate parking area. The permit will be designed for pasting and shall be pasted upon the inside of the rear window.

3. No person shall counterfeit a parking permit or making a substitute or temporary permit, or use such a permit.

4. To be valid, the parking permit must be on the car at all times while parking in designated parking areas.

5. Records of all permits issued shall be kept on file at the Office of the Division of Support Services.

6. On special or emergency occasions, any parking area may be designated as a closed area to permit holders. On such occasions,

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proper notice will be given to permit holders as soon as possible and such notice will designate, providing there is space, another area available to them during such time.

7. Parking permits shall be revoked by the Office of the Division of Support Services at any time when the employee fails to comply with this rule.

8. Department employees, in violation of these rules, may be subject to Department disciplinary action as provided for in the Department Policies and Procedures.

9. Department employees, not assigned to the Region 1 Facility of the New Jersey Department of Transportation, shall sign in and this "signing in process" shall serve as a temporary one-day registration.

10. In accordance with N.J.S.A. 39:4-209, any person in violation of this section will be subject to a fine of not less than $1.00 nor more than $15.00; provided, however, that any person who shall violate any of said regulations concerning the altering, counterfeiting or misuse of parking permits shall be subject to a fine of not more than $50.00.

(b) The operator of a vehicle shall conform to the following various traffic regulations in parking area "A" constructed, owned and maintained at the Region 1 Facility of the New Jersey Department of Transportation:

1. The operator of a vehicle shall park said vehicle between the painted lines in the spaces marked, and they shall not park the vehicle in any other space not so marked.

2. Reserved parking spaces and handicapped spaces may be established within parking area "A," including areas for customer/visitor parking and shall be properly marked by signs or markings. The operator of any vehicle using such areas shall obey all reserved signs or markings.

3. The operator of a vehicle shall not stop or stand the vehicle in the driveways or roadways marked with signs or any portion of parking area "A" so as to interfere with the free and orderly movement of vehicles entering or leaving parking area "A."

4. The operator of a vehicle upon entering, remaining in or leaving parking area "A" shall obey all traffic control devices and all Department designated officers that may be on duty at the time.

5. The Department designated officer on duty in parking area "A" may control the traffic and parking. All drivers of vehicles shall obey his or her orders and directions, notwithstanding anything contained in this section.

6. Vehicles parked in restricted areas without proper identification or in violation of any portion of this regulation shall be towed, at the owner's expense, when the enforcing authority deems it necessary in the interest of traffic safety.

(c) The operator of a vehicle shall conform to the following various traffic regulations in parking area "B" constructed, owned and maintained at the Region 1 Facility of the New Jersey Department of Transportation designated as a "Park and Ride."

1. The operator of a vehicle shall park said vehicle between the painted lines in the spaces marked, and they shall not park the vehicles in any other space not so marked.

2. Reserved parking spaces and handicapped parking spaces may be established within parking area "B," including areas for customer/visitor parking and shall be properly marked by signs or markings, and the operator of any vehicle using such areas shall obey all signs or markings.

3. The operator of a vehicle shall not stop or stand the vehicle in the driveways or roadways marked with signs in parking area "B" so as to interfere with the free and orderly movement of a vehicle entering or leave parking area "B."

4. The operator of a vehicle upon entering, remaining or leaving parking area "B" shall obey all traffic control devices and all Department designated officers that may be on duty at the time.

5. The Department-designated officer on duty in parking area "B" may control the traffic and parking. All drivers of vehicles shall obey his or her orders and directions, notwithstanding anything contained in these rules.

6. Vehicles parked in restricted areas without proper identification or in violation of any portion of this regulation shall be towed at the owner's expense when the enforcing authority deems it necessary in the interest of traffic safety.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Miscellaneous Traffic Rules
Route I-295 Scenic Overlook (Northbound and Southbound)
Hamilton Township, Mercer County
Proposed New Rule: N.J.A.C. 16:30-11.3

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-1.38, 39:4-198, 39:4-199 and 39:4-208.

Proposal Number: PRN 1995-121.

Submit comments by April 5, 1995 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation is proposing a new rule at N.J.A.C. 16:30-11.3 to establish parking and movement restrictions for traffic at the Route I-295 Scenic Overlook in Hamilton Township, Mercer County. The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system.

This new rule is being proposed at the request of the Project Engineer of the Bureau of Traffic Engineering and Safety Programs for Route I-295, Section 7J and 5L, in a memorandum dated November 14, 1994. As part of the Department's ongoing review of current conditions, the traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of parking and movement restrictions for traffic at the Route I-295 Scenic Overlook in Hamilton Township, Mercer County, were warranted. These parking and movement restrictions will consist of the establishment of handicapped parking, vehicular weight designation to control the type of vehicles utilizing the Scenic Overlook and the closing of the Scenic Overlook between the hours of dusk and dawn. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish parking and the movement restrictions for traffic at the Route I-295 Scenic Overlook in Hamilton Township, Mercer County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of appropriate parking restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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Regulatory Flexibility Statement

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

Full text of the proposal follows:

16:30-11.3 Route I-295 Scenic Overlook (northbound and southbound) at approximate mileposts 58.2 to 58.5

(a) Under the provisions of N.J.S.A. 39:4-208, the following provisions for the control of traffic upon the roadways of the Route I-295 Scenic Overlook at approximate mileposts 58.2 to 58.5 are hereby adopted:

1. In Mercer County:

i. In Hamilton Township:

(1) No stopping or standing:

(A) No person shall stop or stand a vehicle except in designated areas and between the painted lines.

(2) Handicapped parking:

(A) Locations as indicated on Site Plan Section 7J Attachments, No. 5 and No. 6, incorporated herein by reference as an appendix to this section, shall be for handicapped parking. All stalls shall be 12 feet wide and signed with R7-8 and R7-8(P) (Reserved Parking Sign and Penalty Plate).

(3) Vehicle weight limit:

(A) The use of the Route I-295 Scenic Overlook is hereby prohibited to all vehicles over five tons G.V.W. (10,000 pounds), except that the following vehicles are exempt from the provisions of this restriction:

(I) Emergency vehicles; and

(II) Maintenance or service vehicles actually engaged in the inspection, maintenance or reconstruction of the Route I-295 Scenic Overlook.

(4) Closing of the Route I-295 Scenic Overlook:

(A) No person shall enter upon the area known as the Route I-295 Scenic Overlook between the hours of dusk and dawn.

APPENDIX to N.J.A.C. 16:30-11.3
SITE PLAN SECTION 7J
ATTACHMENTS NO. 5 and NO. 6

(**OAL Note:** The Appendix documents incorporated by reference are not reproducible herein, but may be examined by contacting the Office of Administrative Law, Quakerbridge Plaza Bldg. 9, CN 049, Trenton, NJ 08625.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibition
Route U.S. 130
Mansfield Township, Burlington County
Proposed Amendment: N.J.A.C. 16:31-1.22

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.

Proposal Number: PRN 1995-122.

Submit comments by April 5, 1995 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.22 concerning turning movements along Route U.S. 130 to effect no "U" turn in Mansfield Township, Burlington County.

The provisions of this proposed amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Township of Mansfield, Burlington County, in a phone conversation with Lieutenant William Kerr who concurred with a complaint received by the Department from Mr. Pat Gerber of Mershon Concrete Company on October 11, 1994. As part of the Department's on-going review of current conditions, the traffic investigations conducted by the the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the "U" turn restrictions along Route U.S. 130 in Mansfield Township, Burlington County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a "U" turn restriction along Route U.S. 130 in Mansfield Township, Burlington County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

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

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

16:31-1.22 Route U.S. 130

(a) Turning movements of traffic on certain parts of State highway Route U.S. 130 described in this subsection are regulated as follows:

1.-3. (No change.)

4. No "U" turns for trucks over four tons registered gross weight:

i. In Bordentown Township, Mansfield Township, Florence Township, Burlington Township and Burlington City in Burlington County:

(1) (No change.)

(2) Along Route U.S. 130 southbound at:

(A) (No change.)

(B) Mershon Concrete driveway, Mansfield Township (approximate milepost 52.45).

Recodify existing (B)-(D) as (C-(E) (No change in text.)

(3) (No change.)

ii.-iii. (No change.)

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(a)

DIVISION OF TRANSPORTATION ASSISTANCE

Employer Trip Reduction Program

Reproposed Amendment: N.J.A.C. 16:50-8.9
Reproposed New Rules: N.J.A.C. 16:50-11
Proposed Amendments: N.J.A.C. 16:50
Proposed New Rule: N.J.A.C. 16:50-12.4
Proposed Repeal: N.J.A.C. 16:50-13.4

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:26A-1 to 27:26A-14 (P.L. 1992, c.32, "New Jersey Traffic Congestion and Air Pollution Control Act") and Section 182(d)(1)(B) of the Clean Air Act Amendments (CAAA) of 1990 (42 U.S.C. Section 7511A(d)(a)(B)).

Proposal Number: PRN 1995-147.

A **public hearing** on the proposed amendments and new rules will be held on:

Tuesday, March 28, 1995 from 1:00 P.M. to 4:00 P.M.
Multi-Purpose Room
Engineering and Operations Building
New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Submit written comments by April 5, 1995 to:

Renee Rapciewicz, Deputy Administrative Practice Officer
Bureau of Legislative Analysis
New Jersey Department of Transportation
1035 Parkway Avenue, CN 600
Trenton, NJ 08625
FAX (609) 530-5719

The agency proposal follows:

Summary

Adopted new rules at N.J.A.C. 16:50 concerning the Employer Trip Reduction Program (ETRP) in New Jersey were published in the December 6, 1993 New Jersey Register at 25 N.J.R. 5494(b). Simultaneously, proposed amendments at N.J.A.C. 16:50-8.9 concerning requirement for an employee transportation coordinator and new rules at N.J.A.C. 16:50-11 concerning disclosure of information were published in the December 6, 1993 New Jersey Register at 25 N.J.R. 5452(a). These proposed amendments and new rules were never adopted, due to substantive changes that were required that could not be made on adoption in accordance with N.J.A.C. 1:30-4.3. Since the proposed amendments and new rules could not be adopted with the required substantive changes, the Department decided to allow those proposed amendments and new rules to expire in accordance with N.J.A.C. 1:30-4.2. Therefore, the Department is now reproposing the amendments to N.J.A.C. 16:50-8.9 and the new rules at N.J.A.C. 16:50-11, as well as additional proposed amendments.

The reproposed amendments and new rules, and the proposed amendments are being made by the Department in consideration of the economic impact of some aspects of the Program on affected employers and to take advantage of additional flexibilities announced recently by the United States Environmental Protection Agency (USEPA) in connection with this Federal mandate. Further, if USEPA suggests flexibilities beyond those reflected in this proposed rulemaking, the Department may propose additional amendments to these rules at a later date.

The proposed amendments concerning the Employer Trip Reduction Program under consideration in this rulemaking are as follows:

Dual Fuel Vehicles: In the employer's calculation of their work site average passenger occupancy (APO), a dual fuel vehicle used for commuting by an affected employee, even if a solo-occupant, will be counted as a zero vehicle, regardless of whether it is powered by gasoline or an NJDEP-approved alternative fuel when arriving at his or her work site. See N.J.A.C. 16:50-7.5(a)13.

Dependent Care: In the employer's calculation of its APO, an affected employee who transports a dependent to a care facility for at least 50 percent of the total one way commute or two or more one-way miles, whichever is less, will be counted as arriving in a carpool or vanpool. Each affected employee and each dependent will be counted equally as full passengers in the commute alternative. See N.J.A.C. 16:50-7.5(a)2vii.

Voluntary Participation: Under the proposed amendments at N.J.A.C. 16:50-3.2(c), non-affected employers and employers with non-affected work locations will be able to register these locations in the ETRP. These registered non-affected employers shall be subject to the provisions of the chapter as subsequently described.

The proposed amendment at N.J.A.C. 16:50-8.7 allows affected employers to average APOs for their affected work locations in their 1996 plan submissions with both voluntarily-participating non-affected employers and non-affected work locations that are in compliance with appropriate program requirements.

The proposed amendment at N.J.A.C. 16:50-5.1(e) allows a non-affected employer or a non-affected work location to register at any time after the adoption of the rule changes.

The proposed amendment at N.J.A.C. 16:50-8.3(e) exempts registered non-affected employers from the payment of filing fees.

In addition, at N.J.A.C. 16:50-12.3(e), a registered non-affected employer found to be in noncompliance shall not be subject to civil administrative penalties, but shall forfeit its designation as a registered non-affected employer.

Primarily Assigned: The proposed new definition at N.J.A.C. 16:50-2.1 clarifies an eligibility criterion for one of two types of exemptions. In counting the total number of employees at a work location, employers are eligible for an exemption if fewer than 100 employees are primarily assigned. The current rule implies that employers must assign each employee to a work location. With this proposed amendment, employers will be able to exclude employees that physically report to the work location less than two days in a typical week.

Peak Period—Definition: The proposed amendment at N.J.A.C. 16:50-2.1 will reduce the length of the peak period from 6:00 A.M. to 10:00 A.M. (Monday through Friday, inclusive) to 6:30 A.M. to 9:30 A.M. (Monday through Friday, inclusive), excluding employees who are scheduled to report between 6:00 A.M. and 6:29 A.M. and between 9:31 A.M. and 10:00 A.M. The proposed amendment at N.J.A.C. 16:50-2.1 will have three possible impacts on employers. It will likely increase the number of employers that are eligible for an exemption because it is easier to have fewer than 33 employees scheduled to report during this narrower time frame. It will likely reduce the number of affected employees at affected work locations, which could either increase or decrease the APO. This amendment also increases the opportunity for employers to pursue a "shift out of the peak" credit.

Scheduled to Report—Definition: An affected employee is defined at N.J.A.C. 16:50-2.1 as an employee who is scheduled to report at the work location during the peak period. The "scheduled to report" definition has been added to clarify that "scheduled to report" includes employees whose start time at the work site is during the peak period and those who arrive at the work site after peak period if they begin their work day during the peak period at another location.

Exemption Criteria—Averaged over a 12 Month Period: There are two categories of exemptions for which employers could be eligible: (1) work sites that employ an average of less than 100 employees for the immediately preceding 12 month period; or (2) work sites with 100 or more employees that have fewer than 33 employees reporting to work during the peak period. The proposed amendment at N.J.A.C. 16:50-13.2(a)1 will clarify an eligibility criterion for the second of the two categories of exemptions. The current rule obligates the employer to re-register if, after they have received this exemption, their number of affected employees increases above the threshold for even one month. This amendment allows employers to use a 12 month average for both exemptions and achieves program consistency through the registration process.

APO Survey—Typical Week and Timing of Re-Survey: The proposed amendment at N.J.A.C. 16:50-7.3(a)2 will expand the definition of "typical week" to include weeks that immediately follow an observed Friday holiday and weeks that immediately precede an observed Monday holiday. This amendment also eliminates the requirement to survey within one month of the anniversary date of the previous survey. Surveys for subsequent plan submittals must simply be conducted no earlier than January of the submittal year.

Deadline Extensions: The proposed amendment at N.J.A.C. 16:50-13.1 will allow employers to request extensions without restriction until the deadline by removing the requirement to submit an extension request within 90 days of the deadline. It will also allow the Department an additional 15 days (total of 30 days) to review and approve the extension

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requests. As a clarification, the employer is advised to provide the following information to the Department for its assessment of the validity of the extension request consisting of: the reasons for the delay; a proposed new commitment date for plan submittal; and the good faith efforts that the employer is undertaking to try to comply.

Enforcement—Commissioner's Authority: Proposed new rule N.J.A.C. 16:50-12.4 will clarify that the Commissioner has the authority to determine if a violation has occurred and the amount of penalties to be assessed, if any, taking into account the nature, seriousness, and circumstances of the violation, if there is a pattern of noncompliance and the good faith efforts being taken by an employer.

ETC Trainer Requirements: The current rule at N.J.A.C. 16:50-8.9 simply requires that an affected employer appoint an Employee Transportation Coordinator (ETC) at each work location. The reproposed amendments will clarify the role and responsibilities of the ETC and Department-approved ETC Trainers.

Disclosure of Information: The intent of the reproposed new rules at N.J.A.C. 16:50-11 is to protect affected employers from exposure to the risk of unfair competitive practices resulting from the submission and subsequent disclosure of confidential program information submitted to the Department.

Certification Requirements: The proposed amendment at N.J.A.C. 16:50-9.1 changes the requirement for plan certification. As proposed, only initial compliance plans must be reviewed and certified by a Department-approved compliance plan certifier prior to submittal to the Department. Revised plans due to a relocation will continue to require certification prior to submittal.

Application Fees for Requests for Waivers, Extensions and Exemptions: The proposed repeal of N.J.A.C. 16:50-13.4 will remove the requirement for an employer to submit an application fee of $250.00 per request for the Department's review and consideration of a waiver, extension or exemption.

ETRP Review Board: The proposed amendment at N.J.A.C. 16:50-13.3 will change the membership of the ETRP Review Board from 11 members to five members. The revised membership will include: the Executive Director of the State Planning Commission, or his or her designee, who will serve as the chairperson of the Review Board; one Department-approved certifier; one representative of an environmental interest group; one representative of an affected employer having less than 500 employees; and one representative of an affected employer having 500 or more employees.

A summary of these program changes as they will be reflected in N.J.A.C. 16:50 as proposed amendments follows:

The terms "newly affected employer or newly affected work location," "non-affected employer" and "non-affected work location" or "non-affected location" have been added to N.J.A.C. 16:50-2.1, Definitions, and have been inserted in various places, as appropriate, throughout the rules.

In addition, many grammatical and syntactical changes have been made throughout the rules.

Various definitions found in N.J.A.C. 16:50-2.1 are being amended for clarification, mostly by adding reference to "registered non-affected" employers or locations.

The following new definitions are being added to N.J.A.C. 16:50-2.1 for further clarification of the rules: "dependent," "dual fuel vehicle," "newly affected employer or newly affected work location," "non-affected employer," "non-affected work location" or "non-affected location," "primarily assigned work location" or "primarily assigned location," "registered non-affected employer," "registered non-affected work location" or "registered non-affected location," and "scheduled to report." These terms have also been added to various sections of the rules.

N.J.A.C. 16:50-3.1 has been amended to clarify an eligibility criteria for the two categories of exemptions. The proposed amendment allows employers to use a 12 month average for both exemptions and achieves program consistency through the registration process. Also, an amendment at N.J.A.C. 16:50-3.1(b) require that a registered non-affected employer shall be subject to provisions of this chapter as subsequently described has been added.

N.J.A.C. 16:50-3.2(c) has been added as an additional provision to identify the three actions required of a registered non-affected work employer or work location that desires to voluntarily participate in the ETR program. Failure to undertake any of these actions will result in forfeiture of the "registered non-affected" designation.

N.J.A.C. 16:50-5.1(b) has been amended to identify that an employer that meets a test for exempted employer described in N.J.A.C. 16:50-13 shall not be required to submit the standard registration form, but shall submit an ETRP return form for non-affected employers, indicating the reason for non-applicability.

N.J.A.C. 16:50-5.1(e) has been added to indicate that an employer with one or more non-affected work locations in affected areas of New Jersey that voluntarily chooses to register such locations with the Department may do so at any time.

N.J.A.C. 16:50-5.2(c) has been added to indicate that an employer that chooses to register one or more non-affected locations in the ETRP shall complete a standard registration form for each such location. An employer with more than one non-affected location in New Jersey must complete a separate registration form for each non-affected location the employer chooses to register, but individual registration forms may be submitted together.

N.J.A.C. 16:50-5.2(d) has been added to allow an affected employer to designate a single contact person to receive APO survey and compliance plan forms for all affected and registered non-affected locations.

N.J.A.C. 16:50-7.2 has been amended to reflect that in subsequent years that employers are required to make a submittal to the Department, the Department shall notify each affected and registered non-affected employer of the requirements by January 1 of that year.

N.J.A.C. 16:50-7.3(a)2ii has been deleted so that "typical week" includes weeks that immediately follow an observed Friday holiday and weeks that immediately precede an observed Monday holiday.

N.J.A.C. 16:50-7.3(a)2iii and v have been recodified as N.J.A.C. 16:50-7.3(a)2ii and iv.

N.J.A.C. 16:50-7.5(a)1 and 2 is proposed to be amended to change the "Peak Period" from 6:00 A.M. through 10:00 A.M. to 6:30 A.M. through 9:30 A.M.

N.J.A.C. 16:50-7.5(a)2vii has been added to identify that an employee who transports a dependent for at least 50 percent of the total one way commute or two miles, whichever is less, to a care facility shall be counted as arriving in a carpool or vanpool. For the calculation of APO, each dependent shall be counted as a carpool or vanpool occupants, as appropriate.

N.J.A.C. 16:50-7.5(a)3 and 4 are proposed to be amended to change the word employees to occupants with regard to the calculation of APO.

N.J.A.C. 16:50-7.5(a)13 has been added to allow a dual fuel vehicle used for commuting to be counted as a zero vehicle on the days it arrives at the work location, regardless of whether it was powered by gasoline or the alternative fuel for that commuting day.

N.J.A.C. 16:50-8.2(b) has been added to require that registered non-affected work locations shall submit an initial APO Survey Report to the Department within 180 days of registering with the Department. The initial APO Survey Report shall represent only the APO for the individual registered non-affected work location.

N.J.A.C. 16:50-8.2(c) has been added to require that registered non-affected work locations shall submit subsequent APO Survey Reports to the Department not more than two years after the initial report was submitted or in conjunction with the submittal of an affected work location's update or maintenance plan.

N.J.A.C. 16:50-8.3(e) has been added that will exempt registered non-affected employers from the payment of filing fees.

N.J.A.C. 16:50-8.4(a)7 has been added to require a description of the actual and projected costs to develop, implement, and monitor the employee commute options (ECO) program to be part of the information required by the standard plan form.

N.J.A.C. 16:50-8.4(e) has been added to require that each registered non-affected work location prepare APO Survey Reports using a standard form developed by the Department and identifies the information required on the standard form.

N.J.A.C. 16:50-8.5(b) has been added to identify the elements required as part of a complete APO Survey Report submitted by a registered non-affected work location.

The reproposed amendments for N.J.A.C. 16:50-8.9 are the same as those proposed in the December 6, 1993 issue of the New Jersey Register at 25 N.J.R. 5452(a). These reproposed amendments include: (1) an employer is not required to send its ETC to training; (2) the Department will provide employers with a list of approved ETC trainers and training courses; (3) the Department shall issue a request for qualification of ETC trainers, and shall specify the qualifications and requirements of such trainers; (4) ETC trainers approval shall be for renewable, one year periods. Renewal may be denied or approval revoked under certain circumstances, in which case an appeal may be made in accordance with

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N.J.A.C. 16:50-14; and (5) the Department will not prohibit an ETC trainer from charging fees for services nor regulate those fees.

The Department received one comment during the comment period from Mr. Peter Cantu, Executive Director, Keep Middlesex Moving, Inc., with regard to N.J.A.C. 16:50-8.9 amendments as proposed in the December 6th New Jersey Register. Mr. Cantu felt that the rules were far too restrictive in their requirements for adult education experience. He stated that the requirements will serve to exclude many highly qualified travel demand management (TDM) professionals and have a negative impact on the ability of transportation management association (TMAs) to provide this needed service. The Department's response to this comment is that some minimum level of adult education experience is required to ensure that ETC Trainers are good teachers as well as TDM professionals. However, recognizing Mr. Cantu's concerns, the Department reviewed the requirements for adult education experience and decided to reduce the required years of experience from four to two, with a bachelor's degree in education eligible as a substitute for the adult education experience. Therefore, N.J.A.C. 16:50-8.9(c) has been revised in this proposal to reduce the required years of experience for adult education from four years to two years, and also allow a bachelor's degree in education as a substitute for experience in the conduct of adult education courses. At least two years of education or experience in the field of transportation demand management, transportation planning or closely related field is also required.

The following are amendments the Department was unable to make upon adoption following the previous proposal:

N.J.A.C. 16:50-8.9(d) has been revised from the original proposal to require that ETC Trainer candidates, who successfully complete the Department sponsored training course, sign a Memorandum of Understanding with the Department agreeing to provide ETC training with the course content and materials provided for and required by the Department, and to provide the Department with appropriate documentation of ETC Training conducted by the ETR Trainer and other reports as requested by the Department. Also the Department may require candidate trainers to pay for Department provided training in the event that there is not sufficient funding allocated to the ETRP.

N.J.A.C. 16:50-8.9(e) has been revised to require that Department approval of ETC Trainers shall be conferred on individuals only, not the company or organization by whom they are employed. The subsection also provides for renewable one-year ETC Trainer approvals, subject to denial or revocation.

N.J.A.C. 16:50-8.10(a)7 has been added to require that costs and expenses relative to the development, implementation and monitoring of the ECO Program be included, but not be limited to, documents required to be maintained by each affected employer.

A provision at N.J.A.C. 16:50-8.10(c) has been added to require that each registered non-affected work location maintain copies of documents prepared or used in document preparation by the employer or by other entities acting on behalf of the employer in accordance with these rules. A non-inclusive list of document subject matter areas is provided.

N.J.A.C. 16:50-10.3 has been amended to clarify the Department's intent to review at least one compliance plan certified by each certifier to protect the employers' interests and ensure that compliance plans have been properly certified.

The reproposed new rules for N.J.A.C. 16:50-11 are the same as proposed in the December 6, 1993 issue of the New Jersey Register at 25 N.J.R. 5452(a). These reproposed amendments include: (1) the Department of Treasury shall have access to information for the purposes of verifying eligible tax credits and dedications; (2) employers and duly authorized employees of an employer shall have access to information upon written request. An attorney representing an employer shall only have access if the attorney has a written signed release from an employer; (3) Federal agents charged with oversight of the ETRP or the Employee Commute Options Program shall have access to information; (4) other interested parties may have access to information as expressly authorized by the Commissioner if their use of such information is consistent with the purposes of the "New Jersey Traffic Congestion and Air Pollution Control Act" and such party guarantees the written confidentiality of such information; (5) notwithstanding the above, public information shall only consist of the aggregate data that is not identifiable to any individual employer; and (6) the Department may charge fees for photocopying, reprinting, etc., to cover the costs of providing requested records.

The following are amendments the Department was unable to make upon adoption following the previous proposal:

N.J.A.C. 16:50-11.1(a)2i has been amended to require that only information related to the employee's employer shall be released. In addition, persons requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained.

N.J.A.C. 16:50-11.1(a)2iii has been amended to require that requests for information from attorneys or other individuals who state that he or she is the employer's representative must be in writing and the request must indicate the intended use of the information, and that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained.

N.J.A.C. 16:50-11.1(a)3 has also been amended to state that persons or agencies requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained.

N.J.A.C. 16:50-11.1(a)4 has been amended to require other interested parties to request information in writing.

N.J.A.C. 16:50-11.1(a)5 has been amended to add the press or media as an additional category of interested party.

N.J.A.C. 16:50-11.1(a)5 has been amended to add the word "aggregate" to clarify the percentage of employees by mode.

N.J.A.C. 16:50-11.1(a)6 has been added to identify that mailing lists developed by the Department, which identify only the name and address of affected employees, shall be released to any interested party and that this request for information must be in writing indicating the intended use of the list and the medium in which the mailing list is requested. Fees for mailing lists shall be determined by the medium in which it is requested, and the agency cost for duplication.

N.J.A.C. 16:50-11.1(a)6 and 7, as previously proposed, is now codified as N.J.A.C. 16:50-11(a)7 and 8.

N.J.A.C. 16:50-12.2(a) has been amended to declare that registered non-affected employers shall lose their designation and shall not be eligible to participate in consolidated plans or APO averaging for violations of this chapter. Affected employers continue to be subject to civil administrative penalties for violations of this chapter.

N.J.A.C. 16:50-12.2(c) has been added to state that upon determining that a violation has occurred, the Department shall have the authority to issue the registered non-affected employer a notice of noncompliance that shall describe the violation, the actions required to correct the violation, the deadline by which the violation shall be corrected, and the consequences for continued noncompliance. If the non-affected employer has not corrected the violation by the deadline specified in the notice of noncompliance, the non-affected employer shall lose its designation and shall not be eligible to participate in consolidated plans or APO averaging.

As part of this notice, the Department is interested in receiving nominations for the ETRP Review Board. Any interested party may submit nominations for the certifier representative. Three certifiers will be selected by the Commissioner and serve on a rotating basis. Environmental interest groups may submit nominations of individuals that would serve as their representative to the Review Board. Two representatives will be selected by the Commissioner. One representative will serve as the primary member, with the second serving as an alternate. Any affected employer may nominate representatives from the two categories of employer: an affected employer having less than 500 employees and an affected employer having 500 or more employees. Two representatives from each category will be selected by the Commissioner. One representative will serve as the primary member, with the second serving as an alternate. Persons interested in nominating representatives to the ETRP Review Board should submit their nominations in writing to W. Dennis Keck, Acting Assistant Commissioner for Planning, New Jersey Department of Transportation, CN 600, Trenton, NJ 08625-0600. Nominations should be received by June 1, 1995.

Apart and aside from this proposed rulemaking, the Department is very interested in other opportunities to improve the State's air quality that will have less of an impact on business than the ETR Program, from a regulatory and cost perspective. Therefore, **the Department is interested in hearing from businesses or individuals who have ideas or programs that could provide air quality benefits equal to or more than those derived from the ETR Program.** These programs must be in addition to those already included in the State Implementation Plan (SIP) for Air Quality and may be either mobile or stationary in nature.

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This information, along with studies being performed by the Department, may become the basis for a proposal for the State to submit to USEPA in the event that Federal law and policy is changed. Proposals should be submitted to W. Dennis Keck, Acting Assistant Commissioner for Planning, NJDOT, CN 600, 1035 Parkway Avenue, Trenton, NJ 08625-0600.

Social Impact

The proposed amendments and new rules to the Employer Trip Reduction Program recognize the burden placed on affected employers and seek to minimize this burden by providing additional flexibility and opportunities to achieve the APO targets through other emission reduction strategies. These provisions will ensure that the social benefits of the program, namely minor improvements in air quality, and reduction in vehicle miles traveled and traffic congestion, will be carried out with less of a negative impact on affected employers.

The reproposed amendments and new rules and the proposed amendments clarify training provisions of the Employer Trip Reduction Program and provide for confidentiality of information submitted to the Department.

Economic Impact

The proposed amendments and new rules are being made by the Department in consideration of the economic impact on affected employers and to take advantage of additional flexibilities announced by the United States Environmental Protection Agency (USEPA) in connection with this Federal mandate. Further, if USEPA suggests flexibilities beyond those reflected in this proposed rulemaking, the Department may propose additional amendments to these rules at a later date.

In addition, these rules will protect the economic advantage of employers by ensuring that the information they provide to the Department of Transportation is kept confidential. Employers may, however, incur economic costs if they choose to train their employee transportation coordinator(s), or if they request information from the Department that is authorized for release. Also, ETC Trainers may be required to pay for Department provided training in the event that there is not sufficient funding allocated to the Employer Trip Reduction Program, either by the State legislature or through the authorization of Federal Highway funds.

N.J.A.C. 16:1-2.2(f) and (g) shall be referred to with regard to the sale of public records and costs associated with duplication of such records.

The repeal of N.J.A.C. 16:50-13.4, Application fees for extensions, exemptions, and waivers, has a positive impact on all affected employers. The application fee of $250.00 per request for an extension, exemptions, and waivers is now repealed.

The voluntary participation of non-affected employers and non-affected work locations will not have any negative economic impact other than administrative costs associated with the periodically conducted APO survey required by the Department and the reports of results of the survey that need to be provided to the Department. It will have a positive economic impact on affected employers by allowing them to average their APO in their 1996 plan submission with both non-affected employers and non-affected work locations that are in compliance with appropriate requirements. Registered non-affected employers shall be exempt from the payment of filing fees required under N.J.A.C. 16:50-8.3.

Executive Order No. 27 Statement

This proposed amendments and new rules are being made by the Department in consideration of the economic impact on affected employers and to take advantage of additional flexibilities announced by the United States Environmental Protection Agency (USEPA).

The Federal government mandates that New Jersey implement an Employer Trip Reduction Program and the State's rules contain the same requirements as mandated by the Federal government.

Regulatory Flexibility Statement

The reproposed amendments and new rules and the proposed amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. Small businesses as defined by the Regulatory Flexibility Act are not required to participate in the Employer Trip Reduction Program. The proposed amendments only provide an opportunity for voluntary participation by small businesses in New Jersey. If a small business voluntarily participates they will only be asked to survey their employees, submit a simple APO report, and maintain appropriate documents for five years. No fees or penalties will be assessed for any reason against small businesses who participate on a voluntary basis.

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

16:50-2.1 Definitions

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

...

"Affected employee" means an employee, employed by an affected **or registered non-affected** employer, who is scheduled to report at the affected **or registered non-affected** work location during the peak period.

...

"Affected work location" or "affected location" means a work location of an affected employer where 100 or more employees report to work or are **primarily** assigned [primarily for the purpose of performing work for the employer].

...

"Average passenger occupancy" or "APO" means the average passenger occupancy of commuting vehicles arriving at an employer's affected **or registered non-affected** location during peak periods, as calculated by the formula in N.J.A.C. 16:50-7.

"APO survey" means the survey of affected employees' commute patterns required to be conducted at an affected **or registered non-affected** location by affected **and registered non-affected** employers in accordance with N.J.A.C. 16:50-7.

...

"Carpool" means a group of two to six [employees] **occupants** commuting to and from **a** work **location** by means of a vehicle with a seating capacity of 15 or fewer [adult] occupants. **The driver of a taxi or other livery service is not counted as a carpool occupant.**

...

"Compliance plan," "plan," "update plan," "revised plan" or "maintenance plan" means a plan an affected **or registered non-affected** employer is required to submit to the Department in accordance with N.J.A.C. 16:50-8.

...

"Consolidated plan" means a plan, submitted by one employer for two or more of the employer's affected **or registered non-affected** work locations within any target APO area, or submitted by several employers with work locations within any target APO area, that satisfies the plan submittal requirement of N.J.A.C. 16:50-8 for each of the [affected] **participating** work locations.

...

"Dependent" means any person who is a relative by blood, marriage, or adoption; foster child; or any other person who lives in the home as a family member, and who receives at least half of his or her total financial support, from the household of the employee claiming the dependent.

"Dual fuel vehicle" means a highway vehicle with the capability to be powered by either of two fuels, one of which is gasoline and the other of which is an alternative fuel, such as natural gas, propane, methanol, or other fuel as defined in the Comprehensive National Energy Policy Act of 1992, Title 3, Section 301, Public Law 102-486, approved October 23, 1992, (42 U.S.C. §13211).

"Employee" means a partner or limited partner in a partnership, or any person employed by an employer, in a full-time or part-time; permanent, temporary, or contract position, excluding volunteers, who either reports to work or is **primarily** assigned [primarily] to a work location 80 or more hours per 28-day period for at least two consecutive months. A contract position is one in which the employee has a direct contractual relationship as an individual with the affected **or registered non-affected** employer, and reports to the affected **or registered non-affected** work location for a period of at least six consecutive months and whose work hours and assignments are defined by the employer. A contract position shall not include those positions employed through independent contract companies.

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"Employee commute options (ECO) program" means a program, required to be implemented by an affected employer **or voluntarily implemented by a registered non-affected employer** at a work location in accordance with this chapter to reduce vehicle trips to the work location during the peak period, increase the location APO, and reduce commute trip vehicle miles travelled by employees at the location.

. . .

"Highest ranking responsible officer" means the president, executive or managing director, other chief executive or operating officer, or other highest ranking employee located at an affected **or registered non-affected** work location, who has primary responsibility for the operation and management of the work location.

. . .

Newly affected employer or newly affected work location" means a work location that was not previously registered as an "affected employer," but now has 100 or more employees as averaged over the immediately preceding 12 month-period; an affected work location that was previously granted an exemption from the requirements of N.J.A.C. 16:50 by the Department but is no longer exempt; or an affected employer that has been sold to or taken over by an new corporation or owner. An affected employer or work location that has undergone only a change in name, operating structure, highest ranking responsible officer or chief executive officer would not be considered a newly affected employer.

"Non-affected employer" means a New Jersey employer that employs fewer than 100 employees as averaged over the immediately preceding 12-month period at any single work location in an affected area of New Jersey; an employer that is located outside of an affected area of New Jersey; or an affected employer that was previously granted an exemption from the requirements of N.J.A.C. 16:50 by the Department.

"Non-affected work location" or "non-affected location" means a work location of a non-affected employer or a work location of an affected employer where fewer than 100 employees are primarily assigned.

"Peak period" means the time period between the hours of [6:00] **6:30** A.M. and [10:00] **9:30** A.M. inclusive, Monday through Friday.

. . .

"Primarily assigned work location" or "primarily assigned location" means the location to which the employee would report more than 50 percent of his or her time to perform work for the employer. The primarily assigned work location of an employee who does not report to any single location more than 50 percent of his or her time or who teleworks more than 50 percent of his or her time, is the location to which the employee would report for purposes of employer administration. An employee who does not report to any single location more than 50 percent of his or her time is primarily assigned to the location to which the employee would report for the purposes of employer administration, provided the employee physically reports to such location at least two days in a typical week.

. . .

"Registered non-affected employer" means a non-affected employer that is located in an affected area of New Jersey and that voluntarily participates in the ETR Program and is registered as such with the Department.

"Registered non-affected work location" or "registered non-affected location" means a non-affected work location that is located in an affected area of New Jersey and that voluntarily participates in the ETR Program and is registered as such with the Department.

"Scheduled to report" means the employee is directed by the employer to be prepared to begin or continue the compensated portion of the work day.

. . .

"Teleworking" or "telecommuting" means a strategy in which an employee substitutes for an entire day the location at which its work is performed; that is, work assigned to be done at the affected **or registered non-affected** work location is instead done at the employee's residence or other work location that is not more than 10 miles and not more than 50 percent of the distance from the employee's home to the affected **or registered non-affected** work location, such that the employee makes a substitution for the commute trip to the affected **or registered non-affected** work location for the entire day.

. . .

"Vanpool" means a group of seven or more [employees] **occupants** commuting to and from work by means of a vehicle with a seating capacity of not more than 15 [adult] occupants.

. . .

16:50-3.1 Scope

[The requirements of this chapter apply to all affected employers as defined in N.J.A.C. 16:50-2, including government employers and independent government employers, except that affected employers that have fewer than 33 employees reporting to work during the peak period or that employ an average of less than 100 employees for the immediately preceding 12 month period may apply to the Department for an exemption from the requirements of this chapter.]

(a) The requirements of this chapter apply to all affected employers as defined in N.J.A.C. 16:50-2, including government employers and independent government employers, except that the following employers may apply to the Department for an exemption from the requirements of this chapter:

1. Affected employers that have fewer than 33 employees scheduled to report to a single work location during the peak period, when averaged over the immediately preceding 12 month period. Employers that received an exemption from the requirements of this chapter prior to (the effective date of this amendment) because they had fewer than 33 employees scheduled to report to the work location during the peak period are not required to reapply for an exemption provided the number of employees scheduled to report to the location does not exceed 33 in any single month; and

2. Affected employers that employ an average of less than 100 employees for the immediately preceding 12 month period.

(b) A registered non-affected employer shall be subject to provisions of this chapter as subsequently described.

16:50-3.2 Employer requirements

(a) Seven actions are required of affected employers. [An affected] **Such** employers shall:

1.-3. (No change.)

4. Develop and submit to the Department by November 15, 1994 and in subsequent years as required by this chapter, compliance plans that describe activities to be implemented at the location under an employee commute options (ECO) program (N.J.A.C. 16:50-8).

5.-7. (No change.)

(b) (No change.)

(c) There are three actions required of a registered non-affected employer or work location. Non-affected employers and non-affected work locations that desire to voluntarily participate in the ETR Program shall:

1. Register with the Department as a "registered non-affected work location";

2. Periodically conduct an APO survey of its employees to determine employees' current commute patterns; and

3. Report the results of the survey to the Department.

(d) Any registered non-affected work location failing to undertake any or all of the actions listed in (c) above shall forfeit its designation as a registered non-affected location.

16:50-5.1 Registration deadlines

(a) By the due date specified in the notification mailing and as published in the public notice (see N.J.A.C. 16:50-4), each affected employer shall submit a completed standard registration form to the Department. Notwithstanding that an employer may not have been mailed or received the notice or form, an affected employer shall in any event complete the required registration form, copies of which may be obtained upon request from the Department of Transportation, [Bureau of] Employer Trip Reduction **Program**, and submit the completed form to the Department by the deadline specified in the published notice.

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(b) Each employer that receives a notification packet shall respond even if the employer believes it is not subject to this rule. An employer that does not meet the definition of affected employer **or that meets a test for exempted employer described in N.J.A.C. 16:50-13** shall not be required to submit the standard registration form, but shall submit an ETRP return [card] **form** for non-affected employers, included in the notification packet, indicating the reason for non-applicability. The Department may request the employer to submit additional documentation to verify the employer's non-affected status.

(c) (No change.)

(d) An affected employer that moves its work location **within the State** after registering with the Department must submit a new registration form within 60 days of the date of the relocation.

(e) An employer with one or more non-affected work locations in affected areas of New Jersey that voluntarily chooses to register such locations with the Department may do so at any time.

16:50-5.2 Completion and submittal of registration form

(a) Each affected employer shall complete a standard registration form for each affected location in New Jersey. The form must be signed by the highest ranking responsible officer at the location who shall attest to the accuracy of the information reported. An affected employer shall provide the following information on the form:

1.-3. (No change.)

4. The total number of employees [at] **primarily assigned to** the location and the number [assigned] **scheduled** to report to the work location during the peak period;

5.-6. (No change.)

(b) An affected employer with more than one location in New Jersey shall complete a separate registration form for each affected location, but individual registration forms may be submitted together. [An affected employer may designate a single contact person to receive APO survey and compliance plan forms for all affected locations.]

(c) An employer that chooses to register one or more non-affected locations in the ETR Program shall complete a standard registration form for each such location. An employer with more than one non-affected location in New Jersey must complete a separate registration form for each non-affected location the employer chooses to register, but individual registration forms may be submitted together.

(d) An affected employer may designate a single contact person to receive APO survey and compliance plan forms for all affected and registered non-affected locations.

16:50-6.1 Designation of ETRP performance measure

The Department has established average passenger occupancy (APO) at a[n affected] work location as the performance measure against which an **affected** employer's compliance with the State's ETR program will be measured. APO is a measure of the average occupancy of passenger vehicles arriving at a single [affected] location, and is equal to the number of employees arriving at the location during the peak period divided by the number of passenger vehicles in which the employees arrive at the same location during the peak period.

16:50-6.6 Deadline for compliance with the target APO

Not later than November 15, 1996, each affected employer is required to increase the APO at the employer's affected work locations during the peak period to the target APO of the target area in which the employer is located. An employer that has achieved the target APO is required to maintain the location APO at a level at least as high as the target APO, but is not required to increase its APO beyond the target APO. Each affected employer shall document achievement of the target APO at each affected location through the APO survey, described in N.J.A.C. 16:50-7, and report the location's compliance with the target APO to the Department [in the Update Plan], in accordance with N.J.A.C. 16:50-8.

16:50-7.1 Requirement to survey

For the purpose of documenting the work location APO, each affected **and registered non-affected** employer shall conduct APO surveys of the commute patterns of the employees who are scheduled to report to its affected **and registered non-affected** locations during the peak period. APO surveys shall be conducted [no earlier than December 6, 1993 and] in each year that the employer is required to make a submission to the Department, **but in no case earlier than December 6, 1993.** An **affected or registered non-affected** employer that has not demonstrated achievement of the target APO by November 15, 1996 shall additionally conduct an APO survey in 1997 as specified in N.J.A.C. 16:50-7.3(a). An [affected] employer with more than one **affected or registered non-affected** location in the State shall conduct a survey at each [affected] **such** location.

16:50-7.2 Notice of requirement to survey

The Department shall, within 180 days of receiving completed registration forms from affected employers, but not later than May 1, 1994, notify each affected **and registered non-affected** employer of the requirement to conduct an APO survey and to develop and implement a compliance plan in accordance with the requirements of N.J.A.C. 16:50-8. **In subsequent years that employers are required to make a submittal to the Department, the Department shall notify each affected and registered non-affected employer of the requirements by January 1 of that year.** The notice shall include copies of the required APO survey and compliance plan forms.

16:50-7.3 Survey procedure

(a) [An] **Each** affected **and registered non-affected** employer shall conduct [an] APO surveys of all employees assigned to report to [the] **its** affected **and registered non-affected** work locations during the peak period, except as provided in (a)4 below, using the following procedure:

1. (No change.)

2. Employers shall choose a typical week in which to conduct the APO survey. A week shall not be considered typical if it:

i. (No change.)

[ii. Immediately follows a week in which a holiday was observed on Friday or precedes a week in which a holiday will be observed on Monday;]

Recodify existing iii.-v. as **ii.-iv.** (No change in text.)

3. APO surveys conducted for subsequent plan submittals (1996, 1997 and after, if required) shall be conducted [within one month of the anniversary date of the previous survey, but] no earlier than January of the submittal year.

4. [An] **Each** affected **and registered non-affected** employer shall survey all affected employees scheduled to report to [the] **its** affected **and registered non-affected** locations during the peak period in the survey week, except that an employer with 1,000 or more employees arriving at a single location during the peak period may survey a random sample of those employees. Employers desiring to conduct a random sample survey shall submit to the Department, [Bureau of] Employer Trip Reduction **Program**, a sampling methodology that is recognized as statistically valid with a 95 percent confidence level, and documentation that the person or persons conducting the survey have the qualifications to ensure the survey will be conducted in a statistically valid manner. The Department shall grant or deny approval for the random survey within 30 days of receipt of the methodology. Employers utilizing random sampling surveys shall be subject to the **same** requirements for document recordkeeping (N.J.A.C. 16:50-8.10) and work location audits (N.J.A.C. 16:50-11.1) as employers using the standard survey procedures.

5. An [affected] employer may use its own staff to conduct the APO survey or arrange with a market research or transportation consultant, local government, TMA, or other entity outside the employer to conduct the survey.

16:50-7.4 Reporting of survey results

[An] **Each** affected **and registered non-affected** employer shall tabulate the APO survey results and report the results to the Department on a standard form to be provided by the Department [no later than May 1, 1994]. [An] **The** employer shall submit the APO survey results as a component of the compliance plan in accordance with N.J.A.C. 16:50-8. In years in which the employer is required

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to document its work location APO to the Department but is not required to submit a plan, survey results shall be submitted alone as an APO survey report.

16:50-7.5 Calculating work location APO

(a) [An] **Each** affected **and registered non-affected** employer shall demonstrate its compliance with the ETRP by documenting achievement of the target APO as described in N.J.A.C. 16:50-6. The Department shall measure each [affected] **such** employer's performance, as documented by the work location APO, against the target APO.

1. An employer shall calculate the APO for its work location from the results of the APO survey as follows:

$$\text{Work Location APO} = \frac{\text{Number of Employees Arriving}}{\text{Number of Vehicles Arriving}} \quad \text{where:}$$

Employees Arriving is: total number of employees scheduled to report [at] **to** the location between [6:00] **6:30** A.M. and [10:00] **9:30** A.M., Monday through Friday of the survey week, and

Vehicles Arriving is: total number of passenger vehicles in which these employees arrive at the location between [6:00] **6:30** A.M. and [10:00] **9:30** A.M., Monday through Friday of the survey week.

To illustrate the calculation of APO, the following example is provided:

	Mon.	Tues.	Wed.	Thurs.	Fri.	Total Week
No. Employees	200	200	200	200	200	1,000
No. Vehicles	165	170	180	175	170	860

$$\text{Work Location APO} = \frac{\text{1,000 Employees Arriving}}{\text{860 Vehicles Arriving}} = 1.16$$

2. Calculation of [affected location] APO shall count employees scheduled to report at the location during the peak periods, Monday through Friday of the survey week as follows:

i. Each employee that is scheduled to report [at] **to** the location during the peak period shall be counted as one employee arriving for each of the days Monday through Friday of the survey week that the employee reports to the location, regardless of the actual arrival time or length of time the employee remains at the location. An employee that is scheduled to report between [6:00] **6:30** A.M. and [10:00] **9:30** A.M., but that actually arrives at the [primarily affected] work location prior to [6:00] **6:30** A.M. or after [10:00] **9:30** A.M. shall be counted as arriving at the scheduled to report time.

ii.-iii. (No change.)

iv. An employee that is scheduled to report to the [affected] **primarily assigned** work location but that does not report at all shall not be counted for the day that he or she does not report to the [affected] work location.

v. An employee that is scheduled to report [at] **to** the [affected] work location during the peak period and then remains on-site or at work for more than 24 continuous hours shall be counted as arriving each consecutive day [they] **he or she remains** [remain] on-site or at work.

vi. Beginning in 1995 and in any subsequent year, each employee [whose] **that was** scheduled to report [time was in] **during** the peak period [in 1994] **in the survey week documented in the approved 1994 plan** and [has now been] **whose scheduled to report time was subsequently,** purposefully changed to a time outside of the peak period, other than [those] **changes** caused **by** regularly scheduled shift work changes [and that was scheduled to report during the peak period during the survey week documented in the approved 1994 plan], shall be counted as one employee scheduled to report for each survey day the employee arrives at the work location.

vii. An employee who transports a dependent for at least 50 percent of the total one way commute or two miles, whichever is less, to a care facility shall be counted as arriving in a carpool or vanpool. For the calculation of APO, each dependent shall be counted as a carpool or vanpool occupants, as appropriate.

3. For calculation of APO, the count of vehicles arriving shall include:

i. Passenger cars and trucks, with fewer than seven [employees] **occupants**; and

ii. (No change.)

4. The following shall be counted as zero vehicles arriving:

i. Vanpools with seven or more [employees] **occupants**;

ii.-iv. (No change.)

5. An employee that works a compressed work week or teleworks shall be counted as arriving at the work location in a zero vehicle on the day he or she does not report to the [affected] work location.

6. An employee that is scheduled to report [at] **to** the [affected] work location during the peak period and then remains on-site or at work for more than 24 continuous hours shall be counted as arriving in the commute mode in which [they] **he or she** arrived the first day and then in a zero vehicle for each consecutive day [they] **he or she remains** [remain] on-site or at work.

7. Beginning in 1995 and in any subsequent year, each employee that was scheduled to report during the peak period [in 1994] **in the survey week documented in the approved 1994 plan** and whose scheduled to report time [gets] **was subsequently, purposefully** changed to a time outside of the peak period, other than [those] **changes** caused by regularly scheduled shift work changes [and that was scheduled to report during the peak period in the survey week documented in the approved 1994 plan], shall be counted as one employee arriving in a zero vehicle for each survey day the employee arrives at the [affected] work location at a time other than the peak period.

8. An employee that is dropped off at the [affected] work location by another employee or employees commuting to their work location or locations shall be counted as arriving in a share of a vehicle proportional to the number of occupants in the vehicle, even if the other employees do not work for an affected employer.

9.-10. (No change.)

11. An [affected] employer shall not count employees who have disabilities which require the use of a single-occupant vehicle for communting in the APO calculation. The vehicles of such employees shall not be counted in the APO calculation.

12. (No change.)

13. A dual fuel vehicle used for commuting shall be counted as a zero vehicle on the days it arrives at the work location, regardless of whether it was powered by gasoline or the alternative fuel for that commuting day.

16:50-8.1 Requirements

Each affected **and registered non-affected** employer shall prepare and implement compliance plans and/**or** shall prepare APO reports in accordance with the procedures and schedules established in this subchapter.

16:50-8.2 Plan and report submittal schedule

(a) Each affected employer shall submit compliance plans and APO reports, as described in N.J.A.C. 16:50-8.4 and 8.5, respectively, to the Department of Transportation, [Bureau of] Employer Trip Reduction **Program**, ATTENTION: [Compliance] **Employer Assistance** Unit, 1035 Parkway Avenue, Trenton, NJ, 08625 in accordance with the following schedule:

1. Not later than November 15, 1994, each affected employer shall prepare and submit to the Department an initial compliance plan for each of its affected work locations. [An employer] **Work locations** that [becomes an] **become** affected [employer] **work locations,** [or an affected employer with a non-affected work location] that becomes affected after May 1, 1994 shall be **considered newly affected work locations and** given a minimum of 180 days from the date [it registers] **they register** with the Department, as required by N.J.A.C. 16:50-6, to prepare and submit [an] initial compliance plans. [This employer] **These work locations** further shall not be required to demonstrate achievement of the target APO in effect on the date of the initial submittal for the newly affected work location until two years following submittal of the initial plan.

2. Not later than November 15, 1996, each affected [employer] **work location** that has achieved the required APO target shall prepare and submit to the Department a maintenance plan for each [affected] **such** work location as described in N.J.A.C. 16:50-8.4(c).

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3. Not later than November 15, 1996, each affected [employer] **work location** that has not achieved the required APO target shall prepare and submit to the Department an update plan as for each [affected] **such** work location as described in N.J.A.C. 16:50-8.4(c).

4. After November 15, 1996, each **affected work location** [employer] shall maintain the target APO for the employer's target area. [Maintenance plans demonstrating achievement and maintenance of the target APO] **Subsequent compliance plans** shall be required if mandated by the Federal Environmental Protection Agency (EPA), [or] if required by the New Jersey Department of Environmental Protection [and Energy] to comply with EPA's mandated State Implementation Plan requirements, or if an **affected work location** [employer] is not in compliance with the required target APO.

5. Not later than November 15, 1997, each [affected] employer whose 1996 APO survey showed it did not meet the target APO for an affected work location shall prepare and submit to the Department an APO Survey Report for each such work location documenting the results of a 1997 survey.

6. An affected employer that moves its work location within the State, desires to modify the elements of its compliance plan, or experiences a change in its work location operations that could reasonably be expected to affect the appropriateness or effectiveness of an approved compliance plan, shall submit a revised plan within 90 days of the change. A revised compliance plan must be reviewed by a certifier prior to submittal to the Department when the revision is necessitated by a relocation of the [affected] work location. Other compliance plans revised for other minor corrections may be submitted directly to the Department for review and approval.

(b) Registered non-affected work locations shall submit an initial APO Survey Report to the Department within 180 days of registering with the Department. The initial APO Survey Report shall represent only the APO for the individual registered non-affected work location.

(c) Registered non-affected work location shall submit subsequent APO Survey Reports to the Department not more than two years after the initial report was submitted or in conjunction with the submittal of an affected work location's update or maintenance plan.

16:50-8.3 Plan filing fees

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

(e) Registered non-affected employer shall be exempt from the payment of filing fees.

16:50-8.4 Components of a standard compliance plan

(a) [An a] Affected employers shall prepare [the] compliance plans using a standard compliance plan form developed by the Department. The plan will include all information required by the standard plan form, including the following:

1. The name of the affected employer, address of the **affected** work location, and name, title, and telephone number of the Employee Transportation Coordinator (ETC) at the work location appointed by the employer.

2. The [tabulated] results of the current APO survey and any previously required APO surveys and a description of the procedure used to conduct the APO survey;

3.-6. (No change.)

7. A description of the actual and projected costs to develop, implement, and monitor the ECO program.

(b) Each affected employer shall provide information included in (a)1 through 6 above in the initial plan to establish a baseline against which future years' **plans** can be compared.

(c) Beginning with the 1996 update plan and for any subsequent update plan, [an affected] **each** employer **with an affected work location** that has not achieved the target APO also shall provide the following information:

1.-3. (No change.)

(d) (No change.)

(e) Each registered non-affected work location shall prepare APO Survey Reports using a standard form developed by the Department. The report will include all information required by the standard form, including:

1. The name of the employer, address of the registered non-affected work location, and name, title, and telephone number of the employer's contact at that work location; and

2. The results of the current APO survey and a description of the procedure used to conduct the APO survey.

16:50-8.5 Required components of compliance plan submittals

(a) (No change.)

(b) A complete APO Survey Report submitted by a registered non-affected work location shall consist of the following elements:

1. The report elements described in N.J.A.C. 16:50-8.4(e)1 and 2;

2. A letter signed by the highest ranking responsible officer at the work location or report preparer, if different from the employer, who shall attest to the correctness of the information included in the report; and

3. APO Survey Reports submitted by registered non-affected work locations are not required to be reviewed and certified by Department approved compliance plan certifiers.

16:50-8.6 Required components of APO survey reports **submitted by affected work locations**

(a) A complete APO survey report submittal [will] **from an affected work location shall** consist of the following elements:

1.-3. (No change.)

16:50-8.7 Consolidated plans and averaging APO reports

(a) Beginning in 1996 and in any future year for which an affected employer is required to submit an update plan or APO survey report, [an affected] **such** employers may submit a consolidated plan or report, as defined in N.J.A.C. 16:50-2, subject to the following provisions:

1. An employer with more than one affected **or registered non-affected** location or two or more separate affected **or registered non-affected** employers may submit a consolidated plan or report for any or all of the affected **or registered non-affected** locations, provided that collectively the [affected] **participating** work locations reach the appropriate average target APO.

2. Employers submitting consolidated plans or APO Survey reports for [affected] work locations located within a single APO target area shall average the APOs for all of the work locations participating in the consolidated plan. The average APO shall be calculated as the total number of employees scheduled to report at all participating locations during the peak period of the survey week, divided by the total number of vehicles in which those employees arrive.

3. Employers submitting consolidated plans or APO survey reports for two or more work locations located in different APO target areas shall determine the averaged target APO for the participating work locations. This shall be done by first determining the theoretical maximum vehicles allowed for the individual participating work locations, as if the individual work location were to come into compliance itself. This shall be calculated as:

$$\text{Maximum vehicles allowed (at each work location)} = \frac{\text{Affected employees at each location}}{\text{APO Target at each location}}$$

	Employer "A"	Employer "B"
Affected Employees	1,000	500
Individual APO Target	1.40	1.97
Maximum Vehicles Allowed	714	254

The Averaged "Target" APO shall be calculated as:

$$\text{Averaged Target APO} = \frac{\text{Sum of Affected Employees}}{\text{Sum of Maximum Vehicles Allowed}} \quad \text{Where:}$$

Employees are: Total number of employees scheduled to report at a participating location during the peak period of the survey week; and

Maximum Vehicles are: The maximum number of passenger vehicles that could arrive at the affected work location and still

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have the individual work location meet its APO target. Using the employer examples shown above, the Averaged APO Target would be calculated as:

$$\text{Averaged APO Target} \quad \frac{1{,}000 \text{ employees} + 500 \text{ employees}}{714 \text{ vehicles} + 254 \text{ vehicles}}$$

Averaged APO Target = 1.54

Both the number of affected employees and the maximum number of vehicles allowed at each participating location shall be determined for each location. Each participating [affected] work location shall be assigned the averaged APO target as the APO target for each individual location. To determine compliance, the actual average APO shall be calculated as the sum of employees scheduled to report at each work location divided by the sum of the actual number of arriving vehicles at each location.

4. An employer that submits a consolidated plan for multiple affected **and/or registered non-affected** work locations and averages its APO shall prepare a consolidated maintenance plan.

5. Multiple employers participating in a consolidated plan shall individually prepare plan sections for each participating [affected] work location, accompanied by a jointly-prepared APO survey report, signed by the highest ranking responsible officer for each employer participating in the plan. The APO calculation shall present the results of the APO calculation as though the participating locations were one employer or one location.

16:50-8.9 Requirement for an ETC

(a) [An] **Each** affected employer shall designate an employee transportation coordinator (ETC) at each **affected** work location [with 100 or more employees] to administer the ECO program at that work location.

(b) An affected employer is not required to send its designated ETC to training. However, the Department shall provide affected employers with a list of Department approved ETC trainers and Training courses.

(c) The Department shall issue a request for qualifications (RFO) for ETC Trainers and select candidates from among trainer applicants. To be considered for selection as a candidate trainer, applicants must have two years experience in the direct conduct of adult education classes or courses, or may substitute a bachelor's degree in education for experience in the conduct of adult education courses and in addition must also have at least two years of education or experience in the field of transportation demand management, transportation planning or closely related field.

(d) To be approved as ETC Trainers, candidates must attend and complete a training course developed and sponsored by the Department, and must pass a proficiency examination at the completion of the course. ETC Trainer candidates who successfully complete the Department sponsored training course, will be required to sign a Memorandum of Understanding with the Department agreeing to provide ETC Training with the course content and materials provided for and required by the Department, and to provide the Department with appropriate documentation of ETC Training conducted by the ETC Trainer and other reports as requested by the Department. Additionally, all ETC course materials shall be reviewed and approved by the Department. Participation in the Department provided ETC Trainer training course may be at the expense of the candidate trainer. The Department may require candidate trainers to pay for Department provided training in the event that there is not sufficient funding allocated to the Employer Trip Reduction Program, either by the State legislature or through the authorization of Federal highway funds.

(e) Department approval shall be conferred on individuals only, not the company or organization by whom they are employed. The Department shall approve ETC Trainers for one-year renewable periods. The Department may deny or may revoke the ETC Trainer's approval if the Department receives multiple complaints from employers regarding the ETC Trainer's conduct of training courses or fees, or if a Department audit of such training courses provided by the ETC Trainer indicates that such courses are not being conducted as approved by the Department. The ETC Trainer may appeal revocation of approval in the same manner as provided for certifiers in N.J.A.C. 16:50-14.

(f) Notwithstanding any other provision of this chapter, there is no prohibition against an ETC Trainer charging a fee for ETC Training.

16:50-8.10 Document recordkeeping

(a) [An] **Each** affected employer shall maintain copies of all documents prepared or used in the document preparation by the employer or by other entities acting on behalf of the employer in accordance with these rules. These documents shall include, but not be limited to, documents related to:

1.-4. (No change.)

5. Program monitoring and evaluation; [and]

6. Development of the affected employer's ECO Program, including survey forms and results, policies and procedures related to the ECO Program, etc. Such documentation need not include draft writings or preliminary policies and procedures developed by the affected employer[.]; **and**

7. Costs and expenses relative to the development, implementation and monitoring of the ECO Program.

(b) (No change.)

(c) Each registered non-affected work location shall maintain copies of all documents prepared or used in document preparation by the employer or by other entities acting on behalf of the employer in accordance with these rules. These documents shall include, but may not be limited to, documents related to:

1. Conduct of the APO survey;

2. Calculation of work location APO; and

3. Preparation of reports.

16:50-9.1 Selection and approval of certifiers

(a) Prior to submittal to the Department, **initial** compliance plans shall be certified as to accuracy and efficacy by a person approved by the Department as qualified to so certify plans. Notwithstanding this provision, an employer that submits a revised plan in accordance with N.J.A.C. 16:50-8 shall not be required to have the plan certified prior to its submittal to the Department. Certification shall be conducted in accordance with the following procedure:

1.-5. (No change.)

16:50-9.2 Certification procedures

(a) The following procedure shall govern plan certification:

1.-3. (No change.)

4. It is the responsibility of [an] **each** affected employer to allow adequate time for certification. Failure of the certifier to certify the employer's plan in time to allow submittal of the plan to the Department prior to the deadline shall not excuse the employer from this obligation. Notwithstanding this provision, however, an employer that submits a certifiable plan to a certifier at least 90 days prior to the plan submittal deadline shall not be considered in violation of the plan submittal deadline until 60 days after the scheduled submittal date to the Department.

16:50-9.3 Plan certification criteria

(a) In assessing whether [a] **an initial** compliance plan can be certified, a certifier shall consider the following criteria:

1.-7. (No change.)

16:50-10.1 Plan review schedule

Within 180 days of receipt of a plan the Department shall review the plan for completeness and consistency with the provisions of this chapter and shall return an incomplete and inconsistent plan to the employer for revisions. If a plan is returned to the employer, concurrently, the Department shall notify the appropriate certifier that the plan was returned and the reason(s) it was returned. An employer whose plan is returned shall have 60 days from the date of return to revise and resubmit the plan to the Department. The employer shall not be required to have the plan recertified prior to resubmittal to the Department if the revised plan is not precipitated by a relocation of the [affected] work location. A plan not returned to the employer by the Department within 180 days of submittal shall be considered approved by the Department.

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16:50-10.3 Additional review by Department of sample of plans

The Department shall select a portion of the [affected employers' ECO programs] **compliance plans** reviewed and certified by each certifier for review [and audit], in accordance with the criteria presented in N.J.A.C. 16:50-9 for plan review and certification.

SUBCHAPTER 11. [(RESERVED)] **DISCLOSURE OF INFORMATION**

16:50-11.1 Administration of the Employer Trip Reduction Program

No disclosure of information obtained from and identifiable to specific employers in the course of administering the requirements of the Employer Trip Reduction Program shall be made directly or indirectly, except as authorized by the Commissioner or his or her representative in accordance with this subchapter.

16:50-11.2 Authorized disclosure of information

(a) Disclosure of any information in the course of administering the ETR Program may be authorized in the following cases for the following purposes:

1. To the Department of Treasury, Division of Taxation, for the purposes of verifying eligible expenses and deductions claimed for State income tax purposes;

2. To any properly identified employee or duly authorized representative of an affected employer required to file a compliance plan, APO Survey Report or other information in accordance with this subchapter;

i. Requests for employer information received directly from an employee or duly authorized representative, in writing, will be honored once the identity of the requestor has been verified. Only information related to the employee's employer shall be released. Persons requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained;

ii. Telephone or informal requests are not to be honored;

iii. Written requests from an attorney or other individual who states that he or she is the employer's representative are not to be honored unless the employer provides the Department with a signed and dated authorization for the release of the specified information. Persons requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained;

3. To officers or employees of any agency of the Federal government or New Jersey State government which is lawfully charged with the administration, monitoring or enforcement of an employer trip reduction or employee commute option program. Persons or agencies requesting information must do so in writing indicating the intended use of the information, that the information will be used for the intended purpose only and must also certify in writing that the confidentiality of the disclosed information will be maintained;

4. To other interested parties only to the extent and for such purposes that such disclosure will not impede the operation of, and is not inconsistent with, the purposes of the New Jersey Traffic Congestion and Air Pollution Control Act and this subchapter, and as may be expressly authorized by the Commissioner of Transportation. Such persons or agencies requesting information must do so in writing and must also certify in writing that the confidentiality of the disclosed information will be maintained;

5. To employees, employers, the press or media, and the public, disclosure of the number of affected employers by geographic location, as well as the aggregate percentage of employees by mode, and current aggregate APO of affected employers. Such release shall not include numbers of employees, trip reduction strategies, and the incentives identifiable to individual employers. Aggregate data which is not identifiable to individual employers may be released to anyone upon written request to the Department;

6. Mailing lists developed by the Department, which identify only the name and address of affected employers, shall be released to any interested party. Persons or agencies requesting information must do so in writing indicating the intended use of the list and the medium in which the mailing list is requested. Fees for mailing lists shall be determined by the medium in which it is requested, and the agency cost for duplication;

7. Information related to violations or penalties shall not be considered confidential and may be released upon request;

8. Any citizen or agency requesting information provided for in this subchapter shall refer to N.J.A.C. 16:1-2.2(f) and (g) regarding the sale of public records and costs associated with duplication of such records.

16:50-12.1 Work location audits

To verify implementation of work location programs, the Department shall have the authority to conduct or cause to be conducted audits of an employer's affected location. The Department shall notify an employer **with a work location** selected for an audit not less than 24 hours in advance of the audit. The employer shall provide the Department access to all records pertaining to the development, implementation, and administration of the ECO program described in the employer's plan, and access to employees at the location.

16:50-12.2 [Noncompliance] **Notice of noncompliance**

(a) An affected **or registered non-affected** employer shall be considered in noncompliance [and subject to civil administrative penalties] for violations of any provisions of this chapter. **An affected employer shall be subject to civil administrative penalties for violations of this chapter. Registered non-affected employers shall lose their designation and shall not be eligible to participate in consolidated plans or APO averaging for violations of this chapter.**

(b) Upon determining that a violation has occurred, the Department shall **have the authority to** issue the affected employer a notice of noncompliance that shall describe the violation, the actions required to correct the violation, the deadline by which the violation shall be corrected, and the penalty that shall be assessed for continued noncompliance. If the affected employer has not corrected the violation by the deadline specified in the notice of noncompliance, the Department shall have the authority to assess penalties in accordance with N.J.A.C. 16:50-12.3.

(c) Upon determining that a violation has occurred, the Department shall have the authority to issue the registered non-affected employer a notice of noncompliance that shall describe the violation, the actions required to correct the violation, the deadline by which the violation shall be corrected, and the consequences for continued noncompliance. If the non-affected employer has not corrected the violation by the deadline specified in the notice of noncompliance, the non-affected employer shall lose its designation and shall not be eligible to participate in consolidated plans or APO averaging.

16:50-12.3 Penalties for noncompliance

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

(c) An employer **with an affected location** that fails to meet the target APO in 1996, but whose 1996 update plan is approved by the Department, shall not be subject to the $5,000 penalty for failure to meet the target APO until one year after the date by which the update plan is required to be filed. An employer **with an affected location** that fails to meet the target APO in 1996 and who fails to submit an update plan or submits an update plan the Department does not approve, shall be subject to the penalty for failure to reach the target APO in accordance with the provisions of (b) above.

[(d) The Commissioner may assess the above mentioned penalties at his/her discretion, taking into account the nature, seriousness, and circumstances of the violation, whether there is a pattern of noncompliance, and the good faith efforts that are being made by the employer to achieve compliance.]

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

(e) A registered non-affected employer found to be in noncompliance shall not be subject to civil administrative penalties, but shall forfeit its designation as a registered non-affected employer.

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16:50-12.4 Noncompliance authority

The Commissioner has the authority, at his or her discretion, to determine if a violation has occurred and the amount of the penalties assessed, if any, not to exceed the maximum amount allowed by law, taking into account the nature, seriousness, and circumstances of the violation, whether there is a pattern of non-compliance, and the good faith efforts that are being made by the employer to achieve compliance.

16:50-13.1 Deadline extensions

An employer that, for reasons beyond its control, is unable to meet a deadline established in this chapter may petition the Department for an extension of the deadline. All requests shall be submitted in writing, **be** [and] signed by **either** the highest ranking responsible officer at the site **or the Chief Executive Officer of the employer, and include a complete explanation of the circumstances precipitating the request. This explanation should include, but not be limited to, the reasons for the delay, a proposed new commitment date for plan submittal, and the good faith efforts that the employer is undertaking.** A request for an extension of [the] **any** deadline [to register as an affected employer] shall be submitted [not less than 30 days] in advance of the deadline [for registration. A request for extension of the deadline to submit a compliance plan or report shall be submitted not less than 90 days in advance of the deadline]. **Notwithstanding the date of the request, the** [The] Department shall have [15] **30** days from receipt of [the] **a complete** request to rule on extensions of scheduled deadlines. Extensions may be considered for hardship circumstances or other unusual circumstances that may make it impossible to meet the deadlines established in this chapter.

16:50-13.2 Exemptions

(a) An employer **with a work location** that meets any of the criteria described in (a)1, **2, or 3** [and 2] below may apply to the Department for an exemption **for that work location** from the requirements of this chapter. Requests for exemptions shall be made in writing and shall be signed by the highest ranking responsible officer at the work location **or the Chief Executive Officer of the employer**.

1. An employer that employs 100 or more employees at a single work location, but that [has] **can document that** fewer than 33 employees **averaged over the immediately preceding 12 month period** [arriving] **arrive** during the peak period; or

2. An affected work location which changes status due to a decrease in employment and that can document that it now employs an average of less than 100 employees for the immediately preceding 12 month period[.]**; or**

3. An employer with a registered non-affected location that chooses to remove the location from the ETR Program.

16:50-13.3 Waivers

(a) Each affected employer is required to comply with all provisions of this chapter, including the requirement to achieve the target APO as specified in N.J.A.C. 16:50-4. However, an affected employer that would suffer extreme financial hardship may petition the Department for a "hardship" waiver. An employer seeking a hardship waiver must demonstrate, on the basis of evidence submitted to the Department, that the costs of compliance would substantially impair its ability to continue as a going concern. The Department may adjust the terms and conditions of the waiver, and will outline the specific non-financial strategies that an employer will be required to implement, if any. Hardship waivers shall not remove the requirement to achieve the APO target. Hardship waivers may be applied for [upon notification of intent to impose penalties for non-compliance and] in the manner [further provided for "good faith effort" waivers established in] **described in** this subchapter. An affected employer for which a hardship waiver is approved shall not be assessed a penalty for non-compliance.

(b) An affected employer that has implemented an approved plan in "good faith," as defined in N.J.A.C. 16:50-13.5, but that has not achieved the target APO by November 1997, may petition the Department for a "good faith" waiver of the penalty for failure to achieve the target as follows:

1. (No change.)

[2.](c) The Department shall [grant or deny] **act on** a request for [a] **any** waiver within 120 days of receipt of such a request. If the **request cannot be resolved favorably within that period.** [employer so chooses, prior to the decision on the request,] the Department shall forward the request to [a] **the** ETRP Review Board for its consideration.

(d) The ETRP Review Board[, consisting] **shall consist** of [11] **five** members, [the membership of] which shall include [one representative each from the Departments of Transportation, Environmental Protection and Energy, and Labor, New Jersey Transit Corporation]; **the Executive Director of the State Planning Commission or his or her designee;** one independent certifier**; three certifiers shall be selected and serve on a rotating basis**; one representative from an environmental interest group; [and one citizen;] and [four] **two** affected employers, [two each] **one** from an affected employer having between 100 and 500 employees, **two such employer representatives shall be selected, with one serving as the primary representative and one serving as an alternate;** and [an employer] **one** affected employer having more than 500 employees, **two such employer representatives shall be selected, with one serving as the primary representative and one serving as an alternate. All representatives shall be** selected [and trained] by the [Department, shall] **Commissioner. The ETRP Review Board shall** review employer[s'] requests [for waivers] **as a group, with all meetings requiring a quorum of three** and make a recommendation **based on a majority of those present** on **the** disposition of the request to the Assistant Commissioner **for Planning. The Executive Director of the State Planning Commission or his or her designee shall serve as the chairperson of the ETRP Review Board.** Each representative to the ETRP Review Board shall be responsible for identifying any conflicts of interest which may arise in the review of requests and shall remove themselves from such review while such conflict or appearance of conflicts exists. **In instances when a conflict of interest is identified, the designated alternate shall participate in the review of the request, unless they also identify a conflict of interest.**

(e) Any interested party may submit nominations for the certifier representative. Environmental interest groups may submit nominations of individuals that would serve as their representative to the ETRP Review Board. Any affected employer may nominate representatives from the two categories of employer. The members of the ETRP Review Board shall serve one year terms on the Board, except for the Executive Director of the State Planning Commission, who shall serve for the duration of his or her appointment as Executive Director. All terms shall be served on a calendar year basis, January through December. Persons interested in nominating representatives to the ETRP Review Board should submit their nominations in writing to: W. Dennis Keck, Acting Assistant Commissioner for Planning, New Jersey Department of Transportation, CN 600, Trenton, NJ 08625-0600. Nominations must be submitted by June 1 of each year for the next year's term.

[3.]**(f)** (No change in text.)

16:50-13.4 [Application fees for extensions, exemptions and waivers] **(Reserved)**

[All requests for extensions, exemptions, and waivers shall be accompanied by an application of $250.00 per request. If the request is granted, the application fee shall be refunded.]

16:50-13.5 Definition of "Good Faith Effort"

(a) [An] **Each** affected employer shall develop and implement an ECO Program in good faith at each affected location. In determining an employer's good faith, the Department shall first consider whether the employer implemented an approved plan in accordance with an approved implementation plan, but may consider any or all of the following additional criteria:

1.-8. (No change.)

16:50-13.6 Scope of waivers

All waiver requests shall be made based on work location [and all fees shall be applied per work location].

16:50-14.1 Requirements

(a) (No change.)

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(b) A certifier whose approval to certify is revoked shall have the opportunity to appeal such revocation in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA), N.J.S.A. 52:14B-1 et seq. **An ETC Trainer whose designation as a Department approved trainer is revoked shall have the opportunity to appeal such revocation in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA), N.J.S.A. 52:14B-1 et seq.** An appeal shall be submitted to the Department in writing not later than 30 days after receipt of notification of the revocation.

(c) The Department shall, if desired by the employer, **the ETC Trainer,** or the certifier, submit the request for appeal to the ETRP Review Board prior to its disposition through the procedures of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq, and N.J.A.C. 1:1. An employer, **ETC Trainer,** or certifier is not required to utilize the Review Board, and may choose to appeal directly to the Commissioner through the provisions of the Administrative Procedures Act. The ETRP Review Board, described in N.J.A.C. 16:50-13, shall make a recommendation to the Assistant Commissioner[, Policy and] **for** Planning, of the Department, who shall rule on the request for appeal. If the ruling is not satisfactory to the employer, **ETC Trainer,** or the certifier, the employer, **the ETC Trainer,** or the certifier may appeal the ruling of the Assistant Commissioner to the Commissioner as provided for N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Manufacturing Equipment and Employment Investment Tax Credit

Proposed New Rule: N.J.A.C. 18:7-3.21

Authorized By: Richard D. Gardiner, Director, Division of Taxation.

Authority: P.L.1993, c.171, section 8 and N.J.S.A. 54:10A-27.

Proposal Number: PRN 1995-130.

Submit comments by April 5, 1995 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

P.L. 1993, c.171, approved July 7, 1993 and codified at N.J.S.A. 54:10A-5.16 through 5.21, the Manufacturing Equipment and Employment Investment Tax Credit Act, provides a corporation business tax credit for businesses which invest in qualified manufacturing equipment in tax years beginning on and after January 1, 1994. The purpose of the credit is to encourage investment in certain manufacturing equipment in New Jersey, and to provide an incentive to increase employment of New Jersey residents at locations in New Jersey. Such investment has the benefit of allowing a tax credit computation for the tax year in which the equipment investment was made, as well as for each of the following two tax years.

There are two distinct parts to the credit—the manufacturing equipment portion and the employment investment portion. The manufacturing equipment portion is computed when a taxpayer invests in qualified manufacturing equipment in its tax year beginning on or after January 1, 1994. The equipment investment alone will provide the taxpayer with a manufacturing equipment credit based on the cost of the qualified manufacturing equipment placed in service in New Jersey during that tax year.

The employment investment portion of the credit is computed for each of the two tax years following the year a credit is allowed for equipment investment. It is based on the increase in employment of employees domiciled in New Jersey, subject to a limitation based on the cost of the equipment investment.

Each yearly qualified investment has the potential to provide the taxpayer with applicable credits over a three-year period.

The purpose of the proposed new rule, including definitions of terms and a detailed example, is to supply guidance to taxpayers. Without a rule, there is a possibility of uneven application of the statute involved. The proposed new rule provides a synthesis, in readily understandable Code form, of the Act's significant provisions.

Social Impact

The social effect of the proposed new rule will be to give additional official guidance to taxpayers who are attempting to claim the benefits of P.L.1993, c.171, which entitles certain corporations to possible tax credits. The credit offers an inducement to corporations in New Jersey to invest in equipment and increase employment in New Jersey. The rule itself is not intended to have a social impact different from the statute, but it is intended to assist taxpayers in better understanding the statute and to enable them to fulfill more easily their tax payment obligations.

Economic Impact

The Division of Taxation, Department of the Treasury, has estimated that approximately $20 million of investment credits will be granted in the first year of the Act's implementation, which will have primary impact on the fiscal year following the fiscal year of implementation. That estimate is based on assumptions about the utilization of the credit and the level of business investment in the State that may be affected in future years by changes in the business environment and the availability of the credit. In years following the first year in which investment credits are granted, further credits are granted with revenue impact that, because the credits depend on the creation of additional jobs in New Jersey, cannot be determined at this time.

The proposed rule is intended to facilitate taxpayers' compliance with their statutory requirements and, hence, lower the resources necessary to be expended by taxpayers in the course of complying with the Corporation Business Tax Act. Other than that effect, the rules are not intended to have an independent economic significance.

The underlying statute imposes significant administrative duties and costs upon the Division of Taxation to implement the statutory credit, relating to forms preparation, data collection from tax returns, and report preparation. See N.J.S.A. 54:10A-5.21. No additional revenues were appropriated to the Division to accomplish these tasks.

Executive Order No. 27 Statement

While the statute (The "Manufacturing Equipment and Employment Investment Tax Credit Act," N.J.S.A. 54:10A-5.16 et seq.) refers in a number of sections to the Federal Internal Revenue Code, there are no Federal requirements or standards contained in the rule within the meaning of Executive Order No. 27 requiring an analysis, since the Federal government does not regulate the same area that the Division does in this rule; State and Federal taxation are two separate jurisdictions.

Regulatory Flexibility Statement

The credit in question applies to both large and small taxpayers, and the Division therefore discerns no basis for distinguishing between those two types of entities in the application of the proposed new rule. By its very nature, the new rule does not place an economic burden on the public because taxpayers qualifying for the credit would receive a dollar for dollar decrease in their tax bill as a result of properly claiming the credit. No requirements are imposed by the rule beyond those already imposed by the Act.

Full text of the proposed new rule follows:

18:7-3.21 Manufacturing equipment and employment investment tax credit

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

"Base year" means the tax year immediately preceding the year in which a qualified investment was placed in service.

"Cost of qualified equipment" means, and is determined according to, the following criteria:

1. With respect to self-constructed equipment, the term means the cost amount properly charged to the capital account for deprecia-

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tion in accordance with the Federal income tax law. This includes all charges incurred to produce a particular manufacturing piece of equipment. Costs include engineering designs, drafting, and other consultations required, as well as the physical construction costs associated with the finished product.

2. With respect to purchased equipment, the term is determined to be the net cost or net monetary consideration provided for acquisition of title and/or ownership of the subject property.

3. With respect to equipment acquired by written lease, the term is the minimum amount required by the agreement to be paid over the term of the lease, provided that the minimum amount shall not include any amount required to be paid after the expiration of the useful life of the equipment. Property which a taxpayer leases, rents or licenses to another person is not qualified equipment.

4. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion.

"Credit allowable" means the credit available after applying limitations listed under (b)2i and ii below.

"Credit available" means the credit earned plus any unused carryover from prior years.

"Credit earned" means the manufacturing equipment portion of the credit plus the employment investment portion of the credit in a given tax year.

"Employee equivalents" means the aggregate hours of qualified part-time employees who worked for the taxpayer for at least 20 hours per week for at least six months. This amount is used to determine the total number of full-time employees and equivalents necessary when calculating the employment investment portion of the credit. The employees must be New Jersey residents domiciled in this State who are working at locations in New Jersey.

"Measurement year" means the tax year immediately following the year in which a qualified investment was placed in service.

"Placed in service," with respect to qualified equipment, means and occurs in the earlier of the following tax years:

1. The tax year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Qualified equipment" means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, as defined pursuant to N.J.S.A. 54:32B-8.13a, having a useful life of four or more years, placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use. Lease renewals, subleases, or assignments shall not be considered as qualified equipment. See N.J.A.C. 18:24-4.2.

"Useful life" used to distinguish three-year property from all other property, is determined in accordance with section 168 of the Federal Internal Revenue Code.

(b) A corporate taxpayer that acquires qualified manufacturing equipment either by purchase or lease and/or has an increase in New Jersey employees due to the equipment investment is entitled to a corporation business tax credit.

1. The credit earned is subject to the following limitations:

i. The manufacturing equipment portion is limited to two percent of the cost of qualified equipment placed in service up to a maximum credit for the tax year of $1,000,000.

ii. The employment investment portion is limited to three percent of the cost of qualified equipment, not to exceed a maximum allowed amount of $1,000 multiplied by the increase in the average number of qualified employees and/or employee equivalents. It is valid for each of the two tax years next succeeding the tax year for which the manufacturing equipment portion is allowed.

2. The two portions combined plus any carryover (the credit available as defined herein) is also subject to the following limitations:

i. The amount of the tax credit shall not reduce the tax liability below 50 percent of the tax liability otherwise due for any tax year or below the statutory minimum tax provided at N.J.S.A. 54:10A-5(e).

ii. See N.J.A.C. 18:7-3.20.

(c) If the total credit earned in the current or prior years is unused due to the limitations contained in (b)2i and ii above, the unused portion may be carried over to the seven tax years succeeding the year in which the credit was earned.

(d) The credit assigned to property that has been disposed of, or which ceases to be qualified equipment prior to the end of its categorized useful life, should be redetermined using the ratios specified below:

THREE-YEAR PROPERTY	ALL OTHER PROPERTY
Number of months qualified use	Number of months qualified use
36	60

(e) Property subject to lease agreements shall have a minimum term of four years with a maximum not to exceed 20 years to be considered qualified equipment.

(f) The following example illustrates the application of the credit:

Example:	1993	1994	1995	1996
Cost of qualified equipment placed in service	None	$3,000,000	$5,000,000	$1,000,000
Average employees and/or employee equivalents	125	140	150	160

1994: XYZ Corporation places qualified manufacturing equipment in service in New Jersey during 1994. The cost of the manufacturing equipment, excluding shipping and installation, is $3,000,000. The taxpayer receives a recycling equipment tax credit of $10,000 and its corporate tax liability is $400,000. The manufacturing equipment portion of the credit is $60,000 ($3,000,000 cost × two percent, not to exceed $1,000,000), and the employment investment portion is unavailable until the two years following placement of equipment in service. Therefore, the credit is the lesser of $60,000 or $190,000 (50 percent of the tax liability less the recycling equipment credit). In this case the allowable credit for XYZ Corporation is $60,000, the lesser of the two amounts.

1995: XYZ Corporation places additional qualified equipment in service during 1995, which was acquired through a lease agreement. The lease agreement required $5,000,000 to be paid over the term of the lease. The taxpayer is not eligible for any other tax credits, and its corporate tax liability is $220,000. The manufacturing equipment portion of the credit is $100,000 ($5,000,000 total lease cost × two percent, not to exceed $1,000,000). The employment investment portion is $25,000 (150 measurement year average–125 base year average = average increase of 25 × $1,000, not to exceed three percent of the cost of qualified equipment placed in service in New Jersey in 1994). Therefore, the credit is the lesser of $125,000 ($100,000 + $25,000) or $110,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $110,000, the lesser of the two amounts. The difference between the total of the two credit portions ($125,000) and the credit allowable ($110,000), or $15,000 may be carried over for a maximum of seven years.

1996: Qualified equipment is placed in service during 1996 at a cost of $1,000,000. The taxpayer is not eligible for any other tax credits, and its corporate tax liability is $350,000. The manufacturing equipment portion of the credit is $20,000 ($1,000,000 total lease cost × two percent, not to exceed $1,000,000). The employment investment portion is $45,000, based on calculations for the 1994 and 1995 investments (150 measurement year average – 125 base year average = average increase of 25 × $1,000 or $25,000 for the 1994 investment AND 160 measurement year average – 140 base year average = average increase of 20 × $1,000 or $20,000 for the 1995 investment). Therefore, the credit is the lesser of $80,000 ($20,000 + $45,000 + $15,000 carryover from 1995) or $175,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $80,000, the lesser of the two amounts.

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(a)

DIVISION OF TAXATION

Corporation Business Tax
New Jobs Investment Tax Credit
Proposed New Rule: N.J.A.C. 18:7-3.22

Authorized By: Richard D. Gardiner, Director, Division of Taxation.

Authority: P.L. 1993, c.170, section 13, and N.J.S.A. 54:10A-27.

Proposal Number: PRN 1995-152.

Submit comments by April 5, 1995 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

P.L. 1993, c.170, approved July 7, 1993 and codified at N.J.S.A. 54:10A-5.4 through 5.15, allows a corporation business tax credit for New Jersey investment which creates new jobs. The New Jobs Investment Tax Credit Act (NJITC) is effective for tax years beginning on or after July 7, 1993. The NJITC is available for investment in new or expanded business facilities that create new jobs in the State.

The purpose of the proposed new rule is to explain how the credit is calculated. For a small business, the investment must create at least five new jobs. The median annual compensation for the new jobs must be at least $27,000. A small business taxpayer in 1994 means a taxpayer with an annual payroll of not more than $2,050,300 and annual gross receipts of not more than $6,150,950. For other taxpayers (that is, large businesses) the investment must create 50 new jobs. Qualified investment must be in new or expanded business facilities. The credit is a percentage of the cost of property purchased for qualified investment and is determined based on expected depreciable life of the property as follows: three year property (35 percent), five year property (70 percent), seven year property or more (100 percent).

New investment is not eligible for the credit unless the average book value of all the taxpayer's real and tangible personal property in the State has increased over the prior year. The new or expanded facility must have been purchased after July 7, 1993. In general, the facility must be purchased from an unrelated party, must be employed by the taxpayer in a taxable activity, and must not have been in use during the 90-day period immediately prior to purchase. Investment qualifying for either the Manufacturing Equipment and Employment Investment Tax Credit or the Recycling Equipment Tax Credit is not eligible for this credit.

A new employee means a New Jersey resident, domiciled here, who is hired to fill a regular, permanent position (full-time or part-time) which did not exist prior to the qualified investment, and would not exist but for the qualified investment. The employee must be unrelated to the taxpayer, and not have been in its employ in the prior six months. Individuals counted in determining the new jobs factor must not be ones for whom the taxpayer is allowed an Urban Enterprise Zone or Urban Development Tax Credit. The number of new employees directly attributable to the qualified investment for purposes of the credit cannot exceed the increase in the taxpayer's average employment in the State for the tax year over the previous year's average, or one-half the taxpayer's average employment in the State for the year.

The size of the credit is determined by multiplying the qualified investment by a new jobs factor that is set forth in the statute. For small business taxpayers, this factor is one-half of one percent for each five new jobs, up to 10 percent for 100 new jobs. For other taxpayers (that is, large business taxpayers) this factor is one-half of one-percent for each 50 new jobs, up to 10 percent for 1,000 new jobs. The credit is taken in equal installments over a five-year period. The aggregate annual credit allowed for a tax year is an amount equal to the sum of one-fifth of the allowable credit for qualified investment placed into service or use during the current tax year, plus one-fifth of the allowable credit for qualified investment placed into service or use during prior tax years.

The credit may only be applied against corporation business tax liability attributable to the new investment. If the taxpayer's (1) local property tax, (2) implicit property tax paid through rental or lease on property subject to local tax, and (3) corporation tax are not solely attributable to the taxpayer's qualified investment, then the amount of such taxes so attributable may be determined by multiplying the amount of taxes due under those acts for the tax year by the ratio of compensation for new jobs in New Jersey to total compensation in New Jersey. The credit may not exceed 50 percent of the corporation business tax liability otherwise due attributable to qualified investment and shall not reduce the tax below the statutory minimum. But if the credit exceeds this limitation the taxpayer is eligible for a refund. The refundable amount is limited to 50 percent of the sum of property tax and implicit property tax directly resulting from qualified investment.

N.J.S.A. 54:10A-5.5 contains lengthy and detailed definitions of terms related to the administration of the credit. The Division does not repeat these definitions in the proposal since their inclusion in the statute already gives adequate guidance to taxpayers and restating them in the Administrative Code would be considered unnecessary and redundant.

Social Impact

The social impact of the proposed rule will be beneficial, in that the rule helps to implement a credit against the corporation business tax enacted by P.L. 1993, c.170, as described in the Summary above. The legislation was part of a package of legislation intended to encourage the growth of job-creating businesses in New Jersey. The reaction to the rule should be positive because the rule incorporates the credit into the corporation business tax rules, thereby providing guidance to corporate taxpayers and their advisors on the operation of the credit.

Economic Impact

The Division of Taxation, Department of the Treasury estimated that approximately $10 million of investment credits would be granted in the first year of the act's implementation, which would have primary impact on the fiscal year following the fiscal year of implementation. Revenue losses are expected to depend on the degree of utilization of the credit, and the level of business investment in the State.

Corporations subject to the corporation business tax would benefit by having their tax reduced to the degree they are able to utilize the credit, which depends on their investment in expanded business facilities.

The proposed rule itself should have no economic impact beyond that intended by the statute.

Executive Order No. 27 Statement

While the statute (The New Jobs Investment Tax Credit Act, N.J.S.A. 54:10A-5.4 et seq.) refers in a number of sections to the Federal Internal Revenue Code, there are no Federal requirements or standards contained in the rule within the meaning of Executive Order No. 27 requiring an analysis, since the Federal government does not regulate the same area that the New Jersey Division of Taxation does in this proposal; State and Federal taxation are two separate jurisdictions.

Regulatory Flexibility Analysis

The proposed new rule could apply to any taxpayers subject to the corporation business tax, including incorporated small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the proposed rule incorporates into the corporation business tax rules the requirement of N.J.S.A. 54:10A-5.13 that written application be made for allowance of the credit and the requirement of N.J.S.A 54:10A-5.12 that records be kept for qualified property. The rule explains the operation of a credit against the corporation business tax enacted in P.L. 1993, c.170, as explained in the Summary, which is available to businesses which invest in expanded facilities and create new jobs. Under the statute, a small business taxpayer, defined as a taxpayer with annual payroll of $2 million or less and annual gross receipts of $6 million or less, must create a minimum of five new jobs to be allowed a credit of one-half of one percent for each additional five new jobs created over the five new job minimum, up to a 10 percent credit for 100 new jobs created.

Large and small corporate taxpayers may wish to obtain the services of accounting or legal professionals, charging at normal rates, to determine if the corporation may take advantage of the credit. The rule implements a credit which would reduce the corporation business tax and thus has the potential to benefit small businesses subject to tax.

Full text of the proposed new rule follows:

18:7-3.22 New jobs investment tax credit

(a) Corporate taxpayers are allowed a credit against the portion of the corporation business tax that is attributable to, and the direct

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consequence of, the taxpayer's qualified investment in a new or expanded business facility in this State which results in the creation of new jobs.

1. For a small business taxpayer, as defined in N.J.S.A. 54:10A-5.5, at least five new jobs must be created. For any other taxpayer, at least 50 new jobs must be created. The median annual compensation for the new jobs must be at least $27,000, adjusted for inflation beginning January 1, 1995 as provided in N.J.S.A. 54:10A-5.6e. The employer should rank the new employees by annual compensation. If the middle employee has compensation less than $27,000, the lowest ranking jobs should be deleted from the list until the median of the remaining list is at least $27,000. (If there are an even number on the list, the top half must be greater than $27,000). The number of employees on this revised list is the number of new jobs created for purposes of this credit.

(b) The amount of the credit shall be determined by mulitplying the amount of the taxpayer's qualified investment, as defined in N.J.S.A. 54:10A-5.8, in property purchased for business relocation or expansion, as defined in N.J.S.A. 54:10A-5.5, by the taxpayer's new job factor determined under N.J.S.A. 54:10A-5.9.

1. The amount of the credit shall be taken over a five year period, at the rate of one-fifth of the amount per tax year, beginning with the tax year in which the taxpayer places the qualified investment into service or use in this State.

(c) The aggregate annual credit allowed for a tax year shall be an amount equal to the sum of one-fifth of the allowable credit for qualified investment placed into service or use during a prior tax year, plus one-fifth of the allowable credit for qualified investment placed into service or use during the current tax year.

1. The amount of the credit shall not reduce the tax liability by more than 50 percent of that portion of the taxpayer's tax liability otherwise due for all tax years which is attributable to and the direct result of the taxpayer's qualified investment.

2. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5.7b.

3. If the credit exceeds the limitations in (c) through (c)2 above, the amount of credit remaining shall be refunded to the taxpayer. The amount refunded to the taxpayer shall not exceed 50 percent of the sum of the amount of property taxes timely paid in the taxable year pursuant to N.J.S.A. 54:4-1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to N.J.S.A. 54:4-1 et seq., and for which taxes another party that is not a related person is liable, which is attributable to and the direct result of the taxpayer's qualified investment. Any excess amount may not be carried forward.

(d) The credit shall only be applied against corporation business tax liability attributable to, and the direct result of, the taxpayer's qualified investment.

1. If the taxpayer's liability for corporation business tax, local property tax, and implicit property tax paid through rental or lease on property subject to local tax and for which taxes another party that is not a related person is liable, are not solely attributable to the taxpayer's qualified investment, then the amount of such taxes so attributable may be determined by multiplying the amount of tax due under those tax acts for the tax year by the ratio of compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey whose positions are directly attributable to the qualified investment, to total compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey.

2. Any credits allowable under N.J.S.A. 54:10A-5.3 (recycling tax credit), N.J.S.A. 52:27H-78 (urban enterprise zone credit), and N.J.S.A. 55:19-13 (urban development corporation credit) shall be applied against and reduce only the amount of corporation business tax not apportioned to the qualified investment under this act. Any excess of those credits may be applied against the amount of corporation business tax apportioned to the qualified investment under this act that is not offset by the amount of annual credit against the tax allowed under the act for the tax year, unless their application is otherwise prohibited by the applicable credit statutes.

(e) The unused portion of the credit shall be forfeited if the property is disposed of prior to the end of its recovery period, or ceases to be used in a new or expanded business facility, except where the cessation is due to fire, flood, storm or other casualty, pursuant to the provisions of N.J.S.A. 54:10A-5.10 and 5.11. Except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years pursuant to the calculation under N.J.S.A. 54:10A-5.10b. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Law.

1. If the average number of employees attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit was based, the credit shall be redetermined and the excess forfeited for the current tax year and for each succeeding year pursuant to the calculations required under N.J.S.A. 54:10A-5.10c.

(f) N.J.S.A. 54:10A-5.13 requires the taxpayer to make written application to the Director of the Division of Taxation for allowance of the credit. No prior approval will be required if the return and Form 304 claiming the credit are filed on or before the original due date of the return. However, the return will be reviewed upon filing, and the Division will notify the taxpayer if the credit is disallowed. If the taxpayer applies for an extension to file Form CBT-100 or CBT-100S, a letter application from the taxpayer requesting allowance of the credit must accompany the request for extension, Form CBT-200T. The recordkeeping requirements of N.J.S.A. 54:10A-5.12 for qualified property must be followed.

EXAMPLE

New Jersey Investment Tax Credit Calculation

Corporation ABC in 1994 purchases and installs the following at location D in New Jersey:

1. A newly constructed building for $1,000,000;
2. Equipment with three year life for $100,000;
3. Equipment with five year life for $200,000; and
4. An airplane for $100,000.

At location E in New Jersey, the corporation makes repairs on existing facilities for $250,000.

At location F in New Jersey, the corporation purchases a building, owned and used by an unrelated party, for $500,000.

All locations are in New Jersey. None of the locations are in an urban enterprise zone.

ABC in 1993 had 50 employees, all at location E, with annual payroll of $2,000,000 and gross receipts of $5,000,000. In 1994 ABC employs 120 people, 50 at location E, 65 at location D, and five at location F, all with income above $30,000, and has gross receipts of $10,000,000 and payroll of $5,000,000. The 65 employees at location D are all newly hired New Jersey residents with total compensation of $3,000,000. The corporation business tax liability for ABC in 1994 is $10,000.

ABC should compute its 1994 New Jersey investment tax credit this way: (Line reference numbers are to Form 304 (1-95) New Jobs Investment Tax Credit.)

First, calculate the allowable investment base as follows:

Qualified investment:		
line 4(a) with three year life	0.35 × $ 100,000 =	$ 35,000
line 4(b) with five year life	0.70 × 200,000 =	140,000
line 4(c) with seven year or more life	1.00 × 1,000,000 =	1,000,000
line 5 Sum of lines 4(a), 4(b), and 4(c)		$1,175,000

The investment base is $1,175,000.

(The airplane purchase does not qualify; the repairs at location E do not qualify; and the purchase of existing property at location F does not qualify. See N.J.S.A. 54:10A-5.5 and N.J.A.C. 18:7-3.22(b).)

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Second, calculate the number of eligible new jobs created as follows in order to arrive at the new jobs factor.

line 6(a) Average New Jersey employment for this tax year	120
line 6(b) Average New Jersey employment for last tax year	50
line 6(c) Subtract line 6(b) from line 6(a)	70
line 6(d) Divide line 6(a) by 2	60
line 6(e) Number of eligible new jobs	65
line 6(f) Smaller of 6(c), 6(d), or 6(e)	60
line 7(a) Divide line 6(f) by 50 with no remainder	1
line 7(b) Multiply line 7(a) by .005	.005
line 7(c) Enter the smaller of .10 or line 7(b)	.005

(The number of eligible jobs is limited to 60, one-half total employment. ABC is, with $10,000,000 in gross receipts, not a small taxpayer in 1994.)

The new jobs factor is .005.

Third, calculate the maximum annual credit:

line 8 Multiply line 7(c) × line 2 × .2	.005 × $1,175,000 × .2 = $1,175
line 9 Qualified investment from prior two years	0
line 10 Aggregate Annual Credit: (Sum of lines 8, 9(a), 9(b), 9(c), and 9(d))	$1,175

Fourth, calculate tax attributable to new investment which is eligible to be offset by the credit (which is proportional to compensation of new employees relative to all employees).

line 11 Compensation of all new jobs in New Jersey attributable to the qualified investment	$3,000,000
line 12 Total compensation of all employees in New Jersey	$5,000,000
line 13 Divide line 11 by line 12	.60
line 14 Enter tax liability from front page of CBT	
line 15 Multiply line 13 by line 11 CBT-100 page 1	6,000

Fifth, arrive at the allowable credit:

line 16 Multiply line 15 by 50 percent	$3,000
line 17 Enter the smaller of line 10 or line 16	1,175

(a)

DIVISION OF TAXATION

Corporation Business Tax Research Credit

Proposed New Rule: N.J.A.C. 18:7-3.23

Authorized By: Richard D. Gardiner, Director, Division of Taxation.

Authority: P.L. 1993, c.175 and N.J.S.A. 54:10A-27.

Proposal Number: PRN 1995-129.

Submit comments by April 5, 1995 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

P.L. 1993, c.175, codified at N.J.S.A. 54:10A-5.24 as the Research Credit, supplemented the Corporation Business Tax Act to provide a credit against the taxes which would otherwise be due under the corporation business tax. The credit is equal to 10 percent of the increase in qualified research expenses in a fiscal or calendar accounting year over the base amount and 10 percent of the basic research payments for an accounting year.

The tax credit is based on the same credit base, rules, and restrictions as the Federal research and development credit provided under the Federal Internal Revenue Code of 1986, provided that the credit under the State law is limited to expenditures made in New Jersey. This use of existing Federal laws was intended to simplify the administration of the tax and reduce compliance costs. The credit cannot reduce the tax below 50 percent of the amount otherwise due or below the statutory minimum tax, and credits that are not usable in the current year can be carried forward for use in up to seven following years. The credit applies to expenditures incurred in taxable years beginning on and after January 1, 1994, but does not terminate in 1995 as the Federal credit is currently scheduled to do.

The proposed new rule sets forth for the convenience of taxpayers and their advisers certain guiding principles related to the administration of the credit for New Jersey purposes. Federal definitions have been included in the present rule as a convenience to taxpayers, so that the general parameters and initial scope of the credit would be apparent by examining the New Jersey rules independently of examining the Federal statute and rules. Since the Federal credit is currently scheduled to expire, most Federal code provisions were set forth at length explicitly in the rule (other than the provision for IRC 41(f) Special Rules, which was omitted from the rule as overly specialized) rather than incorporated by reference, since the continuing status of the source Federal rule is uncertain due to possible expiration. The Federal definitions in the rule include definitions of "qualified research expenses," "base amount," "qualified research," and "credit allowable with respect to certain payments to qualified organizations for basic research" for example.

Since the statute refers to "terms determined by the Director of the Division of Taxation to affect the calculation of the credit" the Division has included in the rule's "base amount" definition certain provisions that were inserted into the Internal Revenue Code after June 30, 1992 for the convenience of taxpayers. (See the proposed new rule, at N.J.A.C. 18:7-3.22(c)3ii; also P.L. 103-66).

It should be noted, however, that other changes to the Federal law and regulations will not have a direct impact on the New Jersey credit, since N.J.S.A. 54:10A-5.24 refers to calculation of the State credit by reference to the section of the Internal Revenue Code Section 41 as in effect on June 30, 1992.

The rule also offers an example to illustrate to taxpayers the operation of the credit.

Social Impact

The rule is intended to facilitate taxpayer compliance with the statute which makes the research credit available. It will assist taxpayers and their representatives in calculating such credit as they may be entitled to receive. The credits themselves provide substantial incentives for taxpayers to engage in research within New Jersey, thus encouraging economic development and expansion.

Economic Impact

When the statute was enacted, the Division of Taxation estimated that at current expenditure rates and research activity levels in New Jersey the statute would decrease net corporation business tax revenues by $30 million annually. As noted above, the statute's incorporation of existing Federal law was intended to simplify the administration of the tax credit and reduce compliance costs.

Implementation of the credit provision results in increased administrative costs to the Division, including form development and preparation, training personnel, and other costs, but the statute does not include any appropriations to offset these increased expenses.

Executive Order No. 27 Statement

The underlying statute creating the research credit, N.J.S.A. 54:10A-5.24, refers to certain Federal concepts established by Section 41 of the Internal Revenue Code. The State law uses these concepts as a benchmark to calculate the State tax. Different State and Federal policy goals exist.

An Executive Order No. 27 analysis is not required because, while New Jersey is "piggy backing" the Federal rules, the rules are in a separate area. The Federal government administers Federal taxes and New Jersey administers State taxes, and these are separate jurisdictions.

Regulatory Flexibility Statement

Nothing in the statute allows for discrimination between large and small business corporations since the corporation business tax applies to large and small corporations alike. The proposed new rule is intended to decrease the administrative costs that would be necessary for taxpayers to expend in complying with the statute. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows:

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18:7-3.23 Research credit

(a) A taxpayer shall be allowed a credit against its corporation business tax liability in an amount equal to 10 percent of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent of the basic research payments determined in accordance with IRC Section 41 as in effect on June 30, 1992, provided that IRC Section 41(h) relating to termination of the availability of the credit in 1995 shall not apply.

(b) For purposes of this section, the term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer:

1. In-house research expenses; and

2. Contract research expenses.

(c) In general, the term "in-house research expenses" means:

1. Any wages paid or incurred to an employee for qualified services performed by such employee;

2. Any amount paid or incurred for supplies used in the conduct of qualified research; and

3. Under Federal regulations prescribed, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

i. Paragraph (c)3 above shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection IRC 41(f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(d) "Qualified services" means services consisting of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which constitute qualified research. If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of engaging in qualified research or engaging in the direct supervision or direct support of research activities which constitute qualified research, the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(e) The term "supplies" means any tangible property other than:

1. Land or improvements to land; and

2. Property of a character subject to allowance for depreciation.

(f) The term "wages" means:

1. In general, the term "wages" has the meaning given such term by IRC Section 3401(a).

2. For self-employed individuals and owner-employees, in the case of an employee (within the meaning of IRC Section 401(c)(1)), the term "wages" includes the earned income (as defined in IRC Section 401(c)(2)) of such employee.

3. Exclusion for wages to which targeted jobs credit applies, the term "wages" shall not include any amount taken into account in determining the targeted jobs credit under IRC Section 51(a).

(g) In general, the term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

1. If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(h) Trade or business requirement may be disregarded for in-house research expenses of certain startup ventures. In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of (b) above if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business:

1. Of the taxpayer; or

2. Of one or more other persons who with the taxpayer are treated as a single taxpayer under IRC subsection 41(f)(1).

(i) Base amount requirements are as follows:

1. In general, the term "base amount" means the product of:

i. The fixed-base percentage; and

ii. The average annual gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (hereinafter referred to as the "credit year").

2. In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

3. Fixed-base percentage requirements are as follows:

i. Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

ii. Start-up companies shall comply with the following:

(1) For taxpayers to which this subparagraph applies, the fixed-base percentage shall be determined under this subparagraph if there are fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(2) In a case to which this subparagraph applies, the fixed-base percentage is:

(A) Three percent for each of the taxpayer's first five taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses;

(B) In the case of the taxpayer's sixth such taxable year, one-sixth of the percentage which the aggregate qualified research expenses of the taxpayer for the fourth and fifth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(C) In the case of the taxpayer's seventh such taxable year, one-third of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth and sixth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(D) In the case of the taxpayer's eighth such taxable year, one-half of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, and seventh such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(E) In the case of the taxpayer's ninth such taxable year, two-thirds of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, and eighth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(F) In the case of the taxpayer's tenth such taxable year, five-sixths of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, eighth, and ninth such taxable years is of the aggregate gross receipts of the taxpayer for such years; and

(G) For taxable years thereafter, the percentage which the aggregate qualified research expenses for any five taxable years selected by the taxpayer from among the fifth through the tenth such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

(3) The Director may in future prescribe rules providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under (i)3ii(1) and (2) above.

iii. In no event shall the fixed-base percentage exceed 16 percent.

iv. The percentages determined under (i)3i above shall be rounded to the nearest 1/100th of one percent.

4. Consistent treatment of expenses is required. Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

i. The Director may in future prescribe rules to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed base percentage.

5. For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be

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taken into account only gross receipts which are effectively connected with the conduct of a trade of business within the United States.

(j) Qualified research, for purposes of this subsection, is defined as follows:

1. The term "qualified research" means research:

i. With respect to which expenditures may be treated as expenses under IRC section 174;

ii. Which is undertaken for the purpose of discovering information

(1) Which is technological in nature; and

(2) The application of which is intended to be useful in the development of a new or improved business component of the taxpayer;

iii. Substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in (j)3 below; and

iv. Does not include any activity described in (j)4 below.

2. For purposes of this subsection, the following tests shall be applied separately to each business component:

i. In general, paragraph (j)1 above shall be applied separately with respect to each business component of the taxpayer.

ii. The term "business component" means any product, process, computer software, technique, formula, or invention which is to be:

(1) Held for sale, lease, or license; or

(2) Used by the taxpayer in a trade or business of the taxpayer.

iii. Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).

3. For purposes of (j)1iii above, the following are purposes for which research may qualify for credit:

i. In general, research shall be treated as conducted for a purpose described in this paragraph if it relates to:

(1) A new or improved function;

(2) Performance; or

(3) Reliability or quality.

ii. Research shall, in no event, be treated as conducted for a purpose described in this paragraph if such research relates to style, taste, cosmetic, or seasonal design factors.

4. The term "qualified research" shall not include, nor shall credit be allowed for, any of the following:

i. Research after commercial production, that is, any research conducted after the beginning of commercial production of the business component;

ii. Adaptation of existing business components, that is, any research related to the adaptation of an existing business component to a particular customer's requirement or need;

iii. Duplication of existing business component, that is, any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component;

iv. Surveys, studies, or similar activities as follows:

(1) Efficiency survey(s);

(2) Activity relating to management function or technique;

(3) Market research, testing, or development (including advertising or promotions);

(4) Routine data collection; or

(5) Routing or ordianry testing or inspection for quality control;

v. Except to the extent provided in rule, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in:

(1) An activity which constitutes qualified research (determined with regard to this subparagraph); or

(2) A production process with respect to which the requirements of (j)1 above are met;

vi. Foreign research, that is, any research conducted outside the United States;

vii. Any research in the social sciences, arts, or humanities; or

viii. Funded research, that is, any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(k) Credit allowable with respect to certain payments to qualified organizations for basic research shall be as follows:

1. In general, in the case of any taxpayer who makes basic research payments for any taxable year;

i. The amount of basic research payments taken into account under (k)2 below shall be equal to the excess of such basic research payments, over the qualified organization base period amount.

ii. That portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of this paragraph.

2. Basic research payments shall be defined, for purposes of this subsection, as follows:

i. In general, the term "basic research payment" means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if:

(1) Such payment is pursuant to a written agreement between such corporation and such qualified organization; and

(2) Such basic research is to be performed by such qualified organization.

ii. In the case of a qualified organization described in (k)6iii or iv below (k)2i(2) above shall not apply.

3. For purposes of this subsection, the term "qualified organization base period amount" means any amount equal to the sum of the minimum basic research amount, plus the maintenance-of-effort amount.

4. Concerning the minimum basic research amount, for purposes of this subsection:

i. In general, the term "minimum basic research amount" means an amount equal to the greater of:

(1) One percent of the average of the sum of amounts paid or incurred during the base period for:

(A) Any in-house research expenses; and

(B) Any contract research expenses; or

(2) The amounts treated as contract research expenses during the base period by reason of this subsection (as in effect during the base period).

ii. Except in the case of a taxpayer which was in existence during the taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

5. Concerning the maintenance of effort amount, for purposes of this subsection:

i. In general, the term "maintenance-of-effort" amount means, with respect to any taxable year, an amount equal to the excess (if any) of an amount equal to: the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by the cost-of-living adjustment for the calendar year in which such taxable year begins, over the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

ii. Nondesignated university contributions, for purposes of this paragraph, means any amount paid by a taxpayer to any qualified organization described in (k)6i below:

(1) For which a deduction was allowable under IRC section 170; and

(2) In which was not taken into account:

(A) In computing the amount of the credit under this provision (as in effect during the base period) during any taxable year in the base period; or

(B) As a basic research payment for purposes of this section.

iii. Cost-of-living adjustment shall be defined as follows:

(1) In general, the cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under IRC section 1(f)(3), by substituting "calendar year 1987" for "calendar year 1989" in subparagraph (B) of Code Section 1(f)(3).

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(2) If the base period of any taxpayer does not end in 1983 or 1984, IRC section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which the base period ends for 1989. Such substitution shall be in lieu of the substitution under (k)5iii(1) above.

6. For purposes of this subsection, the term "qualified organization" means any of the following organizations:

i. Educational institutions, that is, any educational organization which:

(1) Is an institution of higher education (within the meaning of IRC section 3304(f)), and

(2) Is described in IRC section 170(b)(1)(A)(ii).

ii. Certain scientific research organizations, that is, any organization not described in (k)6i above which:

(1) Is described in IRC section 501(c)(3) and is exempt from tax under IRC section 501(a);

(2) Is organized and operated primarily to conduct scientific research; and

(3) Is not a private foundation.

iii. Scientific tax-exempt organizations, that is, any organization which:

(1) Is described in:

(A) IRC section 501(c)(3) (other than a private foundation); or

(B) IRC section 501(c)(6);

(2) Is exempt from tax under section IRC 501(a);

(3) Is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph i pursuant to written research agreements; and

(4) Currently expends:

(A) Substantially all of its funds; or

(B) Substantially all of the basic research payments received by it, for grants to, or contracts for basic research with, an organization described in (k)6i above.

iv. Certain grant organizations, that is, any organization not described in (k)6ii or iii above which:

(1) Is described in IRC section 501(c)(3) and is exempt from tax under IRC section 501(a) (other than a private foundation);

(2) Is established and maintained by an organization established before July 10, 1981, which meets the requirements of (k)6iv(1) above;

(3) Is organized and operated exclusively for the purpose of making grants to organizations described in (k)6i above pursuant to written research agreements for purposes of basic research; and

(4) Makes an election, revocable only with the consent of the U.S. Secretary of the Treasury, to be treated as a private foundation for purposes of U.S. Code Title 26 (other than IRC section 4940, relating to excise tax based on investment income).

(l) Definitions and special rules shall be as follows:

1. The term "basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include:

i. Basic research conducted outside of the United States; or

ii. Basic research in the social sciences, arts, or humanities.

2. The term "base period" means the three-taxable-year period ending with the taxable year immediately preceding the first taxable year of the taxpayer beginning after December 31, 1983.

3. For purposes of determining the amount of credit allowable under subsection (k)1 above, for any taxable year, the amount of the basic research payments taken into account under subsection (k)2 above:

i. Shall not be treated as qualified research expenses under (k)1i above; and

ii. Shall not be included in the computation of base amount under (k)1ii above.

4. For purposes of applying (b) above to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of (g)1 above).

5. The term "corporation" shall not include:

i. An S corporation;

ii. A personal holding company (as defined in IRC section 542); or

iii. A service organization (as defined in IRC section 414(m)(3)).

(m) For Special Rules, see IRC section 41(f).

(n) Notwithstanding any provision in this section to the contrary, a credit can be claimed for only those research activities that are performed in New Jersey.

(o) Notwithstanding any provision in this section to the contrary, a credit for increased research activities is allowed based on qualified expenditures made in taxable years beginning on and after January 1, 1994.

(p) The filing of a consolidated tax return by a controlled group of corporations shall not be permitted.

(q) Section references are to the Internal Revenue Code, unless otherwise noted.

(r) The research credit shall be generally allowed for qualified research. Qualified research is that which is limited to scientific experimentation or engineering activities designed to aid in the development of a new or improved product, process, technique, formula, invention, or computer software program held for sale, lease, or license, or used by the taxpayer in a trade or business. For in-house research expenses, this trade or business requirement will be met if the principal purpose for conducting the research is to use the results of the research in the active conduct of a future trade or business. The research credit shall generally not be allowed for the followng types of activities:

1. Research conducted after the beginning of commercial production;

2. Research adapting an existing product or process to a particular customer's need;

3. Duplication of an existing product or process;

4. Survey or studies;

5. Research relating to certain internal-use computer software;

6. Research conducted outside the State of New Jersey;

7. Research in the social sciences, arts, or humanities; or

8. Research funded by another person (or government entity.)

(See IRC Section 41 and regulations thereunder for other definitions and special rules concerning the research credit.)

(s) The research and expenditure tax credit is determined as follows:

1. First, calculate fixed base percentage. Fixed base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983 and before January 1, 1989 is of the aggregate gross receipts of the taxpayer for such taxable years.

Example:

Year	Qualified Research Expenses	Gross Receipts
1984	$ 2,000,000	$ 10,000,000
1985	4,000,000	15,000,000
1986	6,000,000	20,000,000
1987	8,000,000	30,000,000
1988	10,000,000	25,000,000
Total	$30,000,000	$100,000,000

$$\frac{\$\ 30{,}000{,}000}{\$100{,}000{,}000} = 3\% \text{ fixed base percentage}$$

2. Next, compute the base amount. The base amount is the average gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (credit year) multiplied by the fixed base percentage.

Example:

Year	Gross Receipts
1990	$ 25,000,000
1991	20,000,000
1992	35,000,000
1993	30,000,000
Total	$120,000,000
	divided by 4 =
Average Gross Receipts	$ 30,000,000
Fixed Base Percentage	× 3%
Base Amount	$ 900,000

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3. Then, compute current qualified research expenses.

	Total Costs Incurred	Research Tax Credit Qualified Research Expenses
Wages	$ 750,000	$ 500,000
Supplies	250,000	250,000
Depreciation	100,000	-0-
Overhead	250,000	250,000
Total	$1,350,000	$1,000,000

Then compute the research tax credit.

Current year qualified research expenses	$1,000,000
Less: Base Amount	(900,000)
Total incremental research expenses	$ 100,000
Research tax credit %	× 10%
New Jersey research tax credit	$ 10,000

(t) Credit for increased research activities shall take priority as specified by N.J.S.A. 54:10A-5.246. If any amount of property or expenditures is included in the calculation of the research credit, or for which a credit is allowed, then no such amounts can be allowed for the recycling credit, manufacturing and employment investment credit, and the new jobs credit.

(u) If taxpayer has research within and outside New Jersey and is unable to determine the New Jersey research expenses for the period, an alternative method is available to arrive at the fixed base percentage. Taxpayer shall take the figure for research and development everywhere for the three year period and multiply it by the average of the average of the payroll fraction and the property fraction used on the corporation business tax reports for the corresponding three years in question. This amount becomes the numerator of a fraction whose denominator is taxpayer's aggregate gross receipts for the three year period.

(v) Any Federal deduction under IRC Section 174 will be the same for New Jersey purposes, since there is no New Jersey provision for a separate modified state tax credit amount under such circumstances.

(w) The credit allowable in any given tax year cannot exceed 50 percent of the tax liability otherwise due on the return.

(x) The amount of the credit cannot reduce the tax liability to any amount less than the statutory minimum provided in N.J.S.A. 54:10A-5(e).

(y) The amount of the tax year credit allowable which cannot be applied for the tax year due to certain limitations may be carried over, if necessary, to the seven accounting years following a credit's tax year.

(z) Credits allowable shall be applied in the order of the credits' tax years.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations
Zoning of Renewal Areas
Proposed Amendment: N.J.A.C. 19:4-3.3

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i), and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1995-132.

A **public hearing** regarding this proposed amendment will be held on Thursday, March 23, 1995 at or after 7:00 P.M. at:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by April 5, 1995 to:

Thomas R. Marturano, P.E., P.P.
Director of Engineering and Solid Waste
Hackensack Meadowlands Development Commission
One DeKorte Plark Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

In accordance with N.J.S.A. 13:17-20, the HMDC has the exclusive power to declare any portion of the District as a renewal area, provided the Commission makes the necessary findings required under this section of the Statute. Once an area has been declared a renewal area, the Commission is authorized to prepare and adopt a redevelopment plan for said area.

Redevelopment plans will include the use and bulk requirements that will apply to the particular renewal area. The proposed amendment will establish that, once the Commission staff prepares a draft of the redevelopment plan, which will include development standards for the renewal area, a public hearing will be held to receive comments on the proposed requirements for the area. Once the redevelopment plan is adopted by the Commission, it will supersede existing zoning regulations found in this chapter.

Social Impact

The proposed amendment will affect the property owners of the lots included in the renewal area in that new development standards will be imposed on their properties. The number of property owners affected will vary with each renewal area. The amendment will have a positive impact on the property owners in the renewal area, in the municipality in which the renewal area lies, and in the Hackensack Meadowlands District (District), as the standards included in redevelopment plans will be designed to stimulate growth and economic development in areas which have remained stagnant for decades.

Economic Impact

The proposed amendment will have a positive economic impact, not only on the property owners of land within the renewal area, but also on the municipality in which it is located and on the District as a whole. An area can only be designated as a renewal area if it meets the criteria set forth by the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. If, in fact, an area meets these criteria, it is because it has remained undeveloped and stagnant for a period of time because of existing conditions which may be too overwhelming for any one or more of the property owners to handle on their own. The Commission has the ability and statutory authority to stimulate development in that area.

By allowing the Commission to establish redevelopment plans on a case-by-case basis that will insure development, the property owners will experience a direct and positive economic impact. In addition, redevelopment will have a positive impact on the municipality in which the renewal area is located in terms of an increase in ratables. Through the HMDC tax-sharing statute, the other municipalities will also benefit from increased development, as each municipality in the District is required to share the financial benefits of development within its boundaries with the other District municipalities.

Executive Order No. 27 Statement

There are no Federal standards or regulations dealing with redevelopment of blighted areas.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses as that term is defined in N.J.S.A. 52:14B-16 et seq. The proposed amendment is a requirement on the Commission, in terms of drafting development standards and holding a public hearing to get input from the general public. There are no requirements that will affect the general public. There are requirements on the property owners of land within the renewal area. If they were to participate in the redevelopment process, then the proposed amendment informs them that the zoning regulations that would be applicable to their land will be formulated by the Commission and presented to the general public during a public hearing. Since, by the very nature of the redevelopment process, the standards that are adopted by the Commission are geared towards promoting the development of the land, they will not impose stricter requirements than those already in place as part of the existing zoning designation of their land.

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

19:4-3.3 Zoning of public ways, waterways, [and] railroad rights-of-way **and renewal areas**

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

(d) Applicable use and bulk requirements for an area within the District, designated as a renewal area in accordance with N.J.S.A. 13:17-20, shall be established on a case by case basis and, once adopted by the Commission, shall supersede zoning regulations in this chapter. Once an area is designated as a renewal area, a public hearing shall be held in order to receive comment on the development standards that would be applicable to the area. Said public hearing shall be in accordance with N.J.A.C. 19:4-6.22. Notification shall be by certified mail and shall go to all property owners within the renewal area and the owners of property and appropriate officials or constituent municipalities within 500 feet of the renewal area as shown on the most recent tax lists of the municipality in which the subject property is situated and any adjacent municipalities.

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Contested Transfer Determinations

Proposed Readoption with Amendments: N.J.A.C. 19:18

Authorized By: Public Employment Relations Commission, James W. Mastriani, Chairman.

Authority: N.J.S.A. 34:13A-11 and 34:13A-22 et seq.

Proposal Number: PRN 1995-133.

Submit comments by April 5, 1995 to:
James W. Mastriani, Chairman
Public Employment Relations Commission
CN 429
Trenton, New Jersey 08625-0429

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Public Employment Relations Commission proposes to readopt, with amendments, N.J.A.C. 19:18. These rules govern proceedings to determine whether an employee of an employer as defined in N.J.S.A. 34:13A-22 has been transferred between worksites for disciplinary reasons in violation of N.J.S.A. 34:13A-25. These rules implement the directive to the Commission in N.J.S.A. 34:13A-27(a) that it make a determination as to whether an employer has made a transfer for disciplinary reasons. The entire chapter is due to expire on May 21, 1995. A summary of each section in N.J.A.C 19:18 follows:

N.J.A.C. 19:18-1.1 sets forth the nature of contested transfer proceedings.

N.J.A.C. 19:18-2.1 provides that an employee or the employee's majority representative may initiate a contested transfer proceeding.

N.J.A.C. 19:18-2.2 sets forth the required contents of a petition for contested transfer determination.

N.J.A.C. 19:18-2.3, (a new section replacing N.J.A.C. 19:18-2.2(c)), provides that a contested transfer petition shall be filed within 90 days of receipt of a notice of transfer.

N.J.A.C. 19:18-3.1 allows for intervention in a contested transfer proceeding.

N.J.A.C. 19:18-3.2 allows a Commission staff agent to convene a settlement conference.

N.J.A.C. 19:18-3.3 governs amendment, withdrawal, dismissal and consolidation of contested transfer petitions.

N.J.A.C. 19:18-3.4 gives a respondent 20 days to file a written answer to a petition, specifies the contents of an answer and provides that matters not specifically denied or explained shall be deemed to be true, unless the respondent states that it is without information as to the matter alleged.

N.J.A.C. 19:18-3.5 requires that an original and nine copies of an answer be filed, together with proof of service, on all other parties.

N.J.A.C. 19:18-3.6 allows an answer to be amended.

N.J.A.C. 19:18-3.7 provides that the petitioner may file a reply five days after service of the answer.

N.J.A.C. 19:18-3.8 allows any party to file a request for an evidentiary hearing which must detail any substantial and material disputed factual issues. All other parties may file a response opposing the request.

N.J.A.C. 19:18-3.9 provides that where no hearing is held the parties will file briefs after notice from the Commission or its designee.

N.J.A.C. 19:18-3.10 provides that the Commission Chairman or such other designee may order a hearing to resolve substantial and material disputed factual issues. It further provides that a hearing examiner shall conduct the hearing in accordance with rules governing unfair practice proceedings and shall at its conclusion prepare a report and recommended decision to be served on the parties and to which the parties may file written exceptions and responses with the Commission.

N.J.A.C. 19:18-3.11 lists the contents of the record to be considered by the Commission in a contested transfer determination.

N.J.A.C. 19:18-3.12 provides that contested transfer cases will normally be decided without oral argument but allows the parties to request oral argument.

N.J.A.C. 19:18-3.13 provides that the Commission or its designee shall issue a final decision. Where it is determined that the disputed transfer was predominately disciplinary, a remedial order may be included. In cases where no exceptions are filed the recommended decision shall become a final decision unless the Commission decides after notice to the parties that it will consider the matter further.

N.J.A.C. 19:18-3.14 allows the filing of a motion for reconsideration.

N.J.A.C. 19:18-3.15 provides that an application for interim relief may be made a contested transfer proceeding.

The text of N.J.A.C. 19:18-2.2(a) has been amended to simplify the filing requirements. This amendment reflects general agency practice throughout State government as well as the provisions of the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.

The text of N.J.A.C. 19:18-2.2(c) has been recodified, without change in text, to set it apart as a separate rule, making the requirements on time limits more apparent to the regulated public.

Social Impact

Under P.L. 1989, c.269, "employees" means "employees of an employer as defined by this act" and "employer" means "any local or regional school district, educational services commission, jointure commission, county special services school district or board or commission under the authority of the Commissioner or the State Board of Education." Readoption of these rules will permit the users of the Commission's services to properly file contested transfer petitions and resolve disputes over disciplinary worksite transfers. These rules detail how such cases will be processed and what each party must or may do at each step of the proceedings. The procedures are designed to avoid protracted administrative litigation. The amendments are expected to simplify the process for the regulated public.

Economic Impact

The rules, if readopted, will have no discernible economic impact on the public, since the rules simply outline the procedures for contesting an allegedly disciplinary transfer. These rules are designed to reduce the expense of litigation for the parties and the Commission by expediting administrative litigation. The amendment of N.J.A.C. 19:18-2.2(a), in deleting a requirement which could have imposed a cost for notarization, would save that cost for the public employees who may have used that option.

Executive Order No. 27 Statement

The National Labor Relations Act specifically excludes from its coverage "any State or political subdivision thereof," 29 U.S.C. §152(2). Thus, no Federal law or regulation applies to the subject matter of these rules, the transfer of an employee as defined by N.J.S.A. 34:13A-22 between worksites for disciplinary reasons. As there is no comparable Federal rule or standard upon which the Commission can rely to achieve the aim of N.J.S.A. 34:13A-22 et seq., the readoption of these rules is necessary and proper, and no Executive Order No. 27 analysis is required.

Regulatory Flexibility Statement

The proposed rules impose no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Commission's actions involve employer-employee relations in public employment.

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Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:18.

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

19:18-2.2 Contents of petition for contested transfer determination

(a) A petition[1] shall be in writing [and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."] **and the party or representative filing the petition shall make this dated and signed certification: "I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief."**

(b) (No change.)

[1](No change.)

[(c)] **19:18-2.3 Timeliness of petitions**

The petitioner shall file a petition no later than the 90th day from the date of receipt of a notice of transfer.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Exclusion of Match Play Coupons from Cash Complimentary Limits

Proposed Amendment: N.J.A.C. 19:45-1.9B

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

Authority: N.J.S.A. 5:12-69(a), 70(g), 99(a)4, 100 and 102(m).

Proposal Number: PRN 1995-126.

Submit written comments by April 5, 1995, to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendment would specifically include match play coupons in the definition of a "cash complimentary" in N.J.A.C. 19:45-1.9B(a), and would exempt match play coupons from the annual limitations on cash complimentaries imposed by N.J.A.C. 19:45-1.9B(g), if they are not otherwise exempt.

A match play coupon is basically a promotional device. When presented at a gaming table by a patron, and accompanied by gaming chips equal in value to the face value of the coupon, the coupon's value is included in the amount of the patron's wager in determining the payout on a winning bet. Win or lose, the coupon is then deposited in the drop box and counted as gross revenue (see N.J.A.C. 19:45-1.1 and 1.18(b)).

Match play coupons were originally conceived and authorized as a low-cost table game incentive or mass marketing promotion (see N.J.A.C. 19:45-1.46(a), (i) and (j)4). When issued in that manner and in certain other situations, they are exempt from the cash complimentary amount limitations in N.J.A.C. 19:45-1.9B(g), as well as some of the reporting requirements in N.J.A.C. 19:45-1.9(e) (see N.J.A.C. 19:45-1.9B(a) and 19:45-1.9(f)-(h)).

However, if issued in denominations greater than $100.00, for example, or via marketing programs that are directed to a specific person or to groups of persons smaller than 500 people, and which would not be available to the general public, match play coupons would not be exempt from the present cash complimentary amount limitations and reporting requirements (see N.J.A.C. 19:45-1.9(f) and (h)).

Although a match play coupon is clearly something of value, it only becomes valuable when certain conditions are met: it must be wagered with an equivalent amount of a patron's gaming chips, and the wager must win. Since a match play coupon is not an outright cash or noncash gift, it does not raise some of the same concerns as other types of cash complimentaries.

Given these factors, the proposed amendment would expand the exemption for match play coupons from the above mentioned annual limitations on cash complimentaries, regardless of the face value of the coupon, the manner in which it is issued, or the person to whom it is offered. However, because such coupons are cash complimentaries, as the proposed amendment to N.J.A.C. 19:45-1.9B(a)6 would make clear, a casino licensee would still be required to comply with the cash complimentary reporting requirements for such coupons, which are contained in N.J.A.C. 19:45-1.9(e).

Social Impact

The proposed amendment would give casino licensees more flexibility in utilizing match play coupons, and may increase the use of such coupons by casino licensees and their patrons.

Economic Impact

As noted above, the proposed amendment would give casino licensees more flexibility in utilizing match play coupons. The expansion of such incentive and promotional programs may stimulate and increase the casinos' trade, and may also help New Jersey casinos to compete more effectively with other gaming jurisdictions.

The increased availability and use of such coupons may also have an economic impact upon casino patrons, since the coupon is used to match the patron's bet, thus increasing the payout to the patron if the wager wins.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required. The proposed amendment would only affect casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m(1) through (3), N.J.A.C. 19:45-1.9(f), 19:45-1.9(h) or 19:45-1.46. Complimentary cash gifts shall include, without limitation:

1.-3. (No change.)

4. Cash complimentaries issued to patrons as a result of actual gaming activity; [and]

5. Cash complimentaries issued to participants in complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g), except as otherwise provided in this section; **and**

6. Match play coupons.

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

(h) Notwithstanding the provisions of (g) above, complimentary cash gifts which are provided to persons pursuant to complimentary incentive programs regulated by N.J.A.C. 19:45-1.9(f), complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g), direct mass marketing complimentary programs regulated by N.J.A.C. 19:45-1.9(h) or complimentary distribution programs regulated by N.J.A.C. 19:45-1.46 shall be governed by any limitations contained in those respective rules and shall not be subject to the annual limits specified in (g) above. **Additionally, match play coupons shall not be subject to the annual limitations specified in (g) above.**

(i)-(l) (No change.)

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(a)

CASINO CONTROL COMMISSION

Equal Employment and Business Opportunity Determination of Disbursements For Goods and Services; Commercial Buyers

Reproposed Amendments: N.J.A.C. 19:53-1.2, 5.5 and 5.7

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

Authority: N.J.S.A. 5:12-63, 69, 75, 186 and 190.

Proposal Number: PRN 1995-127.

Submit written comments by April 5, 1995 to:
David C. Missimer, Assistant General Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Pursuant to the provisions of N.J.A.C. 19:53-5, casino licensees are required to make a good faith effort to spend specified percentages of the dollar value of their contracts for goods and services with certified minority business enterprises and women business enterprises (certified MBEs and WBEs) (see N.J.A.C. 19:53-5.3). N.J.A.C. 19:53-5.5(e) currently authorizes a casino licensee to satisfy up to 70 percent of its MBE/WBE participation goals in any particular year by requiring one or more of its contractors to award portions of their contracts to certified MBEs and WBEs, to the extent that dollars are actually spent by these contractors with certified MBEs and WBEs.

On February 7, 1994, the Casino Control Commission (Commission) published in the New Jersey Register at 26 N.J.R. 785(a) proposed amendments to N.J.A.C. 19:53-1.2 and 5.5 that were intended to clarify the application of these provisions to agreements between a casino licensee and a contractor that either purchases or negotiates the purchase of goods and services for the benefit of the casino licensee (a "commercial buyer"). A proposed amendment to be codified at N.J.A.C. 19:53-5.5(f) would have limited the amount of disbursement credit that a casino licensee could claim for dollars spent with any single certified MBE or WBE to $750,000 in any calendar quarter. As a result of public comments submitted in response to the proposal, the Commission determined not to adopt the amendments to N.J.A.C. 19:53-5 that were originally published but to instead modify the proposed amendments in the manner indicated in this reproposal.

Initially, it should be noted that the reproposal does not include the proposed amendment to N.J.A.C. 19:53-5.5(f) that would have imposed a quarterly limitation on the amount of purchasing credit that could be obtained by a casino licensee for disbursements made to a particular certified MBE or WBE. Five commenters objected to the adoption of this portion of the original proposal. Two of the commenters objected to the amendment on the ground that the Commission was without statutory authority to adopt such a limitation. The remaining commenters opposed the adoption of the amendment on the basis that it would restrict the growth of emerging minority and women businesses and would prevent the continuing casino industry support which such businesses would need in order to become major independent enterprises.

Upon further consideration, the Commission determined that there was not sufficient evidence of casino business being concentrated in a few minority or women business enterprises so as to justify the need for the proposed amendment to N.J.A.C. 19:53-5.5(f) at this time. The Commission wishes to note, however, that, although the Commission is in effect granting the relief requested by the commenters by not including this amendment in the reproposal, the Commission does not agree with the arguments presented by the commenters.

First, the Commission does not agree that it lacks the authority to adopt a rule setting a limit on the amount of purchasing credit that may be claimed for disbursements made by a casino licensee to any single MBE or WBE. The public policy declared by the Legislature when enacting Article 13 of the Act states that its intended purpose is to assure "the opportunity for full minority and women's business enterprise participation in the casino industry . . . ." N.J.S.A. 5:12-184. If the Commission were to determine that casino licensees were generally ignoring the spirit of this policy by satisfying their MBE/WBE purchasing obligations with just a few enterprises, there is no question that section 190 of the Act gives the Commission the authority to adopt a rule that would interpret and implement the statutory purchasing obligations in a meaningful way. The fact that the Commission has concluded that the present record does not support the institution of a purchasing credit limitation does not mean that the Commission does not have the authority to take such action should it become necessary or appropriate.

Nor does the Commission concede that the public policies reflected in Article 13 of the Act would be better served, as suggested by the other commenters, by allowing casino licensees to satisfy their purchasing obligations with a few large MBEs or WBEs rather than by requiring that opportunity be provided to a much broader segment of the community. It is certainly arguable that an enterprise that is doing three million dollars a year in business with a single casino licensee has established its reputation as an able and reliable enterprise to such a degree that further casino business with that company will not be dependent upon its status as a minority or women business enterprise. Since the Commission has determined, however, not to repropose the amendment to N.J.A.C. 19:53-5.5(f) creating the quarterly purchasing limitation, it is not necessary to resolve these issues at this time.

The reproposed amendments to N.J.A.C. 19:53-1.2 would add definitions of "commercial buyer," "purchase agreement," "purchase authorization" and "supplier" to that section. These terms would be used in N.J.A.C. 19:53-5.5 in describing how a casino licensee is to determine the amount of expenditures that may be credited toward its purchasing goals when the casino licensee uses a contractor to purchase goods or services for its benefit.

As indicated above, a "commercial buyer" is defined in the reproposal as a person, other than an employee of a casino licensee, who arranges the purchase of, or actually purchases, goods or services for the benefit of a casino licensee. The term includes both contractors who obtain title to or possession of the goods (merchandise factors) and contractors who merely facilitate the purchase (brokers). A "purchase authorization" is defined as a contract between a casino licensee and a commercial buyer pursuant to which the commercial buyer is authorized to negotiate the purchase, or actually purchase, goods or services from a supplier for the benefit of the casino licensee.

A "supplier" is a person who is in the business of selling goods or services. Pursuant to the provisions of the amendments proposed at N.J.A.C. 19:53-5.5(i) and (j), an enterprise that is a commercial buyer may also act in the dual role of supplier if the enterprise is in fact in the business of selling goods or services on an independent basis. A "purchase agreement" is defined as a contract between a commercial buyer and a supplier pursuant to which the commercial buyer purchases, or negotiates the purchase of, goods or services from a supplier for the benefit of the casino licensee.

The reproposed amendments to N.J.A.C. 19:53-5.5(e) clarify that a casino licensee may obtain credit toward its MBE and WBE participation goals by requiring its commercial buyers to spend part of their purchase authorizations with certified MBE and WBE suppliers. The credit that may be obtained will be equal to the amount of dollars that are actually spent with certified MBE and WBE suppliers pursuant to the purchase authorization, subject to the 70 percent limitation established in N.J.A.C. 19:53-5.5(e) and the transitional disbursement credits that are authorized by N.J.A.C. 19:53-5.5(k).

If a commercial buyer happens to be a certified MBE or WBE itself, the reproposed amendment codified at N.J.A.C. 19:53-5.5(i) provides that the amount of MBE or WBE purchasing credit that may be attributed to business conducted with that commercial buyer shall be limited to the amount of compensation paid to the commercial buyer for its services. The casino licensee may not claim credit for funds disbursed to the commercial buyer for the purchase of goods and services from suppliers, except as otherwise authorized by N.J.A.C. 19:53-5.5(e), 5.5(i) or 5.5(k).

The reproposed amendments to N.J.A.C. 19:53-5.7 would make minor changes to the quarterly MBE/WBE expenditure reports that are currently filed by casino licensees in order to reflect the disbursement credit limitations established in N.J.A.C. 19:53-5.5.

The major difference between the original proposal and the current reproposal, other than the elimination of the quarterly purchasing limitation discussed above, is the inclusion of a transitional provision that would permit a casino licensee, for a limited period of time, to continue to claim some disbursement credit for purchasing dollars expended through a certified MBE or WBE commercial buyer regardless whether

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the supplier of the goods or services is also a certified MBE or WBE. This amendment, which is codified at N.J.A.C. 19:53-5.5(k), is intended to minimize the impact of the reproposed amendments on any certified MBE or WBE commercial buyer that, in reliance on prior Commission practice, has established an ongoing business relationship with a casino licensee pursuant to which credit for such disbursements has been claimed and recognized.

The proposed amendment would apply to a certified MBE or WBE that actually performed as a commercial buyer during the 1994 calendar year and would gradually reduce the amount of credit that could be claimed by a casino licensee for purchasing dollars disbursed through the certified commercial buyer to a supplier that was not a certified MBE or WBE. For calendar year 1995, a casino license could claim disbursement credit for no more than 80 percent of the total dollars actually disbursed by that casino licensee during 1994 to an uncertified supplier through the same certified commercial buyer. In 1996, this limitation would be reduced to 50 percent of the total dollars actually disbursed in 1994. Finally, a casino licensee could claim disbursement credit under N.J.A.C. 19:53-5.5(k) for similar disbursements made during the first six months of 1997, as long as such credits did not exceed 10 percent of the total dollars actually disbursed in 1994 (which, on an annualized basis for 1997, would be equal to 20 percent of the 1994 disbursements). After June 30, 1997, a casino licensee would no longer be able to claim any disbursement credit for disbursements made pursuant to the provisions of N.J.A.C. 19:53-5.5(k).

Various public comments submitted in response to the original proposal remain relevant to the reproposal and were addressed by the Commission when it approved the publication of the reproposal. The Division of Gaming Enforcement (Division) expressed its belief that the proposed rules, while reflective of the public policy of the Casino Control Act (Act) that encourages casino licensees to increase the participation of MBEs and WBEs in casino industry business, may undermine those policies of the Act designed to ensure the integrity of the ancillary industries that do business with casino licensees by permitting certain enterprises to circumvent the vendor registration and licensing processes. The Division suggested that if an MBE/WBE supplier can provide a benefit to a casino licensee (in terms of an MBE/WBE disbursement credit) by selling goods to a commercial buyer acting on behalf of the casino licensee, then any enterprise that does business with a commercial buyer acting on behalf of a casino licensee should be vendor registered, have its casino related business tracked and, if the relevant casino business thresholds are reached, be licensed as a casino service industry enterprise.

The Commission does not agree with the Division that the reproposed rules will permit enterprises to avoid the vendor registration and licensure requirements of the Act and the Commission's rules. The vendor registration and licensing processes are not governed by the rules under consideration. The proposed amendments to Chapter 53 simply clarify the amount of MBE/WBE purchasing credit that may be claimed by a casino licensee pursuant to the provisions of N.J.S.A. 5:12-186. The adopted rules are consistent with those provisions of N.J.S.A. 5:12-186c which recognize that a casino licensee may, within the limits established therein, claim MBE/WBE purchasing credit for amounts spent by a contractor of the casino licensee with an MBE or WBE subcontractor.

The rules contained in Chapter 53 address the equal employment and business opportunity obligations of casino licensees. Neither the existing rules in this chapter nor the reproposed amendments are intended to or, in the Commission's opinion, do in fact have any effect on any issue which may exist concerning those enterprises that are currently obligated to be registered or licensed under the provisions of N.J.S.A. 5:12-12, 92 and 104 and N.J.A.C. 19:43-10 and 19:51. See also, N.J.A.C. 19:53-5.4(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.").

As the Division noted in its comments, however, subsection 104b of the Act already provides the Commission with the authority to require the vendor registration or, if appropriate, licensure of suppliers who sell goods or services to casino licensees through broker enterprises (which, under the reproposed amendments, shall be known as "commercial buyers"). The Commission and Division are aware that such transactions are already occurring and may continue to occur regardless whether the reproposal is adopted. If the Division believes that the rules of the Commission should be amended to state explicitly that the Commission has the authority to require the registration or licensure of enterprises involved in pass through agreements, the Commission suggests that these amendments should be made to those provisions of the Commission's rules which govern the vendor registration and licensure process, N.J.A.C. 19:43-10 and 19:51.

The Division also recommended that the criteria used to distinguish a supplier from a commercial buyer in N.J.A.C. 19:53-5.5(j) be supplemented with the following provision: "The enterprise is viable without contributory payments, subsidies or financing of any type from casino licensees, including but not limited to, such devices as start-up contributions, periodic levies or purchase guarantees."

The issue of the independent viability of an enterprise claiming supplier status is addressed by the criterion contained in N.J.A.C. 19:53-5.5(j)1. In evaluating this factor, as with any other factor, the reproposed amendment requires an examination of the totality of circumstances surrounding the business transaction, including the relationship of the participants. The Commission does not, however, wish to create an absolute bar against supplier status for any enterprise that has received a grant or some other type of financial assistance from a casino licensee, particularly in the crucial start-up phase of a business. The Commission's Equal Employment and Business Opportunity rules, see N.J.A.C. 19:53-6, encourage casino licensees to use innovative financing techniques to assist the development of MBEs and WBEs as an alternative means of satisfying their MBE/WBE purchasing obligations. The fact that an MBE or WBE once received financial assistance from a casino licensee should not forever bar that enterprise from becoming a viable independent supplier enterprise. Therefore, the language recommended by the Division was not included in the reproposed amendment.

The Division also recommended that the following provision be added to N.J.A.C. 19:53-5.5(j) as an additional criterion to distinguish a supplier from a commercial buyer: "Whether the enterprise manufactures, or produces and sells, or distributes goods which are maintained for sale either on an independent basis or as a representative of a manufacturer or producer." The Commission would note that this language is included in the definition of "supplier" proposed in N.J.A.C. 19:53-1.2. This definition identifies the three broad categories of businesses that qualify as suppliers. Companies that fall within the first two categories (independent contractors that provide services, and manufacturers or producers of goods) should be readily identified in most cases. The criteria contained in N.J.A.C. 19:53-5.5(j) are primarily intended to help determine whether an enterprise that is distributing goods to a casino licensee is doing so as an independent supplier of goods or as a commercial buyer on behalf of a casino licensee. Accordingly, the Commission does not believe that the amendment to N.J.A.C. 19:53-5.5(j) recommended by the Division is necessary.

Finally, the Division suggested that N.J.A.C. 19:53-1.2 or 5.5(j) be amended to clarify that the term "casino licensee" also refers to a subsidiary thereof, a group of casino licensees, a casino association or a subsidiary thereof. The Commission did not include this suggestion in the reproposal since a commercial buyer, by definition, is "a person who ... acts ... for the benefit of a casino licensee" (see reproposed N.J.A.C. 19:53-1.2). The Commission believes that this language is broad enough to include all of the entities identified by the Division.

The Casino Association of New Jersey (CANJ) objected to the proposed amendments on the theory that the amendments are without legal foundation, asserting that the amendments impose obligations which are not authorized by the Casino Control Act. According to the commenter, in order to obtain MBE/WBE purchasing credit, the Act only requires a casino licensee to buy goods or services from a minority business enterprise or women business enterprise; the Act does not distinguish between categories of enterprises such as suppliers or commercial buyers.

Despite the assertions of the commenters to the contrary, there is no question that the Commission has the authority to adopt such regulations "as may be necessary to interpret and implement the provisions of [Article 13 of the Casino Control Act]." N.J.S.A. 5:12-190. Subsection 186c of the Act recognizes that a casino licensee may, within the limits specified therein, fulfill part of its MBE/WBE purchasing obligations by requiring its vendors to spend a portion of their contracts with certified MBEs and WBEs. The reproposed amendments to N.J.A.C. 19:53-1.2, 5.5 and 5.7 merely carry out the obligation of the Commission to promulgate rules that interpret and implement subsection 186c in a meaningful way.

When a business uses a broker to facilitate a transaction, the value of the broker's services to that business is measured by the broker's fee

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or commission, not the total cost of the independent transaction. The reproposed amendments recognize that the value of the business conducted by a casino licensee with a commercial buyer is the amount of the commercial buyer's fee or commission, not the total cost of all the goods or services purchased through that commercial buyer. The reproposed amendments also recognize, however, that the value of goods and services purchased by a commercial buyer from certified MBE or WBE suppliers for the benefit of a casino licensee may, consistent with subsection 186c of the Act and subject to the limits contained therein, be passed through to the casino licensee that issued the purchase authorization and be used to satisfy its MBE/WBE purchasing obligations.

To accept the arguments of CANJ would be to accept the notion that the Legislature, in establishing the public policy set forth in N.J.S.A. 5:12-184, intended a casino licensee to be able to satisfy its MBE/WBE purchasing obligations each year by simply contracting with one minority or women business enterprise to act as its broker in the purchase of the specified statutory percentage of the casino licensee's total expenditures for goods and services. According to CANJ, it really should not matter that all of the funds supposedly expended by the casino licensee with certified MBEs and WBEs, but for the fee or commission paid to the broker, were actually passed through the broker to enterprises that did not qualify as either an MBE or WBE.

The Commission does not agree with CANJ that the Legislature intended its policy calling for "full minority and women's business enterprise participation in the casino industry" to be circumvented so easily. See N.J.S.A. 5:12-184. The Commission does believe that equity requires the Commission to afford existing certified MBE or WBE commercial buyers that have relied on prior Commission practice an opportunity to adjust their business relationships to comply with the reproposed amendments to N.J.A.C. 19:53-5.5. Subsequent to the expiration of these transitional provisions, the reproposed amendments should assure that the only disbursements that qualify for participation credit are those disbursements made to certified MBEs or WBEs, whether directly by a casino licensee or indirectly through a contractor or commercial buyer acting on behalf of a casino licensee.

CANJ also argued that the proposed amendments were unconstitutional under the United States Supreme Court's decision in *City of Richmond v. J.A. Croson, Co.*, 488 *U.S.* 469 (1989). This comment was rejected by the Commission since, as demonstrated above, the reproposed amendments are in fact perfectly consistent with the provisions of N.J.S.A. 5:12-184 and 186c. It is a well-settled proposition of law that an administrative agency is without authority to entertain constitutional challenges to its enabling statute.

CANJ recommended that N.J.A.C. 19:53-5.5(e) be amended to clarify that when an MBE/WBE commercial buyer purchases goods from an MBE/WBE supplier on behalf of a casino licensee, the casino licensee can receive purchasing credit for the value of the commercial buyer's services and the cost of the goods purchased. The Commission did not believe any clarifying amendments were necessary and did not modify this subsection in the reproposal. When N.J.A.C. 19:53-5.5(e), (i) and (k) are read together, the rules make it perfectly clear that purchasing credit may be obtained for dollars spent with an MBE/WBE commercial buyer under four circumstances: (1) as a fee or commission for services rendered as a commercial buyer; (2) as a result of a pass through arrangement authorized by N.J.A.C. 19:53-5.5(e) and subsection 186c of the Act when the dollars are subsequently spent with an MBE/WBE supplier; (3) as a result of the commercial buyer's independent status as a supplier that sells goods or services to the casino licensee on an arm's length basis; or (4) in accordance with the transitional provisions of N.J.A.C. 19:53-5.5(k).

Both the original proposed amendments and the reproposed amendments limit the purchasing credit that may be claimed for dollars paid to an MBE/WBE commercial buyer, except as provided in reproposed N.J.A.C. 19:53-5.5(k), to "those disbursements ... that represent compensation paid to the commercial buyer for its purchasing or negotiation activities on behalf of the casino licensee" (see N.J.A.C. 19:53-5.5(i)). CANJ criticized this limitation on the basis that it is too restrictive. As an example, CANJ cited a current arrangement pursuant to which casino licensees use the services of an MBE purchasing manager that also provides other services to the casinos, such as warehousing and trucking. According to CANJ, the purchasing credit authorized by the rules should represent the true value of the services provided by the commercial buyer.

This comment was rejected by the Commission. The limitation contained in N.J.A.C. 19:53-5.5(i) only applies to the compensation paid to an enterprise for its services as a commercial buyer, which is defined in N.J.A.C. 19:53-1.2 as "a person who is not an employee of a casino licensee and who acts as a merchandise factor or broker in the purchase or negotiation of purchase of goods or services from a supplier for the benefit of a casino licensee." If a casino licensee has an agreement with an MBE/WBE commercial buyer that requires the commercial buyer to act as an independent contractor supplier of warehousing or trucking services to the casino licensee as well, and the MBE/WBE actually supplies such services, nothing in the reproposed amendments would prevent the casino licensee from claiming the full cost of such services in the same manner as if a different MBE/WBE supplier was providing the services. If, however, the MBE/WBE commercial buyer is simply acting as a broker in the provision of the warehousing or trucking services to the casino licensee (that is, the commercial buyer hires an independent warehouser or trucking company to actually provide the services), then the limitation on purchasing credit would be applied in the same manner as it is applied to the purchase of goods through a commercial buyer.

CANJ also suggested that the determination of the value of the "purchasing and negotiation activities" of a commercial buyer is subjective and will lead to litigation. Therefore, according to CANJ, the rules should be amended to state that this provision will be liberally construed to grant the maximum credit permitted. This comment was also rejected by the Commission. There is absolutely no reason to assume that a reasonable and responsible casino licensee, when negotiating the terms of compensation for a commercial buyer as part of a purchase authorization, would or should permit the determination of this obligation to be subjective. Presumably, if it is a legitimate arm's length transaction, the compensation will be negotiated, will be based on the value of the purchasing and negotiating services to be provided by the commercial buyer, and will be a fixed fee, a percentage commission based on the cost of the goods or services to be purchased, or some similar arrangement.

Finally, the criteria contained in N.J.A.C. 19:53-5.5(j) were criticized by CANJ as being susceptible to litigation and inappropriate due to the need to apply them on a case-by-case basis. As evidenced by the reproposal, the Commission believes the standards contained in N.J.A.C. 19:53-5.5(j) are sufficiently clear to allow a casino licensee or enterprise to readily determine in the vast majority of cases whether an enterprise is acting as a commerical buyer or a supplier when providing goods or services to a casino licensee. The Commission is not troubled by the concept that regulatory standards which govern a potentially broad range of situations should be applied on a case-by-case basis. Accordingly, the comment of CANJ was rejected.

Please note that the reproposed amendments supersede the earlier proposal that was published at 26 N.J.R. 785(a). Any comments received in response to the original proposal will not be considered by the Commission in connection with the reproposal unless those comments are timely submitted in writing during the current comment period.

Social Impact

The reproposed amendments to N.J.A.C. 19:53-1.2 and 5.5 concerning commercial buyers are not anticipated to have any significant social impact. The amendments are merely intended to clarify the manner in which the current provisions of N.J.A.C. 19:53-5.5(e) should be applied to agreements between a casino licensee and persons who are contracted to engage in purchasing activities on behalf of the casino licensee. To the extent that the amendments clarify that casino licensees should not, except as authorized during the transitional provisions, claim MBE or WBE participation credit for purchasing dollars that are disbursed to noncertified companies through certified commercial buyers, the proposed amendments should advance the social policies that are identified in N.J.A.C. 19:53-5.1.

The proposed amendments to N.J.A.C. 19:53-5.7 represent changes to technical reporting requirements and should have no social impact.

Economic Impact

If a casino licensee is currently claiming participation credit for all disbursements made to an enterprise that will be defined as a commercial buyer under the reproposed amendments, regardless whether those disbursements are being passed through to uncertified suppliers, the reproposed amendments will gradually decrease the amount of MBE and WBE participation credit that may be claimed by any such casino licensee

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in the future. Thus, the casino licensee and the commercial buyer may be required to adjust their purchasing activities by seeking out new certified MBE and WBE suppliers.

Conversely, the reproposed amendments will also clarify that a commercial buyer that agrees to use certified MBE and WBE suppliers when fulfilling a purchase authorization on behalf of a casino licensee may continue to pass that business through to the casino licensee for participation credit. This aspect of the amendments should benefit commercial buyers who have established business relationships with certified MBEs and WBEs who do not deal directly with casino licensees.

The proposed amendments to N.J.A.C. 19:53-5.7 are not expected to result in any additional costs to casino licensees.

The amendments are not expected to have any significant economic impact on the Casino Control Commission or the Division of Gaming Enforcement.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this reproposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

The proposed amendments may affect various enterprises that would qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not, however, impose any new reporting, recordkeeping or compliance requirements on such enterprises. At most, the proposed amendments simply clarify that the reporting and recordkeeping obligations already imposed by N.J.A.C. 19:53-5.5(e) apply to contractors that, under the proposed amendments, would now be identified as commercial buyers. The remaining proposed amendments to N.J.A.C. 19:53-5.5 and 5.7 would only apply to casino licensees, none of which qualify as a small business under the terms of the Regulatory Flexibility Act.

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

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.

. . .

"Commercial buyer" means a person who is not an employee of a casino licensee and who acts as a merchandise factor or broker in the purchase or negotiation of purchase of goods or services from a supplier for the benefit of a casino licensee.

. . .

"Purchase agreement" means an agreement between a commercial buyer and a supplier pursuant to which the commercial buyer purchases, or negotiates the purchase of, goods or services from the supplier for the benefit of a casino licensee.

"Purchase authorization" means an agreement between a casino licensee and a commercial buyer pursuant to which the casino licensee authorizes the commercial buyer to negotiate the purchase of, or actually purchase, goods or services from a supplier for the benefit of the casino licensee.

. . .

"Supplier" means an enterprise in the business of: providing services to customers as an independent contractor; manufacturing or producing and selling goods; or distributing goods that are maintained for sale either on an independent basis or as a representative of a manufacturer or producer.

. . .

19:53-5.5 Determination of casino licensee net disbursements for goods and services and disbursements to MBEs and WBEs

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

(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 **its** contractors **or commercial buyers** to award portions of their contracts **or purchase authorizations** 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 determing 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 **or commercial buyers** with certified and provisionally certified MBEs and WBEs in excess of this 70 percent limitation. Any casino licensee seeking credit for subcontracts **or purchase agreements** awarded to certified or provisionally certified MBEs or WBEs by a casino contractor **or commercial buyer** shall provide proof of the amount of the disbursements to the Commission. Such proof shall include:

1. Executed copies of the contract and subcontract **or purchase authorization and purchase agreement, as appropriate**;

2. Copies of any payment orders and checks made payable to the certified or provisionally certified MBE or WBE subcontractor **or supplier** 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 **or enterprises involved in** a particular contract, [or] subcontract, **purchase authorization or purchase agreement**.

(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 **permitted by this section** made during the period by the casino licensee and by any contractor **or commercial buyer** pursuant to an agreement authorized under (e) above **or (k) below**, 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.

(h) 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] **a** certified or provisionally certified MBE or WBE subcontractor if a corresponding credit is claimed for **disbursements made pursuant to** the casino contract.

(i) If a casino licensee has issued a purchase authorization to a commercial buyer and the commercial buyer itself is a certified or provisionally certified MBE or WBE, a casino licensee shall only claim credit for those disbursements made to the commercial buyer that represent compensation paid to the commercial buyer for its purchasing or negotiation activities on behalf of the casino licensee. Except as otherwise authorized by (e) above or (k) below, the casino licensee shall not claim credit for any disbursements made to the commercial buyer for the purpose of purchasing goods and services from a supplier unless, pursuant to (j) below, the commercial buyer also qualifies as a supplier and does in fact supply goods or services to the casino licensee in satisfaction of the purchase authorization.

(j) In determining whether an enterprise that is purchasing goods or services for the benefit of a casino licensee is acting as a supplier or commercial buyer for purposes of this subchapter, the totality of circumstances surrounding the transaction shall be considered including, without limitation, the following:

1. Whether the enterprise is a viable ongoing business enterprise involved in the distribution of such goods or the provision of such services independent of any business conducted with casino licensees (indicative of supplier status);

2. The level of involvement of casino licensees in the purchasing decisions of the enterprise, such as whether:

i. The casino licensee specifies not only the goods or services to be purchased but also the terms of purchase or the supplier from which the goods or services should be purchased (indicative of commercial buyer status); or

ii. The enterprise has the authority to make purchasing decisions without the approval of the casino licensee (indicative of supplier status); and

3. The historical business relationship between the enterprise and the casino licensee, such as whether:

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i. The casino licensee takes an active role in the management of the enterprise (indicative of commercial buyer status); or

ii. All business arrangements between the enterprise and the casino licensee are negotiated on an independent arm's length basis (indicative of supplier status).

(k) Notwithstanding any other provision of this chapter, including (e) and (i) above, in determining the good faith efforts of a casino licensee to meet its MBE and WBE participation goals, a casino licensee may claim credit for disbursements made to a commercial buyer for the purpose of purchasing goods or services from a supplier that is not a certified MBE or WBE provided that:

1. The casino licensee otherwise complies with all the provisions of this chapter by treating such supplier as if it were a certified MBE or WBE (for example, disbursements to the supplier shall be subject to the 70 percent limitation and proof requirements established in (e) above);

2. The commercial buyer is a certified or provisionally certified MBE or WBE and conducted business with a casino licensee as a certified MBE or WBE commercial buyer during calendar year 1994; and

3. The total amount of disbursement credit that may be claimed by a casino licensee pursuant to this subsection shall not exceed the following percentages of the total disbursement credit claimed by that casino licensee in calendar year 1994 for purchases made through that particular commercial buyer from suppliers that were not certified MBEs or WBEs:

i. For calendar year 1995, 80 percent;

ii. For calendar year 1996, 50 percent;

iii. For the period from January 1, 1997, through June 30, 1997, 10 percent; and

iv. After June 30, 1997, no disbursement credit may be claimed by a casino licensee pursuant to this subsection.

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.-5. (No change.)

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, **and of each supplier with whom the casino licensee did business pursuant to the provisions of N.J.A.C. 19:53-5.5(k),** as well as:

i. The certification status of the enterprise (MBE or WBE **or uncertified supplier**);

ii. (No change.)

iii. The total amount of dollars, if any, which were disbursed to the certified or provisionally certified MBE or WBE by a contractor **or commercial buyer** pursuant to an agreement as described in N.J.A.C. 19:53-5.5(e) **or to a supplier by a commercial buyer pursuant to an agreement authorized by N.J.A.C. 19:53-5.5(k)**;

7. The total dollar amount of **permitted** disbursements made to certified and provisionally-certified MBEs and WBEs during the quarter by either the casino licensee or its contractors **and commercial buyers**, listed by MBEs, WBEs and combined total, **the total dollar amount of permitted disbursements made to suppliers by a commercial buyer during the quarter pursuant to agreements authorized by N.J.A.C. 19:53-5.5(k),** 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 **permitted** disbursements made during the quarter to certified and provisionally-certified MBEs and WBEs by contractors **or commercial buyers** pursuant to agreements as described in N.J.A.C. 19:53-5.5(e) **or to suppliers pursuant to agreements authorized pursuant to N.J.A.C. 19:53-5.5(k).**

(b) (No change.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Managed Health Care Services

Proposed New Rules: N.J.A.C. 10:74
Proposed Repeal: N.J.A.C. 10:49-19

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-2, -7.

Agency Control No.: 95-P-3.

Proposal Number: PRN 1995-154.

Submit comments by April 5, 1995 to:

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

A copy of this proposal is available for review at the 21 County Welfare Agencies (CWAs) and at the Medicaid District Office (MDOs).

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services (the Division) is proposing a new rule, N.J.A.C. 10:74, Managed Care Services. N.J.A.C. 10:49-19, Prepaid Health Care Services, is being repealed at this time. The rules establish mandatory managed health care for specific Medicaid eligibility groups, that is, the AFDC and AFDC-Related populations. Other Medicaid-eligible groups for whom managed health care will be available, on an optional basis, include the SSI and DYFS populations.

Nationally, attention has focussed on managed health care structures, or health maintenance organizations (HMOs), in the effort to assure access and availability of health care services, and through the HMOs' primary care physicians, to assure effective and appropriate use of health services.

The United States Department of Health and Human Services (USDHHS) Health Care Financing Administration (HCFA) regulations governing Medicaid programs establish, in general, two regulatory structures for managed health care, Federal approval of HMOs and State approval of HMOs. To obtain Federal approval, a health care entity must conform to the provisions of the Federal Public Health Services Act. State approval of an HMO requires that the HMO acquire a Certificate of Authority from the New Jersey Departments of Health and of Insurance in order to operate within a specific county. Whether federally approved or defined by State authority, the HMO must also obtain State (Department of Human Services and Division of Medical Assistance and Health Services) and Federal (Health Care Financing Administration) approval of the HMO's Medicaid contract. Federal legislation permits a third approach to managed health care, a State-operated managed care program, which, in New Jersey, is the Garden State Health Plan.

The New Jersey Medicaid program has recognized managed care as a viable alternative to the traditional fee-for-service arrangement since the early 1980's, when the New Jersey Medicaid program established a Medicaid Personal Physician program which became, in 1987, the Garden State Health Plan. In the mid-1980's, a second managed care organization was added, HIP/Rutgers. In mid-1993, New Jersey established rules at N.J.A.C. 10:49-19 and amended the Title XIX State Plan to provide for State-approved (State-defined) HMOs, and proposed an emergency rule to enable a State-defined HMO to enroll Medicaid beneficiaries.

Continuing the expansion of the New Jersey Medicaid program into managed care, the Division now proposes to enroll in managed health care, on a mandatory basis, Medicaid eligibles who are recipients of "Aid to Families with Dependent Children" (AFDC), and those whose eligibility is "AFDC-related", that is, pregnant women and children who are enrolled in the New Jersey Care ... Special Medicaid programs. Individuals within the Social Supplemental Income (SSI) and the New Jersey Division of Youth and Family Services (DYFS) populations may voluntarily enroll in an HMO, subject to certain qualifications.

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Beginning in 1995, and extending for a two year period, mandatory enrollment will be phased in. The first phase will include enrollment in Camden, Gloucester and Hudson Counties during the first six months, and in Essex County six months after the initial implementation, enrolling approximately 194,000 clients. See N.J.A.C. 10:74-6 and 10:74-8 concerning enrollment.

Although the mandatory enrollment will cover AFDC beneficiaries and AFDC-related beneficiaries as defined above, some exclusions and exemptions will be granted. Institutionalized individuals, and individuals enrolled in hospice programs will automatically be excluded from mandatory enrollment. Exemptions will be available upon request for:

1. pregnant women beyond the first trimester who have established a relationship with an obstetrician;
2. terminally ill persons with an established physician relationship;
3. individuals with chronic, debilitated illness; and
4. within certain criteria, for persons who speak neither English nor Spanish and who have an established relationship with a physician who speaks the patient's language. (See N.J.A.C. 10:74-8.)

Medicaid beneficiaries whose eligibility for Medicaid stems from coverage through SSI or DYFS may apply for HMO coverage on a voluntary basis. Enrollment is on a "case basis", which means that all family members enroll as a Medicaid case (usually a family unit), and that the case will be enrolled into the same HMO as a unit. Newborns will be enrolled at birth into the mother's HMO. Beneficiaries of special programs are not eligible to enroll. Special programs include waiver and demonstration programs, the home care expansion program and Medically Needy. Medicaid beneficiaries eligible to enroll on a voluntary basis will receive detailed information on how to enroll. (See N.J.A.C. 10:74-6 and 10:74-8.)

Medicaid beneficiaries included within the mandatorily enrolled groups will receive information about the HMOs they are eligible to join, and will be expected to respond by a specified date. See N.J.A.C. 10:74-5 and 10:74-6. State-contracted Health Benefits Coordinators (HBCs) will assist individuals to enroll. Those persons who do not respond by the specified date will be automatically assigned to one of the HMO providers. Assignment to HMOs will be non-discriminatory in respect to persons' health condition(s), gender, race or other traits. Subsequent to enrollment, new enrollees will receive the HMO's new member kit and an HMO identification card. Enrollment periods in the Federally-qualified HMOs will be six months long. During the first 30 days of the individual's first period of enrollment in a Federally qualified HMO, the person may transfer to an alternate HMO for any reason; during the remaining five months of the enrollment, the beneficiary may transfer only with good cause. In subsequent enrollment periods, the beneficiary will not be restricted regarding transfer among available HMOs. Enrollees in State-qualified HMOs are not subject to the lock-in period. (See N.J.A.C. 10:74-7.)

The liaison between the HMOs and the Medicaid beneficiary population is the Health Benefits Coordinator (HBC), who is responsible for the outreach, health education and enrollment functions. In order to familiarize beneficiaries with the use of HMO services, the HBC and the HMO have the responsibility to conduct this education. The HBC will distribute an enrollment package containing an introduction to and explanation of the program, a listing of available HMOs, the "pre-nominated HMO", the toll-free telephone number for the HBC, and a brochure detailing the HMO options available. Health education functions include the conducting of seminars, community events and health fairs, and the coordination and control of HMO marketing efforts. The HBC will process the enrollment forms and will conduct the pre-nomination and assignment process for those individuals who do not select an HMO. After the beneficiaries have enrolled, the HBC will assist them through responding to their inquiries, complaints and grievances. (See N.J.A.C. 10:74-6.)

Mandatory HMO coverage of Medicaid beneficiaries requires a Federal waiver of the "freedom of choice" aspect of the Medicaid program. The Division has applied to HCFA for this waiver pursuant to Section 1915 of the Social Security Act. Implementation of the Managed Health Care program will proceed immediately upon HCFA approval of the waiver.

The managed health care program preserves the right of beneficiaries to some free choice of providers through:

1. the availability of at least two HMO providers in every county;
2. The right of the beneficiary to choose among available HMOs;
3. the random basis of pre-nomination assignments if the beneficiary fails to choose an HMO; and
4. the choice, within each HMO's provider network, of primary care physicians.

The responsibilities of HMO providers include:

1. assurance that all medically necessary services are available in a timely manner, including Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT);
2. provisions to assure appropriate utilization and referral for physicians and other service providers;
3. assurance of access to and provision of a comprehensive range of services;
4. assurance of professional services and quality of care;
5. a mechanism to reduce inappropriate and duplicative use of services;
6. establishing and maintaining a network of providers;
7. ensuring sufficient primary care physicians to provide beneficiaries adequate selection;
8. providing information and education for clients;
9. establishing policies and procedures to identify, investigate and take corrective action against fraud and abuse; and
10. developing appropriate reports (medical, financial, statistical and others) as required by the Department of Human Services. (See N.J.A.C. 10:74-3(b).)

Primary care physicians are responsible to manage the health care services provided to the Medicaid client, and either to provide services directly or to make appropriate referrals. The primary care physician shares with the HMO the responsibility for: access to medical care twenty four hours a day, seven days a week, 365 days a year; continuity of care; medical case management; cost effective administration; maintenance of complete medical records; and health education for clients.

The Standard Service Package contained in Subchapter 3 enumerates the health services to be provided by the HMO. Services not included in the Standard Service Package but case managed by the HMO include personal care services, elective abortions, lower mode transportation, hospital costs for donor and beneficiary for organ transplants, medical day care and rehabilitation services in excess of HMO limits.

The Division retains the responsibility to monitor all aspects of the HMOs' provision of services to clients, including: the HMO administration and organizational structure; the HMO provider network and access to services; quality of care; services for members; procedures for complaints and grievances; HMO marketing practices; recordkeeping; utilization review; policies and procedures to deal with fraud and abuse; the fiscal solvency of the HMOs; and the effectiveness and compliance of the HMO information systems.

Although health care services will be delivered to Medicaid beneficiaries through HMO providers, the Division will actively supervise the delivery of those services. In order to assure that Medicaid beneficiaries continue to receive quality health services, the Division, during January of 1995, is in the process of establishing a contract with an external review organization to conduct quality assurance reviews. The Division will continue to monitor HMO quality assurance activities and to conduct medical audits. The New Jersey Department of Health and Department of Insurance will continue to review institutional aspects of the HMOs and their operations through the Certificate of Authority issuance and renewals, and the New Jersey Department of Law and Public Safety will continue to issue and review provider licenses and certifications. The Federal Health Care Financing Administration (HCFA) will continue to review HMO contracts.

Additional safeguards of the Medicaid clients' health care exist in grievance procedures. Both HCFA and the Division require rigorous HMO grievance procedures before contracting with the HMO. The Medicaid fair hearing process will be available after exhaustion of grievance procedures. The Health Benefits Coordinator will provide assistance to beneficiaries using the grievance and fair hearing processes. (See N.J.A.C. 10:74-11.)

Economic Impact

Anticipated economic impact of the expansion of the managed health care program will vary widely, depending on the particular group under consideration:

Beneficiaries

The economic impact on beneficiaries will be minimal. In both the fee-for-service and the managed health care environments, Medicaid beneficiaries are not required or expected to pay any portion of the costs of services covered by the Medicaid program. In the fee-for-service environment, the program pays the providers of Medicaid services direct-

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ly for the costs of care; under managed health care, the program pays the capitation rate to HMOs for the entire cost of plan services and pays providers directly for the costs of non-plan, Medicaid-covered services.

Providers

The impact on traditional Medicaid providers will vary the most widely. Least affected will be those who traditionally provide services to disabled beneficiaries and others who are not subject to the mandatory managed health care enrollment. This would generally include, but not be limited to, home health care agencies, nursing facilities, and durable medical equipment suppliers.

The greatest impact will be on those providers who generally, in the fee-for-service environment, provide services to the AFDC population. The extent of the impact on individual, traditional Medicaid providers will depend on a number of factors:

1. The expected change in AFDC utilization rates, between fee-for-service and managed care (not all of these are expected to be negative: physician and dental services, for example, are expected to increase);
2. The fees that HMOs agree to pay under the contract terms, as compared with the fees paid by the fee-for-service Medicaid program;
3. The degree to which providers succeed in signing provider contracts with participating HMOs;
4. The degree to which HMO case managers refer beneficiaries to specific providers; and
5. The extent of AFDC involvement by specific providers in the fee-for-service environment.

Because the utilization of hospital services—both inpatient and outpatient—is expected to decline for the AFDC population, hospitals are expected to experience a negative impact. However, some hospitals may actually gain relative to their present position, depending on the patterns of HMO contracting with the hospitals, and admissions to specific hospitals.

Specialty physician and surgeon referrals are also expected to decline.

Government

Local government: Because the Medicaid eligibility rules are not altered as a part of the expanded managed health care program, the General Assistance population and expenditures are expected to be unaffected.

County government: The enrollment process will be coordinated by an outside private contractor and county government activities will be unaffected.

State government: The economic impact is expected to be positive because capitation rates paid will be less than the equivalent service-specific payments under fee-for-services.

Social Impact

Medicaid beneficiaries who are AFDC eligible or AFDC-related eligible will be required to enroll in an HMO, unless they are in one of the excluded or exempt categories. Medicaid beneficiaries who are covered through SSI or DYFS may enroll in an HMO on a voluntary basis. Upon enrollment, HMO members will receive health services through the HMO primary care physicians, or through physicians to whom their primary care physician has referred them.

The rule impacts upon HMOs in defining procedures they must follow in respect to Medicaid enrollees. As described above in this summary, or below, in the text of the rule itself, HMOs must obtain approvals and certifications from Federal and State agencies, must provide health care and keep documentation of services as specified, and provide other services and reports.

Medicaid providers, both as members of HMO structures and as non-members of HMOs, are affected by this rule. HMO member providers must conform to the expectations defined in this rule. Non-member providers will not be reimbursed for providing unauthorized services to HMO-member Medicaid eligibles.

Executive Order No. 27 Statement

The provisions of the new rules are not in excess of Federal regulations. The rules contain standards which are the same as Federal standards and requirements in the following areas:

Topic	Citation
Early and Periodic Screening, Diagnosis and Testing (EPSDT:)	1905(r) of the Social Security Act; 42 U.S.C. 1396d(r).
Health Maintenance Organization (HMO):	42 CFR 417.
HealthStart:	For Pediatric HealthStart: Federal standards for EPSDT, as described above, have defined this State program. For Maternal HealthStart: Section 1902(b) of COBRA provides for enhanced medical, and other, services for pregnant women.
Quality assurance:	42 C.F.R. 434.

Regulatory Flexibility Analysis

Because an HMO may constitute a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, a Regulatory Flexibility Analysis is being submitted.

The rules provide for the delivery of health care services to eligible persons. State and Federal laws require certifications and approvals of diverse focus, and specify that the provider of health services maintain records of services provided to individuals. Providers are required by law to maintain sufficient records to fully document the name of the patient being treated, dates and nature of services, plan of treatment and medications, etc. In addition, the Federal government requires of State Medicaid programs the provision of various reports concerning the administration of public funds. These requirements apply equally to all providers participating in the New Jersey Medicaid program. Consequently, the Division is not authorized to exempt a provider, whether or not the provider is a small business, from the documentation and reporting to the Medicaid agency of any services provided to Medicaid eligible persons.

A Medicaid provider may find it preferable, or essential, to engage the services of a professional firm to handle its accounting, billing, or data services, or other such functions, in order to provide the required reports or records, but this is an administrative decision of the provider, and not required by the proposed rules.

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

CHAPTER 74
MANAGED HEALTH CARE SERVICES
FOR MEDICAID ELIGIBLES

SUBCHAPTER 1. GENERAL PROVISIONS

10:74-1.3 Definitions

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

"AFDC" means Aid to Families with Dependent Children, a cash assistance program administered by the counties, supervised by the State in accordance with Federal requirements and administered with State and Federal funds.

"AFDC-related" refers to pregnant women and children who are enrolled in the New Jersey Care . . . Special Medicaid programs.

"Automatic assignment" means the enrollment of an eligible person, for whom enrollment is mandatory, in a managed care plan chosen by the New Jersey Department of Human Services when the persons fails to make a personal choice.

"Benefit package" means the services which the contractor has agreed to provide, arranged for, and be held fiscally responsible for, which are set forth in N.J.A.C. 10:74, Appendix A.

"Capitation rate" means the fixed monthly amount that the contractor is paid by the Department for each enrollee to provide that enrollee with the services included in the Benefit Package described in Appendix A of this chapter.

"Certificate of Authority" means the granting of authority by the New Jersey Departments of Insurance and Health to operate an HMO in New Jersey in compliance with N.J.S.A. 26:2J3 and 4 and N.J.A.C. 8:38-1.

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"Commissioner" means the Commissioner of the Department of Human Services or a duly authorized representative.

"Contractor" means a health maintenance organization as defined herein which contracts with the Department for the provision of comprehensive health services to Medicaid enrollees on a prepayment basis.

"Cultural competence" means acceptance of, and respect for, cultural differences, sensitivity to how these differences influence relationships with patients/clients and the ability to devise strategies to better meet culturally diverse patients' needs.

"CWA" means county welfare agency, that agency of county government which is charged with the responsibility for determining eligibility for certain public assistance programs.

"Department" means the Department of Human Services.

"Director" means the Director of the Division of Medical Assistance and Health Services or a duly authorized representative.

"Disenrollment" means the process of removal of an enrollee from the contractor's plan, not from the Medicaid Program.

"Division" means the Division of Medical Assistance and Health Services of the Department (DMAHS).

"Division of Youth and Family Services" (DYFS) means the component of the New Jersey Department of Human Services which provides comprehensive social services for children, families and adults. DYFS beneficiaries who are eligible for Medicaid are financially eligible children in foster care who are under the supervision of DYFS, and children who have been placed in private adoption agencies until they are legally adopted or in subsidized adoptions.

"Effective date of enrollment" means the date on which a person can begin to receive services under the contractor's plan.

"Emergency services" means those services required to treat a life-threatening or organ-threatening condition or potentially life or organ-threatening condition of such immediate nature that any unusual delay in treatment would be dangerous to the health or well-being of the enrollee.

"Enrollee" or "enrolled beneficiary" means an individual residing within the defined service area, who elects or has had elected on his or her behalf by an authorized person, in writing, to participate in the specific contractor's plan, whether through the mandatory managed care coverage or on an individual, voluntary basis, and who meets specific Medicaid eligibility requirements for Plan enrollment agreed to by the Department and the contractor, at N.J.A.C. 10:74-6.

"Enrollment" for the voluntary program means the process by which certain Medicaid eligible individuals voluntarily enroll in an HMO for the provision of health services and by which such application is approved.

"Enrollment" for the mandatory managed health care program means the process whereby specified Medicaid beneficiaries are required to join an HMO to receive the health services unless otherwise exempted or excluded.

"Enrollment area" is established by county boundaries, within which the HMO limits its enrollment, in accordance with its contract with the Department.

"EPSDT" means Early and Periodic Screening, Diagnosis and Treatment Program mandated by Title XIX of the Social Security Act.

"Excluded services" means services covered under the fee-for-service Medicaid program that are not included in the benefit package.

"Federally approved HMO" means an entity that has been granted a Certificate of Authority to operate in a specific service area as a Health Maintenance Organization in New Jersey, based upon Section 1903(m)(6) of the Social Security Act.

"Federally qualified HMO" means an HMO that has been determined by the Public Health Service (PHS) to be a qualified HMO under section 1310(d) of the PHS Act.

"Garden State Health Plan", or "GSHP" means the non-profit HMO operated by the State of New Jersey through the New Jersey Division of Medical Assistance and Health Services, in accordance with N.J.A.C. 10:49-20.

"Health benefits coordinator" (HBC) means an entity under contract with the Department whose primary responsibility is to assist Medicaid-eligible enrollees in the selection of and enrollment in a managed care plan.

"Health education services" means instruction to beneficiaries about obtaining the health care they need within an HMO, to medical providers about providing appropriate care within the HMO structure, and to community organizations for assisting their beneficiaries to achieve better health outcomes.

"Health maintenance organization" (HMO) means a public or private organization, organized under State law which:

1. Is a Federally qualified or Federally approved HMO (defined above); or

2. Meets the Division's definition of an HMO which includes, at a minimum, the following requirements:

i. Is organized primarily for the purpose of providing access to health services;

ii. Makes the services it provides to its Medicaid enrollees as accessible to them (in terms of timeliness, amount, duration, and scope) as those services are to non-enrolled Medicaid eligible individuals within the area served by the HMO;

iii. Makes provision against the risk of insolvency, and assures that Medicaid enrollees will not be liable for the HMO's debts if it does become insolvent; and

iv. Has a Certificate of Authority as defined in Subchapter 1, granted by the State of New Jersey to operate in all or selected counties of New Jersey.

"HHS" or "DHHS" means the United States Department of Health and Human Services.

"IPN" means Independent Practitioner Network, which is a type of network used in an HMO operation. Services are provided for enrollees in the individual offices of the contracting physician case managers (PCMs).

"Lock-in" period means, for a Federally qualified HMO, the period beginning 30 days after the effective date of enrollment in the contractor's plan and ending five months thereafter.

"Market area" See "Service Area."

"Marketing" means any presentation by, or on behalf of, an HMO for enrollment purposes.

"Medicaid" refers to the program funded under Title XIX of the Social Security Act, administered by the Department, to provide covered health care services to eligible beneficiaries.

"Medicaid beneficiary" means an individual eligible to receive services under the New Jersey Medicaid program in accordance with N.J.A.C. 10:49-2.

"Network", within the context of managed care, refers to "Provider Network" as described below.

"Out-of-area services" means all services covered under the Contractor's benefit package included under the terms of the Medicaid contract which are provided to enrollees outside the defined service area.

"Out-of-Plan Services" means Medicaid-covered services which have not been included in the contractor's benefits package. These services are provided to Medicaid beneficiaries who have enrolled in an HMO through the fee-for-service Medicaid coverage.

"Non-covered Medicaid services" means all services not covered under the New Jersey State Plan for the Medicaid program.

"Non-Participating Provider" means a provider with which the Contractor has no Provider Agreement.

"PCM" means physician case manager who is the primary care physician.

"Plan" means all services and responsibilities undertaken by the contractor pursuant to N.J.A.C. 10:74, the Managed Health Care Manual.

"Primary care physician" means a licensed physician MD or DO who has the responsibility for providing all required primary care services to enrollees, including periodic examinations, immunizations, diagnosis and treatment of illness or injury, for coordinating overall medical care and record maintenance, for initiating all referrals to specialty providers described in the Benefit Package, and for maintaining continuity of patient care. In general, the primary care physician is a general or family practitioner, internist, pediatrician or obstetrician/gynecologist.

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"Provider Network", within the context of managed care, means the servicing providers with whom an HMO has entered into a written agreement to perform a specified part of the HMO's obligations. These obligations are for the provision of professional medical services or goods and ensuring coverage of all required services included in the benefits package. The provider network will include primary care and specialty physicians, other health care professionals and entitites, hospitals, laboratories, and medical suppliers.

"Referral services" means those health care services rendered by a health professional other than the primary care physician, and who are approved by the primary care physician or by the contractor.

"Risk" or "underwriting risk" means the possibility that a contractor may incur a loss because the cost of providing services may exceed the payments made by the agency to the contractor for services covered under the contract.

"Risk comprehensive contract" means a risk contract for furnishing comprehensive services, that is, inpatient hospital services, and any three of the following services or groups of services:

1. Outpatient hospital services;
2. Other laboratory and diagnostic and therapeutic radiologic services;
3. Covered long-term care services provided in nursing facility; EPSDT services, and family planning services;
4. Physician services; and
5. Home health services.

"Routine care" means treatment of a condition which would have no adverse effects if not treated within 24 hours, or could be treated in a less acute setting, for example, a physician's office, or by the patient himself.

"Secretary" means the Secretary of the United States Department of Health and Human Services.

"Service area" means the geographic area in which the contractor is obligated to provide covered services for its Medicaid enrollees under its contract.

"Special Medicaid programs" means programs for:

1. AFDC families who have income above the 50 percent Federal poverty level standard, and
2. Aged, blind and disabled individuals who receive SSI, and whose income or resources exceed the standard.

"SSI" means Supplemental Security Income, which provides cash assistance and full Medicaid benefits for individuals who meet the definition of aged, blind, or disabled, and who meet the SSI financial needs criteria.

"Staff model" means a type of HMO operation in which HMO employees are responsible for both administrative and medical functions of the plan. Health professionals, including physicians, are reimbursed on a salary or fee-for-service basis. These employees are subject to all policies and procedures of the HMO. In addition, the HMO may contract with external entities to supplement its own staff resources.

"Standard service package" means the list of services, and any limitations thereto, which are required to be provided by managed health care providers to Medicaid beneficiaries.

"Subcontract" means any written agreement between the contractor and a third party to perform a specified part of the contractor's obligations under the contract.

"Subcontractor" means any third party who has a written agreement with the contractor to perform a specified part of the contractor's obligations, and is subject to the same terms, rights, and duties as the contractor.

"Target population" means the population from which the initial number of enrollees, not to exceed any limit specified in the contract, will be drawn; that is, individuals eligible for Medicaid residing within the stated market area and belonging to one of the categories of eligibility for Medicaid to be covered under the contract.

"Termination" means the loss of Medicaid eligibility and therefore automatic disenrollment of the recipient from the HMO.

"Third Party Liability" (TPL) means another party or entity, such as an insurance company, which is, or may be, responsible to pay for all or a part of the health care costs of a Medicaid beneficiary.

"Urgent care" means treatment of a condition that is potentially harmful to a patient's health and for which his or her physician has determined it is medically necessary for the patient to receive medical treatment within 12 hours to prevent deterioration.

SUBCHAPTER 2. CRITERIA FOR CONTRACTING WITH THE DEPARTMENT

10:74-2.1 Contract requirements

(a) The contractor shall:

1. Comply with the requirements of the New Jersey Certificate of Authority (P.L. 1973, c.337, N.J.S.A. 26:2J-1 et seq.) statutes and rules;

2. Provide to the Division of Medical Assistance and Health Services, Department of Human Services, a copy of the Department of Health approved Certificate of Authority and application document on request;

3. Furnish the Department with data, information and reports and maintain records as required by the Department and other State or Federal agencies. Such reports shall include, but are not limited to, enrollment data, quality control, and quality assurance, utilization review and financial statements, and service utilization;

4. Enroll individuals and provide services without reference to race, sex, age, religion, creed, color, national origin, ancestry or on the basis of health status or need for health services, other than those services specifically excluded from coverage as defined in the standard service package;

5. Assure that the provider network used for private, commercial business be equally available to Medicaid enrollees. Such provider network shall consist of hospitals, physicians, laboratories and all other providers of services covered under the contract;

6. Instruct medical providers regarding HMO health services in respect to:

i. Appropriate medical procedures and treatment;

ii. Delivery of culturally competent care;

iii. Advances in medical science; and

iv. Responsibility to notify beneficiaries when they are due to receive certain periodic services, for example, antenatal visits for pregnant women, and EPSDT examinations for children;

7. Have a contract which has been approved by the Health Care Financing Administration (HCFA) and the New Jersey Departments of Health and Insurance;

8. Have the organizational and administrative capabilities to carry out its duties and responsibilities. This shall include at a minimum, the following:

i. A full time administrator to manage day-to-day business activities of the contractor and to be the responsible contract officer. (This does not require a full time administrator to be dedicated solely to the Medicaid contract.);

ii. Data reporting capabilities sufficient to provide necessary reports and data as specified in the contract between the HMO and Department, and to assure orderly and timely flow of information to the Department. Such reports shall include, but are not limited to, enrollment data, quality control, and quality assurance, utilization review and financial statements, and service utilization;

iii. Financial records and books of accounts maintained in accordance with generally accepted accounting principles which are sufficient to disclose fully the disposition of all program funds received; and

iv. An annual independent audit arranged for by the contractor and performed by a certified public accountant;

9. Advise the Department of its administrative organization and changes thereto, which shall include the functions and responsibilities of each principal, an organizational chart and a list of all personnel and providers used either directly by the contractor or through subcontractual arrangements. For each principal and each provider not previously reported, the following information shall be included:

i. Full name;

ii. Business address;

iii. Social Security number;

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iv. IRS employer number;
v. Professional license number (when applicable); and
vi. Medical specialty (when applicable);
10. Comply with eligibility requirements of the program, which include, but are not limited to, enrolling only individuals who are covered under specified Medicaid categories of assistance and who reside in the agreed upon market area;
11. Identify and provide financial disclosure of subcontractors with whom it has had business transactions in excess of $25,000 per year, and any significant business transactions with such subcontractors. Transactions that shall be reported include:
i. Any sale, exchange or leasing of property;
ii. Any furnishing for consideration of goods, services, or facilities (but not employee salaries); and
iii. Any loans or extensions of credit;
12. When specifically requested, make available in the form of a consolidated financial statement, any information reported to the State, to the following:
i. The Secretary of the U.S. Department of Health and Human Services,
ii. The Office of the Inspector General,
iii. The Comptroller General, and
iv. The enrollees of the HMO;
13. Disclose to the Division the identity of each person with a controlling interest and of any person(s) having ownership of five percent or more; and
14. Not employ or contract with:
i. Any individual or entity excluded from Medicaid participation under Sections 1128 or 1128A of the Social Security Act or under N.J.A.C. 10:49-11 for the provision of health care, utilization review, medical social work, or administrative services; or
ii. Any entity for the provision of such services (directly or indirectly) through an excluded individual or entity;
15. Establish and implement policies and procedures for identifying, investigating, and taking corrective action against fraud and abuse on the provision of health services.
(b) The contractor shall also comply with 42 CFR 434 and 42 CFR 110, as amended and supplemented.

SUBCHAPTER 3. BENEFITS

10:74-3.1 Scope of benefits
(a) Federal regulations define risk comprehensive contracts as risk contracts for furnishing comprehensive services, which shall include inpatient hospital services and any of the following services, or any three or more of the following services or groups of services (See 42 CFR 434.21):
i. Outpatient hospital and rural health clinic services;
ii. Other laboratory and x-ray services;
iii. Nursing facility services, early and periodic screening, diagnosis and treatment (EPSDT), and family planning;
iv. Physicians' services;
v. Home health services.
(b) Under the risk contract, all HMO/managed health care contractors shall provide a standard service package, which shall exactly equal the services included in the New Jersey Medicaid program in amount, duration, and scope of services.
(c) The standard service package shall be provided in accordance with medical necessity without any predetermined limits, unless specifically stated; service utilization shall be controlled by the HMO through pre-certification programs and prior authorization for medical necessity.
(d) Health services provided to HMO enrollees through the standard service package shall include the following:
1. Primary care services, which shall include all physician services, primary and specialty, in accordance with State certification/licensure requirements, standards and practices; such services may also include certified nurse midwives, nurse practitioners and physician assistants.
Services rendered at independent clinics come under the management purview of the managed care provider;
2. Preventive health care and counseling, which shall include:
i. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program services including private duty nursing when indicated as a result of EPSDT screening;
3. Emergency medical care 24 hours a day, seven days a week;
4. Inpatient hospital services;
5. Outpatient hospital services;
6. Laboratory services;
7. Radiology services, diagnostic and therapeutic;
8. Prescription drugs:
i. Legend
ii. Non-legend drugs covered by the NJ Medicaid program;
9. Family Planning services (excluding elective/induced abortions);
10. Rehabilitation services—60 visits per therapy per contract year:
i. Physical therapy;
ii. Occupational therapy;
iii. Audiology services; and
iv. Speech/language therapy;
11. Podiatry services;
12. Chiropractic services;
13. Optometry services;
14. Optical appliances;
15. Hearing aids;
16. Home health services;
17. Hospice services;
18. Medical supplies;
19. Durable medical equipment;
20. Dental services;
21. Organ transplants, excluding donor and beneficiary inpatient hospital costs;
22. Transportation services, including ambulance, MICUs, and invalid coach only; and
23. Prosthetics and orthotics.
(e) The remaining services provided by the New Jersey Medicaid program under its State Plan shall remain in the fee-for-service program but shall be case managed by the managed care provider, including:
1. Personal care services;
2. Mental health services;
3. Substance abuse services:
i. Diagnosis;
ii. Treatment; and
iii. Detoxification;
4. Costs for methadone and its administration;
5. Medical day care;
6. Elective/induced abortions;
7. Transportation—livery; and
8. Organ transplants—Donor and beneficiary inpatient hospital costs.
(f) Any other service, activity, or product not covered under these rules shall be provided by a managed care provider only with the prior written approval of the Department and at the cost of the managed care provider.
(g) The following services shall remain in the fee-for-service program without requiring case management by the managed care provider:
i. Nursing facility care;
ii. Residential treatment center care;
iii. Psychiatric hospital;
iv. ICF/MR; and
v. Waiver and demonstration program services.
(h) Beneficiaries participating in a waiver or demonstration program or admitted for long term care treatment in one of the facilities listed in (g) above shall be disenrolled from the managed care entity on the date of admission to institutionalized care.
(i) An enrollee may obtain family planning services from either the contractor's family planning provider network or from any other qualified Medicaid family planning provider.
(j) In accordance with this chapter, the Division shall provide to Medicaid HMO-enrollees all Medicaid benefits which are not covered by the HMO.

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10:74-3.2 Responsibilities of the contractor

(a) The contractor shall make available emergency services, as defined in N.J.A.C. 10:74-1, on a 24-hour-a-day, seven-day-a-week basis.

(b) The contractor shall offer health education services as an integral part of its health care delivery system to its enrollees in order to assure appropriate use of health services and to promote the maintenance of health, including, but not limited to, instruction to beneficiaries regarding:

i. Their rights and responsibilities as members of managed care organizations; and

ii. Appropriate measures to achieve/maintain wellness or prevent illness;

(c) The contractor shall provide EPSDT-equivalent services for all Medicaid enrollees under 21 years of age, in accordance with the protocols approved by the Division.

1. Initial and periodic physical examinations shall be provided. All further treatments indicated shall be provided in an appropriate and timely manner and shall be appropriately documented as specified by EPSDT requirements. The above shall be in accordance with EPSDT regulations as specified at 42 U.S.C. 1396d(r) and N.J.A.C. 10:49-1.3.

i. The Division shall monitor the EPSDT equivalent services through periodic audits.

(d) The contractor shall provide or arrange to have provided all covered necessary health services in a manner that is prompt, appropriate, and of a quality that conforms to generally acceptable professional standards as set forth in the Federal Social Security Act, 42 U.S.C. 1302 et seq., and all other applicable Federal and State laws.

10:74-3.3 General Medicaid program limitations

(a) The following service requirements and limitations shall apply in the standard service package or capitation payments, even if provided by the HMO:

1. Although services of podiatrists shall be provided, New Jersey Medicaid does not ordinarily cover routine foot care or treatment of flat foot conditions. These services shall be provided only when medical necessity is determined.

2. Physical therapy, occupational therapy, and treatment for speech, language or hearing disorders shall be covered only when provided to an enrollee by a nursing facility, an approved home health agency, a hospital outpatient department, an independent outpatient clinic, or at the contractor's facilities.

3. Services provided by private practice physical therapists shall not be eligible for payment under the capitation rate unless:

i. The physical therapist holds a current license to practice in New Jersey; and

ii. The physical therapist is under contract with the contractor and will abide by the provisions of the contract.

4. Elective/induced abortions are not covered under an HMO program but will continue to be paid on a fee-for-service basis by the Medicaid program.

10:74-3.4 General Medicaid program exclusions

(a) The following shall not be considered covered services in the capitation rate, but shall be reported on an encounter, if provided:

1. All claims arising directly or indirectly from services provided by or in institutions owned or operated by the Federal government;

2. Elective cosmetic surgery;

3. Rest cures and custodial or domiciliary care;

4. Personal comfort and convenience items; services and supplies not directly related to the care of the patient, including, but not limited to, guest meals and accommodations, telephone charges, travel expenses other than those services which may be specifically covered under the standard benefits package (such as ambulance services), take-home supplies and similar costs;

5. Services involving the use of equipment in facilities, the purchase, rental or construction of which has not been approved by applicable laws of the State of New Jersey and regulations issued pursuant thereto;

6. All services included in the standard benefit package which are not provided, approved, or arranged by the HMO physician except emergency services as defined in N.J.A.C. 10:74-1 and under the conditions specified in N.J.A.C. 10:74-9;

7. Services provided in an inpatient psychiatric institution that is not an acute care hospital to individuals under 65 years of age and over 21 years of age; and

8. Private duty nursing in an institution or hospital setting and private duty nursing provided in any setting for individuals 21 years of age or older.

10:74-3.5 Reporting of services

All services listed in N.J.A.C. 10:74-3.3 and 3.4 shall be reported on encounters, despite the limitations or exclusions.

10:74-3.6 Availability of services

(a) Each contractor shall demonstrate the availability and accessibility of institutional facilities and professional, allied and supporting paramedical personnel to perform the agreed-upon services.

(b) Each contractor shall ensure that no distinctions will be made with regard to quality of service or availability of covered benefits between Medicaid enrollees under this subchapter and any other parties served by the contractor.

(c) Each Medicaid enrollee shall be given the choice of a primary care physician who will supervise and coordinate his or her care.

(d) Generally, the contractor shall have only one service area for all Medicaid parties served, including those served under these regulations. Modifications of such service area for purposes of contracting under this subchapter shall be achieved by means of contract amendment.

SUBCHAPTER 4. MARKETING

10:74-4.1 Marketing

(a) The contractor shall obtain written approval from the Division prior to the commencement of marketing activities, regarding the form and content of the following:

i. Informational and instructional materials to be distributed to inform Medicaid enrollees of the scope and nature of benefits provided by the contractor;

ii. Informational and instructional materials to be distributed to inform Medicaid enrollees of changes in program scope or administration;

iii. Public information releases pertaining to the enrollment of Medicaid individuals in the contractor's plan; and

iv. Instruction to community-based organizations that will empower them to provide instruction to their beneficiaries to achieve better health outcomes.

(b) The contractor shall ensure that:

1. All of the contractor's marketing presentations accurately and clearly represent the benefits and limitations of the contractor's plan, and are not false or misleading in any way;

2. All of the contractor's marketing representatives and agents have received sufficient instructions and training to be capable of performing such marketing activities;

3. All of the contractor's marketing representatives represent themselves as agents of the contractor involved in marketing;

4. All marketing presentations make clear whether a specific HMO enrollment is voluntary or mandatory; those individuals for whom managed care is mandatory may choose an HMO from those available in their county of residence; and

5. None of the contractor's marketing representatives offer or give any form of compensation or reward as an inducement to a Medicaid beneficiary to enroll in the contractor's plan. However, for marketing purposes, the HMO may offer promotional giveaways that shall not exceed a combined total of $10.00 to any one individual.

SUBCHAPTER 5. INFORMATION PROVIDED TO ENROLLEES

10:74-5.1 Information to be provided to enrollees by the contractor

(a) At such time as a Medicaid beneficiary signs an enrollment application of an HMO or prepaid health plan, the contractor shall inform the beneficiary that:

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1. There is normally a minimum 30 to 45-day processing period between the date of application and the effective date of enrollment;

2. During this interim period, the Medicaid enrollee may continue to receive health services under his or her current arrangement as long as he or she retains Medicaid eligibility; and

3. Subject to the termination of Medicaid eligibility, the disenrollment rules in N.J.A.C. 10:74-7 below and the termination provisions in the contract between the contractor and the Department, the initial enrollment period shall extend for six months.

(b) Prior to, but not later than, the effective date of coverage, or as specified in the contract, the HMO shall provide in writing to a new enrollee:

1. Notification of his or her effective date of enrollment;

2. An identification card clearly indicating that the bearer is an enrollee in the HMO or prepaid health plan;

3. Specific written details on benefits, limitations, exclusions, and availability and location of services and facilities. Thereafter, such notification shall be provided whenever changes are made, but not less than annually;

4. An explanation of the procedure for obtaining benefits, including treatment for emergency care, the addresses and telephone numbers of the enrollee's primary care physician and primary care physicians for members of the enrollee's family who are similarly eligible for Medicaid;

5. Information regarding continued enrollment in the contractor's plan including patient's rights and patient's responsibilities, the reasons a person may lose eligibility for the plan, and what should be done if this occurs;

6. Procedures for resolving complaints;

7. Reasons and procedures for disenrollment;

8. Any other information essential to the proper use of the plan as may be required by the Division;

9. An explanation of where and how 24 hour a day emergency medical care and out-of-area coverage is available; and

10. An explanation of how to obtain non-covered HMO services that are Medicaid benefits.

(c) Information as required by (b) above shall be supplied whenever there are significant changes in the services provided or the locations where they can be obtained, or other changes in program nature and administration. Such information shall be provided to each enrolled family household at least 10 days prior to such change.

SUBCHAPTER 6. ENROLLMENT

10:74-6.1 Enrollment

(a) Prior to implementation, the contractor shall obtain written approval from the Division of the method of enrollment, and the enrollment forms to be used in enrolling Medicaid beneficiaries. The contractor will adhere to the enrollment procedures required by the Division and detailed in the HMO contract.

(b) The contractor shall enroll Medicaid beneficiaries in the order in which they apply, or are assigned by the Division (in those cases where a selection is not made) without restrictions, up to contract limits.

(c) Enrollment shall be for the entire Medicaid "case" (family household).

(d) Except for State-defined HMOs, enrollment shall be for an initial six month period and in accordance with Federal statute, Section 1903(m)(2)(F) of the Social Security Act, with the exceptions indicated in N.J.A.C. 10:74-7 below. This fact shall be clearly stated on the enrollment application.

(e) For any person who applies for participation in the Plan and who is hospitalized at the time this coverage becomes effective, such coverage shall not commence until the date such person is discharged from the hospital.

(f) For those Medicaid beneficiaries enrolling in a federally qualified HMO, a "lock-in" period begins 30 days after the effective date of enrollment in the contractor's plan and ends five months thereafter. During this period, the enrollee must have good cause to disenroll or transfer from the contractor's plan. With respect to an enrollee for whom enrollment is mandatory, the lock-in period for initiation of a transfer concludes at the end of the five month period.

SUBCHAPTER 7. DISENROLLMENT AND TRANSFER

10:74-7.1 Disenrollemnt from Managed Health Care

(a) The contractor shall disenroll Managed Health Care enrollees:

1. Whenever the enrollee is no longer Medicaid eligible, unless otherwise specified in the contract;

2. Whenever the enrollee moves outside of the HMO's service area boundaries, the Contractor will remain responsible for the enrollee's care until the individual or the family/case has been disenrolled from the plan. Moving from the HMO's service area does not negate a plan's responsibility to provide Medicaid benefits. If a plan is aware that a beneficiary is residing outside its service area, the contractor shall ask DMAHS to disenroll the beneficiary due to the change of residence.

3. Whenever the enrollee is admitted to one of the following institutional settings: Nursing Facility, Residential Treatment Center, ICF/MR or long term psychiatric facility;

4. Whenever the contract between the Department and the contractor is terminated; or

5. Whenever granted through the formal grievance, in accordance with N.J.A.C. 10:74-11.1.

10:74-7.2 Disenrollment from a Federally-Qualified HMO

(a) At any time during the first 30 days of an initial period of enrollment in an HMO, the enrollee may elect to disenroll from the contractor's plan upon written notification to the Health Benefits Coordinator, without the need to state a cause.

(b) After this first 30 day period and for the next five months, the enrollee may elect to disenroll, with cause. Good cause reasons include, but are not limited to, failure of the contractor to provide services to the enrollee, failure of the contractor to respond to an enrollee's grievance, enrollee is subject to an enrollment exemption, enrollee has more convenient access to a PCP in another HMO. Such information shall be made available to the enrollee by the contractor and/or the health benefits coordinator.

(c) After the first six months of enrollment, the enrollee may again elect to disenroll without cause.

10:74-7.3 Disenrollment from a non-Federally Qualfied HMO

(a) For those enrollees in an HMO which is not Federally qualified, the following shall apply:

1. The enrollee may elect to disenroll from the contractor's plan, upon written notification to the Health Benefits Coordinator, without the need to state a cause, at any time.

(b) The contractor may terminate an enrollment for reasonable cause, which includes the failure of the enrollee to follow the HMO referral procedures, fraudulent conduct on the part of the enrollee, and loss of eligibility for service by the HMO. The termination shall be effected through a grievance process which is consistent with applicable State and Federal rules and regulations. If the enrollee is not satisfied, he or she may request a fair hearing in accordance with N.J.A.C. 10:49-10.

(c) Provision shall also be made for an enrollee's voluntary disenrollment from the contractor's plan in accordance with Section 1903(m)(2)(F) of the Federal Social Security Act.

(d) Until such time as the enrollee's termination of coverage becomes effective, the contractor shall remain liable for all contracted services. If an enrollee is hospitalized at the time of disenrollment or termination, the contractor shall be liable for all inpatient hospital charges through the date of discharge (if those charges are for a contracted service).

SUBCHAPTER 8. ENROLLMENT

10:74-8.1 Mandatory Managed Care enrollment

(a) Medicaid eligible persons who reside in geographically defined enrollment areas designated for mandatory managed care and who qualify for AFDC or AFDC-related New Jersey Care . . . Medicaid

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Special Programs eligibility categories shall enroll in an HMO of their choice, or, if a choice is not made, an HMO shall be assigned for them.

(b) AFDC-related individuals shall be included in the Managed Care program under the following standards:

1. Medicaid Special: covers children ages 19 to 21, using AFDC standards;

2. New Jersey Care ... Special Medicaid Programs: covers pregnant women and children up to age 1 with incomes at or below 185 percent of poverty; children up to age 6 at 133 percent of poverty; and children born after September 30, 1983 at 100 percent of poverty.

(c) SSI-eligible individuals shall be included in the Managed Care program under the following standards:

1. Community Medicaid Only—provides full Medicaid benefits for aged, blind and disabled individuals who meet the SSI criteria, but do not receive cash assistance, including former SSI beneficiaries who receive Medicaid Continuation;

2. New Jersey Care ... Special Medicaid Programs—provides full Medicaid benefits for aged, blind and disabled individuals who have income at or below 100 percent of the Federal poverty level and resources at or below 200 percent of SSI resource standard.

10:74-8.2 Individuals excluded from enrollment

(a) The following persons shall be excluded from enrollment in managed care:

1. Individuals in a Home- or Community-based Waiver program including Model Waiver I, Model Waiver II, Model Waiver III, Aids Community Care Alternative Program (ACCAP), Division of Developmental Disabilities Community Care Waiver (DDD-CCW); Community Care Program for Elderly and Disabled (CCPED); ABC for Children, and Traumatic Brain Injury (TBI);

2. Individuals in a Medicaid demonstration program;

3. Individuals who are institutionalized in a long term care or residential facility; and

4. Individuals in the Medically Needy, Presumptive Eligibility or Home Care Expansion Program.

10:74-8.3 Voluntary managed care enrollment

(a) The following individuals shall be excluded from the automatic assignment process but may enroll voluntarily:

1. Individuals whose Medicaid eligibility will terminate within three months or less after the projected date of effective enrollment;

2. Individuals who live in a county where mandatory enrollment is not required;

3. Individuals already enrolled in an HMO with a Medicaid contract or private HMO which does not have a contract with the Department to provide Medicaid services;

4. Individuals in the Pharmacy Lock-in or Hospice programs (see "Special Status" at N.J.A.C. 10:49-14.2, and N.J.A.C. 10:53A); and

5. Individuals in eligibility categories other than AFDC or AFDC-related New Jersey Care populations.

10:74-8.4 Individuals exempted from mandatory managed care

(a) The following individuals may apply for exemption from mandatory enrollment in an HMO:

1. Pregnant women, beyond the first trimester, who have an established relationship with an obstetrician who is not a participating provider in the contractor's plan. These individuals will be tracked and enrolled after 60 days postpartum;

2. Individuals with a terminal illness who have an established relationship with a physician who is not a participating provider in the contractor's plan;

3. Individuals with a chronic, debilitating illness who have received treatment from one physician with whom they have an established relationship;

4. Individuals who do not speak English or Spanish who have an illness requiring on-going treatment and who have an established relationship with a physician who speaks the same language, if there is no available primary care physician in any of the participating managed care plans who speaks the client's language; and

5. Individuals who do not have a choice of at least two PCPs within 30 miles of their residence.

(b) If the beneficiary(s) does not exercise his or her option to voluntarily select an HMO within a specified time period, the State will assign the beneficiary to an HMO.

(c) If a beneficiary is granted an exemption, he or she will continue to receive Medicaid services from Medicaid providers in the traditional fee-for-service setting.

10:74-8.5 Coverage prior to enrollment

If the beneficiary needs Medicaid-covered services from the date of eligibility prior to the completion of the enrollment process, care shall be given by providers enrolled in the New Jersey Medicaid program. These providers should bill Medicaid under the normal fee-for-service system, in accordance with N.J.A.C. 10:49-8.

10:74-8.6 Coverage after enrollment

(a) After the beneficiary receives his or her HMO Identification Card indicating the effective enrollment date in the HMO, he or she shall show this card to all Medicaid providers.

(b) Beneficiaries shall consult their primary care physician (PCP) for necessary medical care and services.

(c) The PCP shall provide all necessary treatment or make the appropriate referral.

10:74-8.7 Voluntary enrollment

(a) The following procedures shall apply to voluntary beneficiary enrollment in an HMO:

1. For beneficiaries not required to enroll in managed care, enrollment will be voluntary. Disenrollment will be allowed in accordance with N.J.A.C. 10:74-7.

2. If the beneficiary needs Medicaid covered services from the date of eligibility prior to the completion of the enrollment process, care will be given by providers enrolled in the New Jersey Medicaid program. These providers should bill Medicaid under the normal fee-for-service system, in accordance with N.J.A.C. 10:49-8.

3. Once the beneficiary receives his or her HMO Identification Card indicating the effective enrollment date in the HMO, he or she shall show this card to all Medicaid providers.

i. Beneficiaries will consult their primary care physician (PCP) for necessary medical care and services.

ii. The PCP will provide all necessary treatment or make the appropriate referral.

iii. Emergency procedures are governed by N.J.A.C. 10:74-9.

SUBCHAPTER 9. EMERGENCY SERVICES

10:74-9.1 Emergency services

(a) The contractor shall, on a 24-hour-a-day, seven-day-a-week basis, make available emergency services, that is, treatment of a life-threatening or organ-threatening condition or potentially life or organ-threatening condition of such immediate nature that delay in treatment would be dangerous to the health or well-being of the enrollee (as defined in N.J.A.C. 10:74-1).

1. "Emergency room services" (health services rendered in an emergency room facility, which may or may not relate to a truly emergent condition) shall be distinct from "emergency services" (care rendered in the event of a medical emergency).

2. Criteria by which a medical emergency is determined include severity and rapid onset.

(b) The contractor shall give the enrollee an explanation of where and how 24 hour a day emergency medical care and out-of-area coverage is available, and shall explain to the enrollee the procedure for obtaining treatment for emergency care.

(c) Emergency services, as distinguished at (a)1 above, are covered services, even if they have not been authorized by the HMO physician.

SUBCHAPTER 10. MEDICAL RECORDS; PEER REVIEW AND QUALITY ASSURANCE

10:74-10.1 Medical records

(a) Each contractor shall maintain a medical record on each member who has received medical services while enrolled in the contractor's plan, and shall retain such records in accordance with 45 C.F.R. Part 74 and appropriate State law and rule.

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(b) Each enrollee's medical records shall be kept in detail consistent with applicable Federal and State requirements and good medical and professional practice, based on the service provided.

(c) Each contractor shall conform to the standards of confidentiality of information mandated for Federal and State officials (Section 1902(a)(7) of the Federal Social Security Act, 42 CFR 431.300, N.J.S.A. 30:4D-7(g), and N.J.A.C. 10:49-9.4 and 9.5).

(d) Medical records of enrollees shall be sufficiently complete to permit subsequent peer review or medical audit. All required records, either originals or reproductions thereof, shall be maintained in legible form and readily available to appropriate Division professional staff or its agents, upon request for review, audit and evaluation by professional medical, nursing and investigative staff, in accordance with appropriate Federal and State laws, rules and regulations.

(e) The contractor shall release medical records of enrollees, as may be directed by authorized personnel of the Division, appropriate agencies of the State of New Jersey or the United States Government, consistent with the provisions of confidentiality (Section 1902(a)(7) of the Federal Social Security Act, 42 CFR 431.300, N.J.S.A. 30:4D-7(g), and N.J.A.C. 10:49-9.6).

10:74-10.2 Peer review

(a) Each contractor shall submit a description of its system of internal peer review to the Division. The system shall assure that acceptable professional practice shall be followed by the contractor and any subcontractors of that contractor.

(b) Each contractor shall provide the Division with an explanation of the relationship between peer review procedures and any applicable peer review organization (PRO), should such exist.

(c) The number of cases reviewed and summaries of the actions taken by the peer review system shall be reported at least annually to the Division.

10:74-10.3 Quality assurance

(a) The Division and the U.S. Department of Health and Human Services shall have the right to inspect or otherwise evaluate the quality, appropriateness and timeliness of services performed by the contractor in accordance with State and Federal requirements.

(b) The contractor shall offer assurances that all health services required by its enrollees shall meet quality standards within the appropriate medical practice of care, consistent with the medical community standards of care.

(c) The contractor shall submit to the Division for approval a detailed plan for establishing and maintaining an internal quality assurance system to assure that acceptable professional practice shall be followed by the organization and its subcontractors. This shall include a proposed system for continuing performance review and health care evaluation, that is, explanation of the methods which the contractor proposes to follow in guaranteeing that the services provided each enrollee shall meet criteria established by appropriate Federal and State statutes and regulations (42 CFR 434.34).

(d) The contractor shall agree to medical audits relating to its standard of medical practice and the quality, appropriateness and timeliness of health services provided all members, as may be required by the Division. The medical audit shall include, at a minimum, the review of:

1. The delivery system for patient care;
2. Utilization data and medical evaluation of care provided and patient outcomes for specific enrollees as well as for a statistically representative sample of enrollee records;
3. The peer review system and reports; and
4. The enrollee and/or HMO grievances relating to medical care, including their disposition.

(e) The results of the medical audits may be disclosed to the public as provided by State and Federal law.

(f) The contractor shall agree to release the comprehensive medical records of enrollees upon termination of their coverage, as may be directed by the enrollee, authorized personnel of the Division, appropriate agencies of the State of New Jersey, or of the United States Government.

SUBCHAPTER 11. GRIEVANCE PROCEDURE

10:74-11.1 Grievance procedure

(a) The contractor shall establish a grievance procedure for the receipt and adjudication of any and all complaints from enrollees relating to quality, scope, nature and delivery of services.

(b) The grievance procedure shall be communicated to the enrollees in writing and shall provide for expeditious resolution of grievances by the contractor's personnel who shall be at a decision-making level with authority to require corrective action.

(c) The contractor shall review the complaint procedure at reasonable intervals, but no less than annually, for the purpose of improving the procedure.

(d) Any amendment to the procedure shall be presented to the Division prior to the implementation of any change, and the Division's written approval shall be obtained, in accordance with 42 C.F.R. 434.42, in order to assure that enrollees are afforded an opportunity to be heard.

10:74-11.2 Fair hearing

(a) The contractor shall ensure that all Medicaid enrollees shall be informed in a simple, brief statement, of their rights to a fair hearing in accordance with N.J.A.C. 10:49-10, and of the contractor's grievance review procedures. This may be accomplished by an annual mailing, as noted in N.J.A.C. 10:74-5.1(b)3, a member handbook, or any other method which shall not diminish the enrollees' opportunity to be heard.

(b) The contractor shall report all grievances to the Division with a brief statement of the problem and resulting outcome on a quarterly basis.

SUBCHAPTER 12. REIMBURSEMENT

10:74-12.1 Determination of contractors' costs

(a) The contractor shall submit, for DMAHS approval, information in sufficient detail to describe:

1. Contractor costs for each category of service covered under this contract;
2. The major cost components that constitute each capitation rate, including at a minimum, the projected costs:
   i. Of hospital services;
   ii. Of physician and other health services; and
   iii. Of administration; and
3. A detailed description of the underlying assumptions and procedures followed by the contractor in determining its costs.

10:74-12.2 Capitation payments

Compensation to the contractor shall consist of monthly capitation payments for each enrollee. These payments shall be for a defined scope of services to be furnished to a defined number of enrollees, for providing the services contained in the Benefits Package as described at N.J.A.C. 10:74-3.1. Monthly capitation payments shall not exceed the upper payment limit, which is the cost of providing those services on an established Medicaid fee-for-service basis to an actuarially equivalent, non-enrolled population group.

10:74-12.3 Derivation of capitation rates

(a) Capitation rates shall be derived from the Division's Base Year(s) experience data which resides in the New Jersey Medicaid Management Information System.

(b) A file containing fee-for-service (FFS) data is developed on a date of service basis for all 21 counties. The file contains total claims, utilization counts, and member months. Claim dollars, utilization counts, and member months for which an HMO would not be at risk under the managed care program are removed from the data. Some examples of why an HMO would not be at risk for certain costs include program services retained by the State (for example, mental health care), costs incurred during the prior quarter of coverage, or costs incurred after Medicaid eligibility but before enrollment into an HMO. The data are summarized by:

1. Calendar year incurred
2. Individual county
3. Category of assistance (Program Status Code)
4. Age and sex

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5. Category of service, for example, inpatient hospital, emergency room facility, physician office visit

(c) In addition to adjusting the FFS data to exclude services not covered under the managed care program, additional adjustments must be made to modify FFS data for expected changes in the services to be delivered, catastrophic claims, administration, and trend. Programmatic adjustments estimate what the FFS experience would be after the programmatic changes. The catastrophic adjustment smooths out the experience of a given county by reallocating high cost claims. An additional adjustment must be made to cover the State's cost of administering the program. An inflation/utilization adjustment, that is, trend, is used to estimate what the appropriate service cost should be at a given point in the future.

1. Catastrophic smoothing: Because such claims are unpredictable and can happen in any county, a smoothing technique is used to average the experience of catastrophic claims over all counties. Rates are adjusted by the difference between the county- and rate-group-specific volume of catastrophic payments per eligible month and the corresponding state-wide average.

2. Administration: An administrative load equal to the costs of running the Medicaid program is included as part of the upper payment limit (UPL) calculations.

3. Trend adjustment: To adjust for the effect of inflation, a trend adjustment is calculated by examining a 35-month payment stream by category of service (COS) per eligible month. A rolling 12-month average payment per eligible month is calculated for each COS to smooth the trend line. Then an annual trend figure is determined by comparing a given data point to a data point 12 months prior.

4. Based on the foregoing, a fee-for-service equivalent (FFSE) is calculated, which expresses the FFS experience, modified for programmatic changes, catastrophic claims, and trend, on a per-member per-month (PMPM) basis. The FFSE is then decomposed into component parts of annual utilization per 1,000 members and unit cost figures.

5. The Medicaid FFS experience is then altered to reflect the managed care environment. Adjustments to the FFSE are made to reflect:

i. Reduced utilization of inpatient hospital, outpatient hospital;
ii. Increased utilization of physicians' offices;
iii. Reduced utilization of emergency room;
iv. Reduced utilization of physician specialists;
v. Increases in certain physician's fees;
vi. Increases utilization of physician office visits;
vii. Reduced utilization of surgery;
viii. Increased average cost of surgery;
ix. Reduced average drug cost;
x. Increased administrative load.

6. The PMPM figure that results is the capitation rate.

10:74-12.4 Adjustment of capitation rates

(a) Capitation rates are prospective in nature and will not be adjusted retroactively.

(b) Capitation rates shall not be subject to renegotiation during the contract period, except when any changes in Federal and/or State laws, rules, regulations or covered services so require.

10:74-12.5 Payment of capitation to contractor

(a) The monthly capitation payments are due to the contractor from the enrollees' effective dates of enrollment until the effective dates of disenrollment or termination of the HMO's contract, whichever occurs first.

(b) DMAHS will pay the capitation by the fifteenth day of any month during which health services will be available to an enrollee; provided that information pertaining to enrollment and eligibility, which is necessary to determine the amount of said prepayment, is received by DMAHS by the eighth day of the month.

(c) When DMAHS's capitation payment obligation is computed, if an enrollee's coverage begins after the first day of a month, DMAHS will pay the contractor a fractional capitation payment that is proportionate to the part of the month during which the contractor provides coverage. Payments are calculated and made to the last day of a calendar month, except in the case of death of the enrollee.

(d) Capitation payments for full month coverage shall be recovered from the contractor on a prorated basis when an individual is admitted to a skilled or intermediate care facility, extended acute psychiatric care facility or other institution. The individual shall be disenrolled from the contractor's plan on the day prior to such admission.

(e) When an enrollee is shown on the enrollment roster as covered by a contractor's plan, the contractor shall be responsible for providing services to that person from the first day of coverage shown to the last day of the calendar month of the effective date of disenrollment, and DMAHS will pay the contractor its capitation rate during this period of time.

10:74-12.6 Coverage of a hospitalized person

For any eligible person who applies for participation in the contractor's plan, but who is hospitalized prior to the time coverage under the plan becomes effective, such coverage shall not commence until the date such person is discharged from the hospital, and DMAHS shall be liable for payment for the hospitalization, including any charges for readmission within 48 hours of discharge for the same diagnosis. If an enrollee's disenrollment or termination becomes effective during a hospitalization, the contractor shall be liable for hospitalization until the date such person is discharged from the hospital, including any charges for readmission within 48 hours of discharge for the same diagnosis.

10:74-12.7 Services provided in excess of limits

For Medicaid covered services provided to an enrollee by the contractor or other Medicaid participating provider in excess of the stated limits set forth at N.J.A.C. 10:74-3.1, the participating provider will be reimbursed by DMAHS according to the Medicaid fee schedule, provided that the participating provider has received the Exhaustion of Benefits (EOB) letter from the contractor.

10:74-12.8 Situations wherein no payment will be made

(a) The contractor shall not be responsible and shall not be paid when DMAHS has previously notified the contractor by mail specifying enrollee-months for which DMAHS is not responsible.

(b) If an enrollee is deceased and appears on the beneficiary file as active, the contractor shall promptly notify DMAHS. DMAHS will recover through offset all capitation payments made after the date of death.

(c) Newborn babies are the responsibility of the plan that covered the mother on the date of birth. When the enrollment roster from DMAHS does not include the case addition, the contractor will notify DMAHS when the mother has included the baby in the Medicaid case (family household) with the County Welfare Agency to coordinate the adjustment of coverage. The mother's plan is responsible for the hospital stay for the newborn following delivery. The plan of record for the child is responsible for subsequent services based on enrollment in the plan.

SUBCHAPTER 13. GENERAL REPORTING REQUIREMENTS

10:74-13.1 Reporting requirements

(a) Each contractor shall furnish such timely information and reports as the Division may find necessary, and on such forms or in such format as the Division may prescribe, as specified in the contract. Such reports shall include information sufficient for Division management, monitoring and evaluation purposes in at least the following areas:

1. Enrollment and disenrollment;
2. Encounter data at a level of detail specified in the contract, and enrollee identification data;
3. Utilization data for covered services provided under the contract;
4. Utilization data for family planning services;
5. Financial data; and
6. Third party liability (TPL) recoveries for enrollees.

(b) The contractor shall submit to the Division at least annually information specified by the Division on non-Medicaid enrollees for purposes of comparative analyses of service use and cost patterns.

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(c) Each contractor shall maintain records in accordance with 45 C.F.R. 74, and other applicable State and Federal law, and make available to authorized personnel of the Division all records created pursuant to N.J.A.C. 10:74-2.1 and 10.1.

(d) The contractor shall maintain a uniform accounting system that adheres to generally accepted accounting principles.

(e) The contractor shall provide the primary care physicians with quarterly utilization profiles. These profiles shall include, but not be limited to, utilization information on member encounters with personal care physicians, specialty claims, prescriptions and emergency room use.

(f) The contractor shall collect and analyze data to implement effective quality assurance, utilization review and peer review programs. The contractor shall review and assess data using statistically valid sampling techniques.

(g) The contractor shall agree to make appropriate provisions to physically secure and safeguard documents and files related to the State of New Jersey pursuant to 42 CFR Part 431, Subpart F.

(h) All significant changes that may affect the contractor's performance under the contract shall be immediately reported to the Division.

(i) The contractor, with the prior written approval of the Division as to form and content, shall arrange for the distribution of informational materials to all subcontractors providing services to enrollees, outlining the nature, scope and contract requirements.

SUBCHAPTER 14. CONTRACT SANCTIONS

10:74-14.1 Contract sanctions

(a) Provisions under Federal law relating to imposition of penalties upon providers of health care services can be found at Section 1903(m)(5)(A) of the Social Security Act.

(b) Monetary damages shall be imposed by DHS for failure of the contractor to comply with the timeliness and accuracy of claims processing; timeliness and accuracy of data submittals; and any losses of funds incurred by the State due to the contractor's non-compliance. (See 42 U.S.C. 1396b(m)(5)(A); N.J.S.A. 30:4D-1; N.J.A.C. 10:49-1 and 10:49-11.)

(c) The contractor shall submit a corrective action plan for any deficiency identified by the Department. The contractor shall implement the corrective action established by the Department. Damages will be applied for failure to implement the corrective action plan. (See 42 U.S.C. 1396b(m)(5)(A); N.J.S.A. 30:4D-1; N.J.A.C. 10:49-1 and 10:49-11.)

(d) The contractor shall comply with all performance standards, which shall be defined as compliance with all requirements specified in the contract. Failure to do so will result in the following sanctions:

1. DMAHS may suspend the contractor's right to enroll new members, for any length of time specified by DMAHS;

2. DMAHS may notify enrollees of contractor non-performance and permit enrollees to transfer to another plan;

3. DMAHS may terminate the contract, under the provisions of the contract; and/or

4. DMAHS may withhold all or part of the monthly capitation payments.

(e) Should the contractor fail to satisfy any terms or requirements of the contract, damage to the State shall be presumed, and the contractor shall pay to the State its actual damages.

1. For failure to comply with any requirements concerning services provided to enrollees, DMAHS shall impose sanctions in an amount equal to the costs incurred by the State to ensure adequate service delivery to affected enrollees. (See 42 U.S.C. 1396b(m)(5)(A); N.J.S.A. 30:4D-1; N.J.A.C. 10:49-1 and 10:49-11.) If transfers of patients are required, the costs associated with such transfers shall be assessed against the contractor.

2. For failure to comply with any material contract provisions for which damage cannot be quantified, DMAHS shall notify the contractor in writing and specify a period of time in which the contractor shall respond in writing, and will specify a reasonable period of time in which the contractor shall remedy its non-compliance. If the contractor's non-compliance is not corrected by the specified date, DMAHS shall assess sanctions, as provided for in the contract.

3. DMAHS shall deduct sanctions from any money payable to the contractor.

SUBCHAPTER 15. STATE-DEFINED HMOs

10:74-15.1 Requirements for State-defined HMOs

(a) A State-defined HMO is subject to all of the requirements of N.J.A.C. 10:74-1 through 10:74-14, with the following exceptions noted:

1. A guarantee of Medicaid eligibility cannot be offered to enrollees of a State defined HMO (1902(e)(2)(A) of the Social Security Act);

2. The State may not restrict the period for requests for termination of enrollment without cause to the first month of each period of enrollment for enrollees of a State-defined HMO (1903(m)(2)(F) of the Social Security Act);

(b) Medicaid members of a State-defined HMO receive all Medicaid services for as long as they remain Medicaid eligible.

1. Out-of-plan services are reimbursed through fee-for-service and do not require prior authorization by the HMO.

(a)

DIVISION OF FAMILY DEVELOPMENT

General Assistance Program
Fingerimaging Procedures
Proposed Amendment: N.J.A.C. 10:85-3.2

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1995-144.

Submit comments by April 5, 1995 to:
Karen Highsmith, Acting Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 10:85-3.2(c)7 establishes procedures for fingerimaging in the General Assistance (GA) program and will be an eligibility requirement for all GA applicants/recipients. "Fingerimaging" is the word used to describe electronic capture of fingerprints. The finger(s) is placed on a glass plate which electronically captures the fingerprint image and transmits it, via a PC to a monitor screen. When the operator sees that an acceptable image has been obtained, that image is stored in a data base, along with the appropriate identifying information. The software employed by the computer will match all fingerprint entries against this data base and detect any duplications. The purpose of fingerimaging is to positively identify applicants/recipients and prevent the fraudulent duplication of benefits or other misuse of the GA program. Initially, this project will involve all municipalities within an approximate 15 mile radius of Newark. N.J.A.C. 10:85-3.2(c)7 requires all applicants of GA, as a condition of eligibility, to participate in fingerimaging.

N.J.A.C. 10:85-3.2(c)7i indicates that fingerimages shall be made on the right and left index finger of the GA applicant/recipient.

N.J.A.C. 10:85-3.2(c)7ii requires municipal welfare departments (MWDs), without automated worksites for fingerimaging, to mail the fingerimage data to the Division of Family Development (DFD) within 24 hours.

N.J.A.C. 10:85-3.2(c)7iii specifies that a GA grant shall be issued in immediate need situations, pending fingerimaging results.

N.J.A.C. 10:85-3.2(c)7iv requires that clients refusing to participate in fingerimaging will be denied or terminated from GA.

N.J.A.C. 10:85-3.2(c)7v specifies that fingerimaging results shall be restricted to the use or disclosure of information directly connected to the administration of the GA program.

Social Impact

The proposed amendment at N.J.A.C. 10:85-3.2(c)7, which sets forth the rules and procedures for fingerimaging, may not be viewed favorably

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by some clients, as well as by client advocate entities. The proposed amendment, however, which requires all applicants/recipients to participate in the fingerimaging process, is being implemented in order to positively identify GA clients. The municipalities should be in favor of this process, as it will facilitate the identification of clients and will reduce the amount of duplicate assistance. Taxpayers that have become less sympathetic to the needs of their less fortunate neighbors due to the increasing publicity of fraud in the system are demanding reform and should support this project.

Economic Impact

The proposed amendment at N.J.A.C. 10:84-3.2(c)7 establishing the fingerimaging project is expected to save the State approximately $890,000 during the initial year of the project. The savings to the State should increase over the years as the project expands Statewide. Based on the results of fingerimaging projects from other states, the savings from this project will be realized, for the most part, through individuals not returning to the assistance rolls, rather than from duplicate assistance matches through the fingerimaging project once it is known that fingerimaging is required. During the initial pilot project there will be 12 large MWDs that will employ on-site fingerimaging workstations. These MWDs will have to have staff trained (by the vendor) in the use of this technology. In New York, where this system is in use in two counties, security guards have been trained in this work, in addition to their regular duties. Therefore, it is expected that the additional workload will not require additional staff, except perhaps in Newark and Jersey City (one each).

Executive Order No. 27 Statement

This proposed amendment is not subject to any Federal requirements or standards; therefore, a Federal exceedance analysis is not applicable to the rulemaking.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes 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]):

10:85-3.2 Application process

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

(c) Rules concerning taking applications are:

1.-6. (No change.)

7. All applicants/recipients (except nursing facility applicants/recipients) are required to participate in the fingerimaging process at the time of application and at other times when the MWD deems it necessary to positively establish the identity of the client.

i. Fingerimages will be completed on the left and right index finger of the client. If the client is missing one or both index fingers, then a fingerimage of the next finger will be required.

ii. All MWDs without automated worksites for fingerimaging shall mail the fingerimage cards, with the accompanying reference data, to DFD within 24 hours after obtaining the fingerimage.

iii. When immediate need is apparent, a grant shall be issued in an amount sufficient to assure that the applicant is provided with food, shelter and clothing, pending verification of the results of fingerimaging. Refer to N.J.A.C. 10:85-4.2 for periods for which assistance may be granted.

iv. Applicants/recipients refusing to participate in the fingerimaging process shall be deemed ineligible for GA. Clients currently receiving GA shall be terminated immediately (see N.J.A.C. 10:85-7.2 regarding timely notices) and shall be ineligible for GA until participation in the fingerimaging process occurs.

v. Fingerimaging results shall be restricted to the use or disclosure of information concerning applicants or recipients directly connected with the administration of the GA program (see N.J.A.C. 10:85-1.5).

[7.]**8.** (No change in text.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Support and Government Benefits Collected by the Division

Proposed New Rules: N.J.A.C. 10:133F

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4C-29 et seq.

Proposal Number: PRN 1995-143.

Submit written comments by April 5, 1995 to:

Barbara Kraeger
Operational Policy and Manual Unit
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The Division of Youth and Family Services has undertaken a project to review and incorporate existing Division policy contained in the Division's Field Operations Casework Policy and Procedures Manuals and Administrative Policies and Procedures Manuals into the New Jersey Administrative Code as rules. This project, known as the "Operations Policy to Rules" project, or OPTR, was initiated by the Division to subject those policies which have widespread coverage, continuing effect or a substantial impact on the rights or legitimate interests of the regulated public to the rulemaking process required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The OPTR project involves an advisory body of 90 members, which includes family and child advocates, foster parent associations, Legal Services, the Law Guardian Office of the Public Defender, the Association for Children of New Jersey, Division field staff and other agency representatives. Through the OPTR Advisory Group, the OPTR project is a community-based process drawing from many elements of the affected public, from private non-profit representative groups and from governmental agencies. This process has resulted in a thorough and full-scale study, reevaluation and revision of existing Division policies, procedures, protocols and practices.

This proposal, addressing the Division's pursuit of support monies and Federal government benefits collected on behalf of children in out-of-home placement through the Division, was reviewed by, and endorsed by, the OPTR project. The proposal comports with Division policy as contained in both the Administrative Fiscal Manual and the Health Services Manual.

The Administrative Policy and Procedures Manual on Fiscal Matters as well as the Field Operations Casework Policy and Procedures Health Services Manual contain other material not regulatory in nature (such as, descriptions of benefit sources, specific forms to be used for specified purposes, etc.). The manuals on Fiscal Matters and Health Services will remain in existence but will be revised to reflect proposed new rules upon adoption.

A summary of the proposed rules follows:

Proposed N.J.A.C. 10:133F-1.1 states the authority for this chapter.

Proposed N.J.A.C. 10:133F-1.2 states the purpose of this chapter.

Proposed N.J.A.C. 10:133F-1.3 states the scope of this chapter.

Proposed N.J.A.C. 10:133F-1.4 refers to definitions contained in N.J.A.C. 10:133.

Proposed N.J.A.C. 10:133F-2.1 indicates that Division services shall not be affected by a legally responsible person's ability or willingness to make support payments to the Division.

Proposed N.J.A.C. 10:133F-2.2 states that a legally responsible person shall be liable for up to the full cost of maintenance for his or her child in out-of-home placement through the Division, and that the Division shall advise each legally responsible person of that liability prior to or upon his or her child entering out-of-home placement.

Proposed N.J.A.C. 10:133F-2.3 explains what actions the Child Support and Paternity Unit of the county welfare agency shall take on behalf of the Division to collect support monies from a legally responsible person, including that unit's efforts to file a non-support complaint at court, and have the Division named beneficiary of the order of support.

Proposed N.J.A.C. 10:133F-2.4 indicates that the Family Court's evaluation of a legally responsible person shall be based on the Child

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Support Guidelines established by New Jersey Court Rule 5:6A and Appendix IX of the New Jersey Court Rules.

Proposed N.J.A.C. 10:133F-2.5 indicates what efforts shall be initiated to change the beneficiary of court ordered child support to the Division when a child who is the subject of an order enters out-of-home placement through the Division.

Proposed N.J.A.C. 10:133F-2.6 states that the Division may withhold a referral to the Child Support and Paternity Unit when the Division representative and his or her supervisor determine that it is in the best interests of the child that paternity not be established, or that support not be pursued from a father or a mother.

Proposed N.J.A.C. 10:133F-2.7 explains that the Child Support and Paternity Unit has discretionary power, based on 45 C.F.R. 303.5(b), to waive a court ordered support obligation in certain cases when, in the opinion of the Division Director, it would not be in the best interests of the child to establish paternity.

Proposed N.J.A.C. 10:133F-2.8 indicates when a legally responsible person's support obligation begins.

Proposed N.J.A.C. 10:133F-2.9 indicates when a legally responsible person's support obligation ends, that he or she is responsible to pay arrearages, and that the Division shall reimburse him or her for any overpayments made.

Proposed N.J.A.C. 10:133F-2.10 indicates that the Division shall notify the Child Support and Paternity Unit within 45 days of a child's out-of-home placement, and explains what information the Division must provide upon such notification.

Proposed N.J.A.C. 10:133F-2.11 explains that court ordered support is paid through the Probation Division to the Division, and that the Probation Division shall forward the monies to the Division.

Proposed N.J.A.C. 10:133F-2.12 indicates that the Probation Division, acting on behalf of the Division, has authority to file a lien against real property held by a legally responsible person, and delineates the conditions under which a lien shall be filed.

Proposed N.J.A.C. 10:133F-3.1 details how the Division applies to be the representative payee of a child's government benefits when the child enters out-of-home placement through the Division, that the Division shall apply with or without the permission of the legally responsible person, and that the Division shall request voluntary contributions from the legally responsible person if the administering agency of the government benefit does not name the Division representative payee.

Proposed N.J.A.C. 10:133F-3.2 explains how the Division holds excess Supplemental Security Income benefit monies collected on behalf of a child in an out-of-home placement through the Division in an interest-bearing trust account for the child, and how those monies shall be dispersed when the child is in out-of-home placement, leaves out-of-home placement, turns age 18, or another agency assumes responsibility for maintenance costs associated with the out-of-home placement.

Social Impact

The proposed new rules represent a thorough review, evaluation, clarification and revision of existing Division policy concerning the collection of support monies from legally responsible persons and government benefit monies on behalf of children in out-of-home placement through the Division as contained in the Division's Fiscal Manual and Health Services Manual. These rules make explicit Division policy regarding the pursuit of support monies and government benefit monies, and as such, affect Division staff involved with the pursuit of support monies and government benefits on behalf of children in out-of-home placement.

A child in out-of-home placement through the Division may benefit from these rules in that his or her parent and spouse, where applicable, may become more motivated to work expediently toward his or her return home, or because another permanent plan will be developed for them, based on the mandates implemented by these rules that state that legally responsible persons are responsible for contributing, to the greatest extent possible, toward the maintenance costs associated with out-of-home placement. A child may further benefit, psychologically and emotionally, by knowing that his or her parent or spouse is contributing toward the costs associated with his or her out-of-home placement, and thus may be more involved with and committed to the Division's case planning and permanency initiatives.

The public will benefit by these rules in that the Division, as a public agency, will utilize a more effective and efficient system to generate and collect revenue from the client families it serves, rather than from the taxpaying public as a whole.

These rules serve to clarify Division collection procedures for applicants and clients, by making this information more accessible and understandable to the general public of New Jersey who request information about out-of-home placement services available from the Division and revenue sources available to pay for such services.

These proposed new rules specify actions to be taken by the Division, the Division of Family Development's County Welfare Agency Child Support and Paternity Units and the Probation Division regarding the diverse yet interrelated responsibilities of each agency toward the collection of support monies on behalf of the Division. These proposed new rules are responsive to the needs and wishes of concerned government agencies as well as the regulated public.

Economic Impact

The proposed new rules represent efforts by the Division to collect monies based on N.J.S.A. 30:4C-29 et seq. The rules promulgate procedures contained in an interdivisional agreement between the Division of Youth and Family Services and the Division of Family Development toward collections of monies from legally responsible persons when children enter out-of-home placement through the Division. The rules enable the Division of Family Development, through its Office of Child Support and Paternity Programs and County Welfare Agency Child Support and Paternity Units, to pursue child support monies on behalf of the Division of Youth and Family Services.

The rules concerning the Division's efforts to collect support monies from legally responsible persons upon a child's out-of-home placement through the Division should have a positive economic impact on the Division, in that the Division of Family Development's Office of Child Support and Paternity Programs and County Welfare Agency Child Support and Paternity Units will pursue support monies on behalf of the Division in a highly organized, systemized way. It is anticipated that the Division's revenue from such collections will be $400,000 annually.

The economic impact on natural or adoptive parents or spouses of children receiving out-of-home placement through the Division will be that they will be mandated by the court to pay support toward the needs of their child, based on their gross income, as determined by a formula promulgated by the Child Support Guidelines established by New Jersey Court Rule 5:6A and Appendix IX of the New Jersey Court Rules. In addition, the Probation Division, acting on behalf of the Division, may file a lien against a property held by a child's legally responsible person, if he or she fails to pay support, despite a capacity to pay child support.

At present, approximately $2 million in revenue is collected by the Division annually in its capacity as representative payee of Federal government benefits on behalf of children in out-of-home placement through the Division. The rules in N.J.A.C. 10:133F-3 on Division efforts to collect Federal government benefit monies should have a positive impact on the Division's efforts to collect additional monies, as that subchapter is a description, and thus a reinforcement, of current Division policy and procedures.

A child who begins to receive Federal government benefits while in out-of-home placement and his or her parent or guardian may benefit by these rules in that the parent or guardian can apply to become representative payee for those benefits upon the child's return home. Eligibility to receive Federal government benefits may continue throughout the dependent child's childhood, and into his or her adult life.

A parent or guardian who had been the representative payee for a child's Federal government benefits may be affected by the procedures promulgated in N.J.A.C. 10:133F-3, in that the Division shall apply to become the representative payee for those benefits, rather than the parent or guardian, upon and during the child's out-of-home placement through the Division.

Executive Order No. 27 Statement

The proposed rules are not subject to any Federal standards, and, therefore, an Executive Order No. 27 Analysis is not required.

Regulatory Flexibility Statement

The Division, the Probation Division, Child Welfare Agency Child Support and Paternity Units, and the public requesting Division services are not considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. Therefore, these proposed new rules will have no impact on small businesses in New Jersey. These proposed new rules state the Division's policy concerning the collection of support monies from parents and spouses of children in out-of-home placement through Division, and the Division's efforts to collect government benefit monies on behalf of these children, to offset the costs of maintenance associated with out-of-home placements.

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Full text of the proposal follows:

CHAPTER 133F
SUPPORT AND GOVERNMENT BENEFITS
COLLECTED BY THE DIVISION

SUBCHAPTER 1. GENERAL PROVISIONS

10:133F-1.1 Authority

The Division of Youth and Family Services, Department of Human Services, is authorized under N.J.S.A. 30:4C-29 to collect monies from a legally responsible person and Federal government benefits to be used to offset the costs of a child's maintenance while in out-of-home placement through the Division.

10:133F-1.2 Purpose

The purpose of this chapter is to establish rules by which the Division shall pursue the collection of monies from a legally responsible person and Federal government benefits to be used to offset the maintenance costs of a child in out-of-home placement through the Division.

10:133F-1.3 Scope

The provisions of this chapter shall apply to the parent and other person legally responsible for a child who has been placed in out-of-home placement by the Division, to the Division, to the Probation Division, and to each Child Support and Paternity Unit under the Division of Family Development.

10:133F-1.4 Definitions

The definitions in N.J.A.C. 10:133, Initial Response and Service Delivery General Provisions, are incorporated by reference into this chapter.

SUBCHAPTER 2. SUPPORT

10:133F-2.1 Delivery and quality of services

The delivery, quality and nature of services provided to a child and his or her family by the Division shall not be affected by a legally responsible person's ability or willingness to pay support toward the needs of the child.

10:133F-2.2 Liability of legally responsible person

(a) A child's legally responsible person, based on his or her gross income, as determined by the Child Support Guidelines contained in New Jersey Court Rule 5:6A and Appendix IX of the New Jersey Court Rules, shall be liable for up to the full cost of maintenance for his or her child while the child is in out-of-home placement through the Division, in accordance with N.J.S.A. 30:4C-29 et seq.

(b) Prior to or upon a child entering out-of-home placement, the Division shall advise the child's legally responsible person of the maintenance costs associated with that out-of-home placement, and the procedures for the Division's pursuit of support monies described herein.

10:133F-2.3 Child Support and Paternity Unit actions on behalf of the Division

(a) The Division shall advise the county welfare agency's Child Support and Paternity Unit of every child who is placed in out-of-home placement through the Division, except as specified in N.J.A.C. 10:133F-2.6.

(b) The Child Support and Paternity Unit, acting on behalf of the Division, shall file a non-support complaint against the legally responsible person to obtain an order of support, except as specified in N.J.A.C. 10:133F-2.5 and 2.6.

(c) The Child Support and Paternity Unit shall request that the court name the Division the beneficiary of the order of support against the legally responsible person.

10:133F-2.4 Evaluation based on Child Support Guidelines

The evaluation of the legally responsible person conducted by the Family Court shall be based on the Child Support Guidelines established by New Jersey Court Rule 5:6A and Appendix IX of the New Jersey Court Rules.

10:133F-2.5 Changing the beneficiary of court ordered child support to the Division

(a) If court ordered child support preexists the child's out-of-home placement through the Division, the Division shall seek to receive those monies upon the child's out-of-home placement.

(b) The Child Support and Paternity Unit, acting on behalf of the Division, shall file a motion in court to have the beneficiary of the child's portion of the court ordered child support changed to the Division.

10:133F-2.6 Withholding a referral for support determination

(a) The Division may determine that it is in the best interests of a child that paternity not be established and thus that support monies not be pursued from a father. Examples include, but are not limited to, the following:

1. A case involving incest or rape, when divulging the identity of a child's father or circumstances of a child's conception may prove injurious to the child's mental health, self concept, or well-being;
2. A pending adoption; or
3. Possible resultant physical or emotional harm to the child or family should paternity or support be pursued.

(b) The Division may determine that it is in the interests of a child that support monies not be pursued from his or her mother. Examples include, but are not limited to:

1. A pending adoption; or
2. Possible resultant physical or emotional harm to the child or family should support be pursued.

(c) In these situations, the Division may withhold a referral to the county welfare agency Child Support and Paternity Unit. The decision to withhold a referral for support determination shall be made by the Division representative and his or her supervisor.

10:133F-2.7 Compromise or waiver of a support obligation

(a) The Division Director may request that a compromise or waiver of any or all of a legally responsible person's court ordered support obligation be implemented when the pursuit of such monies is unjust due to the unique circumstances of the case or is likely to result in physical or emotional harm to the child or family.

(b) The Child Support and Paternity Unit shall exercise its discretionary power, under 45 C.F.R. 303.5(b), to determine whether to pursue a support obligation or initiate an action to dismiss a case from court based on a situation as illustrated in that regulation, including:

1. A case involving incest or rape; or
2. Any case in which a legal proceeding for adoption is pending.

10:133F-2.8 When support responsibility begins

The legally responsible person's responsibility to pay support shall begin on the date that the non-support complaint is heard at court.

10:133F-2.9 When a support obligation ends

(a) The legally responsible person shall be obligated to pay support to the Division for the period of time between the date that the non-support complaint was heard at court, until the day upon which the child leaves out-of-home placement, becomes emancipated, or dies. A legally responsible person's obligation to pay support shall end if he or she surrenders custody of his or her child to the Division for the purpose of freeing that child for adoption.

(b) The legally responsible person shall be responsible to pay all arrearages to the Division.

(c) The Division shall advise the county welfare agency's Child Support and Paternity Unit, in writing, within five business days when one of the conditions in (a) above exist.

(d) The Division shall advise the Probation Division, in writing, when one of the conditions in (a) above exist.

(e) Upon receipt of notification from the Division, the Probation Division shall petition the court to vacate or amend the order, taking into consideration whether there is an arrearage in the account.

(f) The Division shall reimburse the legally responsible person for any overpayment made to the Division on behalf of the child.

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10:133F-2.10 Timing of the Division's referral to the Child Support and Paternity Unit

(a) The Division shall notify the Child Support and Paternity Unit within 45 days of a child's out-of-home placement.

(b) The Division shall provide the following information and documentation to the Child Support and Paternity Unit upon referral:

1. Whether the out-of-home placement was authorized by a court order or a parent's informed consent;

2. Proof of the out-of-home placement which shall be admissible in court; and

3. Identifying information pertaining to the child's legally responsible person or absent parent, including that person's:

i. Name;

ii. Date of birth;

iii. Social security number; and

iv. Last known address or last known employer.

(c) A referral will not be considered complete, and will not be processed by the Child Support and Paternity Unit unless the information contained in (b) above is provided.

10:133F-2.11 Payments through Probation Division forwarded to the Division

(a) A legally responsible person ordered to pay support for a child in out-of-home placement through the Division shall pay that support through the Probation Division.

(b) All monies collected by the Probation Division under (a) above shall be forwarded to the Division.

10:133F-2.12 Probation Division authority to file lien

(a) The Probation Division shall have the authority to file a lien against the real property of a legally responsible person on behalf of the Division of Youth and Family Services (DYFS) in the amount owed to the Division of Youth and Family Services (DYFS). The lien shall have priority over all unrecorded encumbrances in accordance with N.J.S.A. 30:4C-29.1.b.

(b) A lien shall be filed under the following conditions:

1. The Family Court has determined that the legally responsible person has a capacity to pay support toward the needs of the child, in accordance with N.J.A.C. 10:133F-1.8;

2. The court has issued an order, directing that the legally responsible person pay support toward the maintenance costs of the child in out-of-home placement through DYFS;

3. The legally responsible person owns real property; and

4. The legally responsible person has demonstrated an unwillingness to pay support by having failed to make monthly support payments to DYFS or to the Probation Division acting on behalf of DYFS.

(c) The Probation Division, acting on behalf of DYFS, may file a lien against the real property of a legally responsible person within two years after the date upon which the child leaves out-of-home placement, in accordance with the provisions of N.J.S.A. 30:4C-29.2.

(d) Nothing in this chapter shall preclude the Probation Division, acting on behalf of DYFS, from initiating another action to procure support monies from a legally responsible person within the purview of the law, such as initiating an action necessary to intercept a State, local or Federal income tax or property tax reimbursement.

SUBCHAPTER 3. FEDERAL GOVERNMENT BENEFITS

10:133F-3.1 Division of Youth and Family Services as representative payee of Federal government benefits

(a) If a child entering out-of-home placement through the Division is eligible for or a recipient of Federal government benefit, the Division shall apply to the Social Security Administration to be named representative payee for the period of time during which the child is in out-of-home placement through the Division. These monies shall be used by the Division toward the cost of the child's maintenance while in out-of-home placement.

(b) The Division shall apply to be the representative payee with or without the legally responsible person's or current representative payee's permission.

(c) If the administering agency of the government benefit does not name the Division representative payee of the child's Federal government benefit while the child is in out-of-home placement through the Division, the Division shall ask the representative payee to make a voluntary contribution to the Division on a monthly basis or a lump-sum basis, based on the Federal government benefit monies received on behalf of the child, in concert with N.J.S.A. 30:4C-29.1.a.

10:133F-3.2 Excess monies held in a trust fund by the Division of Youth and Family Services

(a) Any Supplemental Security Income benefit monies received by the Division in excess of the cost of maintenance for the child in out-of-home placement through the Division shall be held for the child in an interest-bearing trust fund by the Division.

(b) The Division may release monies held in the trust fund for use on behalf of or by the child while the child is in out-of-home placement to purchase items or services to address his or her personal needs, including:

1. Personal articles;

2. Special medical equipment and expenses not covered by Medicaid;

3. Therapeutic services and special tutors;

4. Recreational items and equipment;

5. Room furnishings; or

6. Supplies and equipment for occupational therapy.

(c) The Division shall give trust fund monies to a child or to the birth parent or adoptive parent on behalf of a child, when the child turns age 18.

(d) When the child leaves out-of-home placement before turning age 18, is adopted, or dies, or if another division or agency assumes responsibility for the out-of-home placement, such as the Division of Developmental Disabilities under the Department of Human Services, the Division of Youth and Family Services shall either return the trust fund monies to the Social Security Administration, or forward these funds to a new payee, if so directed in writing by the Social Security Administration.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Notice of Pre-Proposal
Notice of Investigation
IntraLATA Competition for Telecommunications Services

Authorized By: The Board of Public Utilities, Herbert H. Tate, President, Carmen J. Armenti, Commissioner, and Dr. Edward H. Salmon, Commissioner.

Authority: N.J.S.A. 48:2-13 and 48:2-21.20.

BPU Docket Number: TX94090388.

Pre-Proposal Number: PPR 1995-1.

Take notice that the Board of Public Utilities (Board) is initiating an investigation and rulemaking proceeding into permitting toll competition on a presubscription basis within the LATA (Local Access and Transport Area). Pursuant to the Modification of Final Judgment, *U.S. v. American Tel. Co.*, 522 *F.Supp.* 131 (D.D.C. 1982), *aff'd sub nom Maryland v. U.S.*, 460 *U.S.* 1001 (1983), interexchange carriers (IXCs) are permitted to provide service between LATAs, while local exchange carriers (LECs) are prohibited from doing so. There are three LATAs in New Jersey. Originally the Board required all calls attempted within a LATA by a carrier other than the LEC to be blocked; however, over time, the Board permitted compensation to be paid to the LEC for completed intraLATA traffic as an alternative to blocking. Pursuant to the Telecommunications Act of 1992, the Board has the authority to determine the terms and conditions of intraLATA service (N.J.S.A. 48:2-21.20).

Several IXCs had requested that the Board revise its policies and permit competition for intraLATA services and remove the requirement of payment of compensation for intraLATA traffic. MCI Telecommuni-

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cations Corp. filed first for such approval (Docket No. TX90050349). Later, in the case of *In re Petition of MCI Telecommunications Corp.*, 263 *N.J. Super.* 313 (App. Div. 1993), the Appellate Division of the New Jersey Superior Court determined that the Board should afford MCI an opportunity to be heard on its request that the Board re-examine its policies regarding intraLATA competition. Sprint Communications Corp. (Docket No. TE92111047), and AT&T Communications of New Jersey, Inc. (Docket No. TE93060211), also filed specific petitions requesting that the Board modify its intraLATA competition policy.

On February 18, 1994, at its regularly scheduled public agenda meeting, the Board determined to conduct a proceeding to investigate whether the Board should permit access code (10XXX) call completion for intraLATA toll service, and if so, what terms and conditions for completed intraLATA toll calls would be appropriate. The Board further determined to consider whether compensation for completed intraLATA toll calls should be continued. The parties to this proceeding were AT&T Communications of New Jersey, Inc. (AT&T), MCI Telecommunications Corpation, (MCI), Sprint Communications Company (Sprint), Bell Atlantic-New Jersey, Inc. (BA-NJ), the New Jersey Department of the Public Advocate, Division of Rate Counsel, the United States Department of Defense and Board Staff.

On various dates the parties engaged in extensive settlement discussion and, on May 10, 1994, the parties submitted a formal settlement and requested Board approval. The terms of the settlement contained in the agreement, among other things, permitted IXC's to complete intraLATA traffic in BA-NJ's service territory on an access code (10XXX1+) basis and removed the requirement that the IXC's remit compensation to BA-NJ for completing such traffic beginning July 1, 1994. The agreement further established a transitional surcharge to be paid to BA-NJ on IXC intraLATA traffic at a fixed rate of $.0105 and contemplated a Board proceeding to investigate whether there should be intraLATA presubscription in New Jersey. The surcharge will remain in effect until the Board renders a determination on the issue of intraLATA presubscription or until December 31, 1995, whichever is sooner. The Board thereafter approved the settlement at its May 24, 1994 regularly scheduled public agenda meeting, memorialized by Order Approving Settlement dated June 30, 1994. Subsequently, a similar settlement agreement among the same parties and including United States Telephone Company of New Jersey, Inc. was approved by Order dated November 7, 1994.

In accordance with the terms of settlement, Board Staff has met with some parties to address the issues pertaining to intraLATA presubscription. The Board believes that the best course of action to initiate the investigation is with a series of questions crafted by Board Staff. The Board is setting out these issues to help focus the parties as to the key areas of investigation.

As it believes that any further policy set in this area will have wide impact on the regularly community and the public in general, the Board deems it appropriate to initiate this Notice of Pre-proposal and Notice of Investigation.

The Board has identified the following questions that frame the issues in this matter:

1. Is basic service subsidized?
   (a) If so, quantify the subsidy and identify each service that provides a subsidy.
   (b) What specific services receive subsidies?
   (c) What specific services provide subsidies?
   (d) Quantify the subsidy by service, including all Group I and Group II services.
   (e) What is the cost of service for each service provided by local exchange carriers, including Group I and Group II services?
2. What has been the growth of usage for local exchange services since divestiture? Provide the following data for each year from 1984 to 1994 inclusive:
   (a) The number of residential and business access lines.
   (b) The number of local message units.
   (c) The number of messages and the minutes of use for intraLATA toll services.
   (d) Usage and the number of customers for vertical services, including each CLASS service.
   (e) Revenues for each service, including All Group I and Group II services individually.
3. What are the universal service implications?
   (a) Definition?
   (b) Services included?
   (c) What is the best way to assure availability on an equitable basis to all citizens?
   (d) Universal service fund?
4. How should "basic telephone service" be defined? (that is, What services should constitute "basic" service and how is this different from universal service?)
5. Which carriers would be responsible for maintaining universal service if presubscription based intraLATA competition is approved?
6. If a loss in revenue is demonstrated by the local exchange carriers, should the LEC's be compensated for that lost revenue?
7. Should the Board address subsidies in services if presubscription based intraLATA competition is approved? If so, how?
8. How could a universal service fund or subscriber line charge or other similar charge be structured, maintained, organized, and operated?
9. If presubscription based intraLATA competition is approved, what mechanism should the Board utilize to regulate such competition? Should tariffs be required? Should IXC services and LEC services be treated the same or differently?
10. Should a multiple presubscription option be provided for customers and, if so, in what timeframe?
11. If multiple presubscription is permitted, who should be responsible for the network costs incurred to provide the technical means to offer this presubscription format?
12. Should the applicability of a separate intraLATA subscriber line charge to implement presubscription based competition be considered?
13. Should an intraLATA access charge be implemented and if so, at what level? (e.g., the same as the current interLATA access charge?) Should the existing transitional surcharge be extended, amended or replaced? Should the interLATA CCL cap be eliminated?
14. Is balloting appropriate for the selection of a carrier and if so, what procedure should be considered? (e.g., Should customers remain with their current carrier if no selection is made?)
15. Should the current imputation standard for access code competition be utilized for presubscription based intraLATA competition? Should it be revised, amended or replaced?
16. Should all LEC toll services be deemed competitive immediately upon presubscription based intraLATA competition?
17. Should intrastate access rate elements be unbundled further? Should they be bundled into fewer categories?
18. Should the issue of "carrier of last resort" be explored to assure that all members of the public have access to the telecommunications network for public safety purposes independent of customer demographics?
19. Should consideration be given to market entry/exit controls to minimize disruptions due to: (1) marginal carriers entering; and (2) exiting without appropriate notice and/or cause?
20. At what point should the concept of local telephone number portability be explored?
21. Should productivity gains by incumbents due to technology and force-trimming be factored into the financial tradeoffs?
22. Presuming public benefits exist from competition, should rules be explored to assure that demographic considerations are addressed to ensure equitable access?
23. Should new regulatory reporting requirements be imposed on IXC's or should current requirements on LEC's be eliminated?
24. Should IXC's be required to follow service quality standards currently imposed on BANJ?
   (a) Should the procedure for the reporting of service outages applicable to LECs be extended to IXCs providing intrastate intraLATA service?

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(b) Should IXC's be required to pass automatic number identification (ANI) on an intrastate interLATA and intrastate intraLATA basis for all calls not blocked by the call originator?

25. What would be the impact on the affordability of telecommunications service if presubscription based intraLATA competition was approved?

26. What is the cost to provide basic exchange telephone service? What are the tariffed rates?

27. What is the anticipated impact of presubscription based intraLATA competition on a typical customer bill, including all element charges (for example, basic, toll, custom calling services, etc.) for low use and high use customers?

28. What would be the impact on reasonable basic exchange rates if competition on a presubscription basis was adopted as Board policy?

29. What other benefits/detriments are expected to be realized by consumers if presubscription based intraLATA toll competition is allowed? (for example, What rates will be impacted and how? What services/what billing arrangements?)

30. What would be the impact on local exchange carriers' revenues if presubscription based intraLATA toll competition was approved?

31. What is the anticipated economic impact of presubscription based intraLATA toll competition by customer class?

32. What is the anticipated financial impact to be experienced by local exchange carriers as a result of presubscription based intraLATA toll competition?

33. If there is an adverse financial impact on local exchange carriers attributable to presubscription based intraLATA toll competition, what, if anything, should be done about it?

34. What revenue losses, if any, by specific service categories, would be experienced by local exchange carriers as a result of intraLATA toll competition on a presubscription basis?

35. What impact, if any, would presubscription based intraLATA toll competition have on the development of the telecommunications network within the State?
    (a) Would there be more expenditures for network deployment by carriers?
    (b) Would more marketing/sales personnel be hired in New Jersey?
    (c) What effect would presubscription based intraLATA toll competition have on network acceleration plans under ONJ?

36. Would presubscription based intraLATA toll competition spur the development of high telecommunications use businesses in the State or encourage any other business development?

37. Would presubscription based intraLATA toll competition generate more telephone usage as a result, and thereby increase tax revenues?

38. Would presubscription based intraLATA toll competition generate more telephone usage as a result of more providers, and thereby increase telecommunications use in the State?

39. What has been the experience in other states that permit presubscription based intraLATA toll competition? Has it resulted in (1) stimulating toll usage, (2) increasing the number of competitors, or (3) increasing the number of markets (niche pricing)?

40. If presubscription based intraLATA toll competition is approved, should the State support LEC entry in the intrastate, interLATA toll market, and, if so, under what conditions?

41. What added costs will the LEC's incur in order to modify their network to provide presubscription based intraLATA toll competition?

42. What network provisioning is necessary to implement carrier of choice on an equal access basis, that is, what are the technical implications and limitations of "1+ dialing" so that end users can choose a carrier other than his/her current local exchange carrier?

43. Define and describe the future technical network capability for multiple presubscription for local, intraLATA, intrastate and international service.

44. Will the introduction of presubscription based intraLATA toll competition result in geographic rate deaveraging? Will there be a need for rate deaveraging?

45. How do New Jersey's intraLATA toll rates compare with other jurisdictions which have allowed presubscription based intraLATA toll competition?

46. How do New Jersey's basic exchange rates compare with other jurisdictions which have allowed presubscription based intraLATA toll competition?

47. The parties should be prepared to discuss that impact of any relevant federal legislation that may be enacted during the pendency of this case.

48. How can presubscription based intraLATA competition improve the quality of life for New Jersey citizens?

49. How can presubscription based intraLATA competition improve the quality of service for New Jersey telecommunications users?

50. How do wireless networks affect universal service?

51. How do/will cable networks affect universal service?

52. What decisions, if any, from other jurisdictions have relevance to this investigation in New Jersey, and why?

53. Please comment on any and all relevant issues that are not addressed above.

The Board has determined to solicit comments from the public and conduct hearings prior to taking any further action.

Interested persons may submit written comments on the issues raised by this petition.

Submit comments by April 5, 1995 to:
Michael Gallagher, Director
Division of Telecommunications
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Hearings in this matter to receive sworn testimony regarding the positions of the parties, including the legal and factual basis for all positions advanced, shall commence on Monday, May 1, 1995 at 8:30 A.M. at:
Board of Public Utilities
10th Floor Hearing Room
Two Gateway Center
Newark, New Jersey 07102

This is a notice of pre-proposal (see N.J.A.C. 1:30-3.2). Any rule covering the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking. N.J.A.C. 1:30. Copies of any written comments received will be available for inspection at the Board's offices in Newark.

(a)

BOARD OF PUBLIC UTILITIES
GAS PIPELINE SAFETY

Natural Gas

Notices of Probable Violations, Informal Conferences, Civil Administrative Penalties and Requests for Adjudicatory Hearings Regarding Violations of Any Law, Rule, Regulation or Order Pertaining to Natural Gas Pipeline Safety

Proposed Recodification with Amendments: N.J.A.C. 14:11-8 as 14:7-1

Proposed Repeal: N.J.A.C. 14:7-1.1

Proposed New Rule: N.J.A.C. 14:7-2

Authorized By: Board of Public Utilities, Herbert H. Tate, President, Carmen J. Armenti and Dr. Edward H. Salmon, Commissioners.

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Authority: N.J.S.A. 48:9-33.
BPU Docket Number: GX95010002.
Proposal Number: PRN 1995-124.

Submit comments by April 5, 1995 to:
Nusha Wyner, Director
Division of Gas
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

N.J.S.A. 48:9-33, effective May 16, 1989, authorized the Board of Public Utilities (Board) to impose on any person it determines has violated a statute, order, regulation or rule pertaining to natural gas pipeline safety, a civil penalty up to $10,000 for each day the violation persists (subsequently increased to $25,000 by the Underground Facility Protection Act, P.L. 1994, c.188), not to exceed $500,000 for any related series of violations. The amount of the penalty may be compromised by the Board after consideration of the nature, circumstances and gravity of the violation. The statute also authorizes the Board to institute an action for injunctive relief whenever the Board determines that a person has violated, intends to violate or will violate any pipeline safety standards or requirements.

The purpose behind this statute was to bring New Jersey into compliance with the Federal Natural Gas Pipeline Safety Act of 1968 so as to allow New Jersey to enforce State and Federal safety provisions. Up until that time, the Bureau of Pipeline Safety (Bureau) within the Board's Division of Gas (Division), pursuant to an agreement between the State and the United States Department of Transportation (USDOT), surveyed and inspected gas pipelines to ensure that safety standards were met. However, any suspected violations of those standards had to be referred to USDOT for enforcement.

The passage of N.J.S.A. 48:9-33 allowed New Jersey to receive a Federal Pipeline Safety Program 5A Certification authorizing the State, through this Board, to directly implement enforcement proceedings against those individuals who violate or would violate pipeline safety standards or requirements.

In order to implement the assessment by the Board of the civil penalties provided for in the aforementioned statute, the Board proposes the adoption of new rules at N.J.A.C. 14:7-2. The proposed subchapter will govern the Board's assessment of civil administrative penalties for violations of any gas pipeline safety standards or requirements. It further sets out the procedures that would be put into place upon the discovery of a probable violation. These procedures can be summarized as follows:

1. Notice of Probable Violation—This notice is issued by the Division upon discovery of a probable violation and served on the party in question. The party's response may request an informal conference with the Bureau. Said conference may result in an informal resolution or in a written settlement agreement between the party and the Division to be presented to the Board for its consideration. This informal procedure does not in any way preclude or delay the Board's ability to initiate a formal proceeding at any time.

2. Administrative Order and Notice of Civil Penalty Assessment (Administrative Order)—Should the informal conference fail to achieve a resolution or upon the motion of the Board, an Administrative Order may be issued by the Board and served upon the party. Included therein is an identification of the rule, regulation, law or order violated and the facts that constitute the violation, a directive that such violation cease, the amount of the penalty to be imposed and notice that the violator has a right to an adjudicatory hearing.

3. Adjudicatory hearing—If no adjudictory hearing is requested, the Administrative Order becomes a final order on the 21st day following receipt of said Administrative Order by the violator. A request for hearing is to include, among other things, defenses, admissions or denials to the findings of fact set out in the Administrative Order, a statement of facts as the violator believes them to be, information supporting the request and an estimation of the time required for hearing. If the request for hearing is not filed within 20 days of receipt of the Administrative Order, the Board shall deny the request. Should the request not include all required information, the Board may deny the request for hearing.

4. Penalties—The dollar amounts of the penalties that may be assessed pursuant to the proposed rule are consistent with the provisions of N.J.S.A. 48:9-33. In determining the amount of the penalty, the new rules provide that the Board shall consider factors such as the nature and gravity of the violation, the degree of the violator's culpability, any history of prior violations by the violator, the effect of the penalty on the violator's ability to continue business operations, the violator's ability to pay and the good faith effort of the violator to achieve compliance.

In addition, the Board proposes to recodify N.J.A.C. 14:11-8, in its entirety, as N.J.A.C. 14:7-1. The purpose of this recodification is to have all Board rules pertaining to natural gas pipelines contained within the provisions of N.J.A.C. 14:7, Natural Gas Pipelines, rather than have said rules spread among various chapters of Title 14. The proposed amendments associated with this recodification are limited to the replacement of the existing N.J.A.C. 14:7-1.1 and to changes of rule references contained in various subsections.

Social Impact

By coming into compliance with Federal law, New Jersey has been given an opportunity to take a more active role in matters which directly affect its citizens. This provides a most positive effect in that it increases public safety and enables the State to more effectively monitor the transportation and distribution of natural gas and the facilities that are used to provide these services.

Economic Impact

The only economic impact will be the imposition of the statutory penalties on those parties found to have violated natural gas pipeline safety standards or requirements.

Executive Order No. 27 Statement

The proposed rules contain standards that are the same as existing Federal standards or requirements. No Federal standard or requirement is exceeded by any provision of the proposal. As noted above, the specific purpose of N.J.S.A. 48:9-33 was to bring New Jersey into compliance with the Federal Natural Gas Pipeline Safety Act of 1968 so as to allow New Jersey to directly enforce Federal safety regulations rather than having to refer suspected violations to the USDOT as was done in the past. The penalties set out in N.J.S.A. 48:9-33 and included in the proposal are identical to those provided for in the Federal legislation. The proposed procedural requirements, which are not prescribed by Federal law, are to be governed by the provisions of the New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Regulatory Flexibility Analysis

The proposed new rules do not impose any additional reporting, recordkeeping or other compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is possible that a small business may be a violator of natural gas pipeline safety standards or requirements and, as a result, become involved in a proceeding before the Board, either informal and/or formal, as provided for in the proposed rules. As compliance with all natural gas pipeline safety standards and requirements is essential in order to protect the public welfare, the Board sees no reason to differentiate between alleged violators based on size.

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

CHAPTER 7
NATURAL GAS PIPELINES

SUBCHAPTER 1. [APPLICABLE REGULATIONS] **CONSTRUCTION, OPERATION AND MAINTENANCE OF TRANSMISSION AND DISTRIBUTION NATURAL GAS PIPELINES**

[14:7-1.1 General provisions

Regulations applicable to natural gas pipelines are contained in Subchapter 8 (Natural gas) of Chapter 11 of this Title.]

[SUBCHAPTER 8. NATURAL GAS]

Recodify existing N.J.A.C. 14:11-8.1 through 8.8 as **14:7-8.1 through 8.8** (No change in text.)

[14:11-8.9] **14:7-1.9** Lines under or adjacent to railroads and highways

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

(c) Whenever reasonably possible to avoid doing so, a gas pipeline subjected to or intended to be subjected to pressure in excess of

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125 psig, should not be installed beneath and parallel to or within 25 feet of any public hard surface road or street. When such a gas pipeline is so installed the construction shall conform, as far as casing is concerned, to the provisions of N.J.A.C. [14:11-8.8] **14:7-1.8** to the extent reasonably practicable.

(d) Notwithstanding the provisions of N.J.A.C. [14:11-8.8] **14:7-1.8**, all applicable rules of other State or local agencies having jurisdiction which exceed the requirements of said rule shall be effective.

Recodify existing N.J.A.C. 14:11-8.10 through 8.17 as **14:7-1.10 through 1.17** (No change in text.)

[14:11-8.18] **14:7-1.18** Purging

Air shall be purged from pipelines classed under N.J.A.C. [14:11-8.3] **14:7-1.3** as Location Class 2, 3, or 4 piping systems by introducing a suitable quantity of inert gas into the pipelines ahead of the combustible gas, or by any other suitable method which prevents formation of an explosive mixture in the pipeline.

Recodify existing N.J.A.C. 14:11-8.19 through 8.33 as **14:7-1.19 through 1.33** (No change in text.)

SUBCHAPTER 2. NOTICES OF PROBABLE VIOLATIONS, INFORMAL CONFERENCES, CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

14:7-2.1 Scope and purpose

This subchapter shall govern the Board's assessment of civil administrative penalties for violations of any law, rule, regulation or order pertaining to natural gas pipeline safety, including violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety. This subchapter shall also govern the procedures for issuing Notices of Probable Violations, requesting an informal conference, and requesting an adjudicatory hearing on a Notice of Civil Administrative Penalty Assessment or an administrative order.

14:7-2.2 Definitions

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

"Act" means N.J.S.A. 48:9-33, as amended.

"Board" means the Board of Public Utilities.

"Gas Division" means the Division of Gas, within the Board.

"Bureau" means the Bureau of Pipeline Safety, within the Gas Division.

14:7-2.3 Notices of probable violations and informal conferences

(a) Upon discovery of a probable violation of any law, rule, regulation or order pertaining to natural gas pipeline safety, including violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety, the Gas Division may issue a written Notice of Probable Violation to the alleged violator. The Notice of Probable Violation shall state the facts which constitute the probable violation and identify the provision of law, rule, regulation or order violated.

(b) The party cited shall respond to the Notice of Probable Violation in writing to the Gas Division within 14 days of receipt of the Notice of Probable Violation. The response may include a request for an informal conference with the Gas Division and Bureau.

(c) The Notice of Probable Violation may be resolved informally following the alleged violator's response and informal conference, if any; or the staff of the Gas Division and the alleged violater may enter into a written settlement agreement, which shall be presented to the Board for approval.

(d) If the Notice of Probable Violation is not resolved following the informal procedure set forth in (b) and (c) above, the Board may proceed with the Administrative Order and Notice of Civil Administrative Penalty Assessment procedure as set forth in N.J.A.C. 14:7-2.4 and 2.5.

(e) The procedure set forth in this section shall not prevent the Board from issuing an Administrative Order and Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 14:7-2.4 and 2.5 at any time upon discovery of a probable violation of any law, rule, regulation or order pertaining to natural gas pipeline safety, including violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety, nor shall the procedures in this section be deemed to affect the availability of any other enforcement provision provided for by law, in connection with the probable violation.

14:7-2.4 Procedures for assessment and payment of civil administrative penalties

(a) In order to assess a civil administrative penalty under the authority of N.J.S.A. 48:9-33, for violation of any law, rule, regulation or order pertaining to natural gas pipeline safety, or for violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety, the Board shall, by means of an Administrative Order and Notice of Civil Administrative Penalty Assessment, notify the alleged violator by certified mail (return receipt requested) or by personal service. The Board may, in its discretion, assess a civil administrative penalty for more than one offense in a single Administrative Order and Notice of Civil Administrative Penalty Assessment or in multiple Administrative Orders and Notices of Civil Administrative Penalty Assessment. The Administrative Order and Notice of Civil Administrative Penalty Assessment shall:

1. Identify the provision of the law, rule, regulation or order violated;

2. Concisely state the facts which constitute the violation;

3. Order such violation to cease;

4. Specify the amount of the civil administrative penalty to be imposed; and

5. Advise the alleged violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 14:7-2.5.

(b) Payment of the civil administrative penalty is due upon receipt by the alleged violator of the Board's Final Order in a contested case or when an Administrative Order and Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to the procedures in N.J.A.C. 14:7-2.5, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order on the 21st day following receipt of the Administrative Order and Notice of Civil Administrative Penalty Assessment by the violator;

2. If the Board denies the hearing request, pursuant to the provisions of N.J.A.C. 14:7-2.5, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order upon receipt by the violator of notice of such denial; or

3. If an adjudicatory hearing is conducted, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order upon receipt by the violator of a Final Order in a contested case.

14:7-2.5 Procedures to request an adjudicatory hearing to contest an administrative order and notice of civil administrative penalty assessment and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an Administrative Order and Notice of Civil Administration Penalty Assessment issued pursuant to the Act, the alleged violator shall submit the following information in writing to the Secretary of the Board, Attention: Adjudicatory Hearing Requests/Pipeline Safety, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102:

1. The name, address and telephone number of the alleged violator and its authorized representative;

2. The alleged violator's defenses, stated in short and plain terms, to each of the Board's findings of fact contained in the Administrative Order and Notice of Civil Administrative Penalty Assessment;

3. An admission or denial of each of the Board's findings of fact contained in the Administrative Order and Notice of Civil Adminis-

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trative Penalty Assessment. If the alleged violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the alleged violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the alleged violator intends, in good faith, to deny only a part of or qualify a finding, the alleged violator shall specify so much of it as true and material and deny only the remainder. The alleged violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding denied, the alleged violator shall allege the fact or facts as the alleged violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimte of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location to accommodate physically disabled persons.

(b) If the Board does not receive the hearing request within 20 days after receipt by the violator of the Administrative Order and Notice of Civil Administrative Penalty Assessment being challenged, the Board shall deny the hearing request.

(c) If the alleged violator fails to include all the information required by (a) above, the Board may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

14:7-2.6 Civil administrative penalty determination

(a) The Board may assess a civil administrative penalty of not more than $25,000 for each violation, for each day the violation persists, up to a maximum of $500,000 for any related series of violations, against each person who violates the provisions of any law, rule, regulation or order relating to natural gas pipeline safety, including violations of the Underground Facility Protection Act (P.L. 1994, c.118) pertaining to natural gas pipeline safety.

(b) In determining the amount of the civil administrative penalty assessed, or an amount agreed upon in compromise, the Board shall consider:

1. The nature, circumstances and gravity of the violation(s);

2. The degree of the violator's culpability;

3. Any history of prior violations;

4. The prospective effect of the penalty upon the ability of the violator to conduct business;

5. Any good faith effort by the violator to achieve compliance;

6. The violator's ability to pay the penalty; and

7. Any other factors justice may require.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by law, in connection with the violation for which the assessment is levied.

(a)

OFFICE OF CABLE TELEVISION

Regulations of Cable Television

Proposed Readoption with Amendments: N.J.A.C. 14:18

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Herbert H. Tate, President).

Authority: N.J.S.A. 48:5A-10.

Agency Docket Numbers: CX94110533, CX94110516 and CX93100439.

Proposal Number: PRN 1995-125.

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

Friday, March 31, 1995 at 10:30 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by April 5, 1995 to:

Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to the New Jersey Cable Television Act (Act), specifically N.J.S.A. 48:5A-9 and 10, the Board of Public Utilities (Board) is empowered to promulgate rules and regulations necessary to carry out the purposes of the Act.

N.J.A.C. 14:18 contains the substantive regulations of the Board governing cable television. These are necessary to ensure the consistent and orderly regulation of the cable television industry in the State of New Jersey.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 14:18 is scheduled to expire on July 26, 1995. The Board has reviewed the rules and determined that, except where specifically noted, they continue to be necessary, reasonable and proper for the purposes for which they were previously promulgated and amended.

The Board proposes that Chapter 18 be readopted with certain amendments and deletions. These amendments fall into two categories: (1) modifications to conform to changes in State and Federal law since 1990, when the subject rules were adopted; and (2) an amendment established uniform policy and practice regarding late payment charges when imposed on subscribers by cable television operators.

The Board also proposes technical conformation of the rules by changing all references to the Board of Regulatory Commissioners to the Board of Public Utilities. This is consistent with the Board's redesignation as the Board of Public Utilities pursuant to the provisions of Executive Order No. 001-94, effective July 4, 1994.

The Board proposes to readopt, without change, subchapter 1 which pertains to the scope of the rules and defines certain words utilized in Chapter 18.

Subchapter 2, Plant, would be readopted without change. Its rules cover plant construction, inspection, identification of property, maintenance, and pole attachment rates and disputes.

Subchapter 3, Customer Rights, contains 23 rules listing customer rights which would be readopted without change. These govern such matters as customer information, outage credits, access to company representatives, billing, service call scheduling, rate notifications, senior discounts and prompt restoration.

In addition, the Board proposes amendments to N.J.A.C. 14:18-3.14(a)1 and 3.18(a)6. The proposed amendments are designed to bring the Board's cable television technical standards into conformance with the technical and operational requirements for cable television systems promulgated by the Federal Communications Commission (FCC).

The first proposed amendment to the Board's rules is the deletion of a requirement to provide information to subscribers regarding input selector switches or comparable devices. Such requirement is no longer applicable or consistent with present FCC standards.

The Federal Input Selector Switch Rule, formerly 47 C.F.R. §76.66, is no longer effective as it expired through a FCC sunset provision on June 10, 1992, and was specifically deleted through a FCC Report and Order (must carry) dated March 11, 1993, in Docket Nos. MM 92-259 and 90-4. In a clarification, the FCC indicated that franchise authorities could not require cable operators to provide information to subscribers regarding A/B (input selector) switches or any comparable devices.

The Board believes it is appropriate to repeal N.J.A.C. 14:18-3.14(a)1 and 3.18(a)6, which require cable operators to provide notice of the availability of A/B switches, in order to maintain standards that are consistent and uniform with those of the FCC.

Based on prior proceedings, the Board is also proposing the addition of a new subsection to N.J.A.C. 14:18-3.24 in order to protect subscribers from excessive late fee charges. The Office of Cable Television (Office or OCTV) conducted a study concerning billing and rate complaints for

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the period of July 1, 1992, through June 30, 1993. Out of the approximate 3,000 complaints examined, 153, or five percent, dealt specifically with late fees.

As a result of the Office's review, the Board, in Docket Number CX93100439, initially proposed an amendment to N.J.A.C. 14:18-3.24 which was published in the New Jersey Register on January 3, 1994, at 26 N.J.R. 105(a). Pursuant to said proposal, additional fees, charges or penalties on outstanding bill balances would be limited to the collection of interest which would equal the average yields on six-month Treasury Bills for the 12 month period ending each September 30th, calculated in the manner set out in the provisions of N.J.A.C. 14:18-3.19(b).

In addition to a written comment period which ended on February 2, 1994, a public hearing was held by the Board in Trenton on January 28, 1994, to enable cable operators and other interested parties to express their views and concerns. Comments were received from: the New Jersey Cable Television Association; Adelphia Cable Communications Corporation; Comcast Cable Communications, Inc.; Garden State Cable TV; Monmouth Cablevision Associates, L.P.; Riverview Cablevision Associates, L.P.; Suburban Cablevision; and Warner Cable Communications. The hearing record may be reviewed by contacting Edward D. Beslow, Legal Specialist, Board of Public Utilities, Two Gateway Center, Newark, NJ 07102.

The essence of the comments received was that the fee established by the initial proposal would not be based on true cost, thereby resulting in cross-subsidization by those subscribers who pay their bills for services in a timely manner, accompanied by increases in the number of overdue bills and disconnects. The Board considered these comments and found them to be reasonable. Accordingly, the Board is amending its original proposal in order to reflect a more cost based solution.

According to the proposed amendment, additional fees, charges or penalties on outstanding bill balances shall be limited to the collection of a one time flat fee of $2.00. As proposed in N.J.A.C. 14:18-3.24(c), the $2.00 fee may not be imposed on any account balance less than 30 days past due. This $2.00 amount includes the cable operator's expenses associated with the collection of the overdue balance, including, but not limited to, the printing of late fee notices, postage, telegrams and phone calls. The above listed expenses are in addition to the cable operator's average normal operating expenses, which are already included and recovered through national benchmark rates promulgated by the FCC. The Board believes that there are other expenses associated with the collection effort attributable to delinquent payment of cable bills, but that those expenses are non-recurring and should not be recoverable in the context of a late fee charge.

Subchapter 4 sets forth the rights and obligations of the cable television operators with respect to street openings, conditions for service connection and disconnection, premises access, and deposits.

Subchapter 5 establishes procedures for obtaining Board approval of business office closings and relocations, and requires OCTV access to key contact personnel for the system.

Subchapter 6 pertains to recordkeeping requirements.

Subchapter 7 sets forth various reports and notifications cable operators must file with the OCTV.

Subchapter 8 requires cable television operators to carry liability insurance.

Subchapter 9 was previously repealed and shall remain reserved for any future technical testing rules.

Subchapter 10 contains technical standards for system operation.

Subchapter 11 covers the procedures a municipality must follow in issuing an initial municipal consent.

Subchapter 12 covers the procedures and requirements for filing for a certificate of approval from the Board.

Subchapter 13 contains provisions for the renewal of franchises consistent with the Federal requirements, including municipal review of past performance and future cable related community needs, various filing deadlines for the process, and the Federal criteria for denying renewal of a franchise.

Subchapter 14 contains miscellaneous provisions concerning non-retroactivity, modification of regulations, tariffs, prohibition of unreasonable, discriminatory or preferential practices by cable operators, and technical provisions.

Social Impact

The chapter proposed for readoption governs the substantive rules and requirements of the OCTV, setting forth the rights and obligations of customers and cable television operators, along with technical, reporting, and filing standards. The chapter also contains subchapters which govern both the initial municipal consent process and the renewal of cable television franchises. The rules govern the protection of the public safety and welfare by insuring that cable television facilities and equipment are installed and used in an appropriate manner. The function of the Staff of the Office of Cable Television is to monitor compliance with these rules and to take enforcement action if necessary. The rules also provide for the protection of the rights of cable television operators in a number of instances.

Subchapter 3, Customer Rights, defines the rights of subscribers to cable television service and the obligations of cable television operators. The proposed deletion of N.J.A.C. 14:18-3.14(a)1 and 3.18(a)6 will provide consistency with FCC requirements under which cable operators no longer need to provide A/B switch notification. Therefore, the Board believes that the A/B switch notification provided for in N.J.A.C. 14:18-3.14(a)1 and 3.18(a)6 is unnecessary and that its repeal will not diminish the quality of service presently delivered to cable subscribers.

The late fee proposed in the amendment to N.J.A.C. 14:18-3.24 will result in all New Jersey cable television subscribers being responsible for late fees and charges for owing and past due bills in the amount of a flat fee of $2.00. This amendment will protect subscribers from excessive late fees.

Subchapter 4, Operator Rights, specifies the rights of cable operators and the obligations of subscribers on issues of billing, disconnection, access to facilities and deposits. These sections protect the rights of both cable operators and subscribers by clearly setting forth the respective obligations of each.

Subchapters 5, 6, 7 and 8 (Offices, Records, Reports and Filings Insurance) concern the non-technical operations of the cable television company such as the location of offices, records, reports, filings and insurance requirements. The necessity of prior notice and Board approval before an office may be closed may burden cable operators in certain situations but, on balance, ensures that cable companies operate in a responsive manner. The provisions pertaining to records, reports, filings and insurance requirements impose administrative burdens on cable operators which must collect, file, and in some cases report, certain information. However, the proposed readoption is necessary to permit the OCTV to monitor compliance with all statutory and franchise requirements.

The subchapters on plant, testing of service and technical standards for system operation concern the technical aspects of cable television regulation. The proposed readoption ensures that cable television companies operate in a safe and reasonable manner. The rules are intended to assure that the companies supply an adequate level of service. Proposed amendments are intended to revise sections to bring them into conformance with current FCC standards.

The readoption of the subchapters concerning the application for municipal consent, the application for a Certificate of Approval and renewals all govern the franchising process. They are intended to clearly articulate the procedures for obtaining and renewing a cable television franchise in accordance with State and Federal law. Subchapter 13, Renewals, provides municipalities with guidance on the procedures and standards for cable television renewals.

The readoption of subchapter 14 would govern miscellaneous matters such as the non-retroactivity of the rules or modifications, the requirements for tariffs, rate discrimination, the Board's authority and prior rules. These provisions are generally administrative and are proposed for readoption without change.

Economic Impact

This chapter imposes requirements on cable television operators. Thus, it has some additional impact on operating costs which are, to the extent permitted under Federal cable rate regulations, passed on to the subscriber.

The proposed late fee amendment imposes restrictions on additional fees, charges or penalties to subscribers for billing balances that are past due or late. Thus, it would have some adverse impact on operating revenue and costs which, to some extent, may impact subscribers.

As with regulated public utilities, all reasonable levels of expenses incurred by cable operators in complying with these requirements will be considered to be business expenses, recoverable through rate proceedings and cost of service regulations. All fees and charges associated with practice and procedures before the Board and Office are set by statute pursuant to N.J.S.A. 48:2-56 and N.J.S.A. 5A-1 et seq., respectively. Costs that will be incurred include those of an administrative nature for the collection, maintenance and reporting of certain information, and the

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various costs of complying with the plant, service testing and technical operating standards. The readoption of N.J.A.C. 14:18 is necessary to adequately protect the safety and interests of the general public and cable television subscribers. The intent of the rules is for cable television companies to provide safe, adequate and proper service. The existence and enforcement of the rules require the sufficient staffing of the Board and corresponding administrative and overhead costs. The Board believes that the benefits from the rules exceed the burdens of the costs.

The new FCC technical rules require a continuous effort by cable operators to comply with applicable standards. This requires that personnel and overhead expenses be borne by the cable operators. Since the proposed repeal of N.J.A.C. 14:18-3.14(a)1 and 3.18(a)6 is designed to conform with present FCC requirements, no additional expenses beyond what already incurred for operators to comply with the existing FCC standards are anticipated. In fact, certain operational and filing responsibilities for some cable operators may be reduced.

Executive Order No. 27 Statement

The rules proposed to be readopted contain no standards or requirements that exceed standards or requirements imposed by Federal law. To the contrary, the proposed deletion of N.J.A.C. 14:18-3.14(a)1 and 3.18(a)6 is designed to bring Chapter 18 into conformance with present Federal requirements.

Regulatory Flexibility Analysis

It is anticipated that the proposed readoption and proposed amendments will affect four cable television operators which are defined as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As outlined in greater detail in the Summary of this notice, Chapter 18 as proposed for readoption imposes reporting, recordkeeping and other compliance requirements on cable television operators. These include the collection of information and the filing of reports to the Board as well as providing notice to subscribers of their rights and obligations. The compliance requirements are to ensure that the cable television operator supplies safe, adequate and proper service. The Board has reviewed the proposed readoption with amendments and it is the Board's belief that these rules are necessary to protect the subscriber and to ensure that the companies deliver a proper level of service. As such, it is not appropriate to waive the requirements of the rules as they pertain to small businesses.

All of the requirements of the proposed readoption can be performed by the present employees of the cable television companies. It is not anticipated that a small cable television company would necessarily need outside professional services. However, a company might determine that it is more economical to use contracted professional services to prepare and distribute billings, mail out required notices and/or to conduct the required technical tests.

It is not anticipated that the proposed readoption and proposed amendments will require any additional initial capital costs other than those normally associated with the construction and operation of a cable television system. These are not expected to be unreasonable.

The proposed readoption and proposed amendments will not impose any additional reporting, record keeping or compliance requirements as they continue prior requirements for the filings and reports of various kinds required by statute or the Board. In fact, one unnecessary subscriber notification requirement is eliminated.

The Board does not anticipate that the proposed late fee amendment will either require any additional initial cost or impose any periodic additional reporting, record keeping or compliance requirements on cable operators, some of whom may be small businesses as that term is defined in the Regulatory Flexibility Act. N.J.S.A. 52:14B-16 et seq. Existing tariffs on file with the Board, however, msut be modified in order to comply with this proposed amendment.

The purpose of the proposed late amendment is to ensure that: (1) all additional fees, charges or penalties for billing balances past due or late are fair and reasonable and are consistently and equally applied on a Statewide basis; and (2) filed tariffs contain all applicable and required language. The Board is cognizant that cable operators may choose to utilize professional services to assist in the preparation, filing or litigation of matters before the Board and the Office. These services may, in part, be legal, accounting, or economic in nature. As indicated above, all reasonable levels of expenses incurred by a cable television company will be considered to be business expenses that may be recovered through rates to customers.

Accordingly, as the submissions required by the proposed late fee amendment are essential, the Board does not find any reason to distinguish between large and small businesses.

It is anticipated that the repeal of N.J.A.C. 14:18-3.14(a)1 and 3.18(a)6 will not adversely affect small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The deletion will reduce certain operational burdens and filing requirements placed on some small systems, particularly those with fewer than 1,000 subscribers and which maintain a small technical operations staff.

The overwhelming majority of cable companies will see no affect in their daily operations. Since the new FCC rules require that cable operators maintain a sufficient staff to constantly monitor the system, these deletions are not expected to change the daily routine operation of most cable systems. It is anticipated that the cable industry will still supply and install A/B switches to its subscribers upon request.

Accordingly, as the submissions required by the proposed rule are essential, the Board does not find any reason to distinguish between large and small businesses.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:18.

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

14:18-3.14 Availability of special equipment

(a) The cable television operator shall provide, upon the request of the subscriber, the following equipment:

[1. A/B (input selector) switches to allow switchover to subscriber's antenna as required by 47 C.F.R. §76.66;]

[2.]**1.** A parental lock to allow subscriber blocking of a specified cable service or channel as required by 47 U.S.C. Sec. 544(d)(2)(A); and

[3.]**2.** Devices to insure adequate access to cable television service for hearing-impaired persons pursuant to 47 U.S.C. Sec. 543(f)(2).

(b) The cable television operator may impose fees to the subscriber for any equipment listed in [(a)3] **(a)2** above, which shall not exceed the purchase cost plus overhead.

14:18-3.16 Notice of rate change

(a) If the rates and charges of a cable operator are not subject to prior approval by the Board:

1. A cable TV company implementing a change in its rates shall file with the Office revised tariff sheets reflecting any rate changes at least [35] **30** days prior to the effective date.

2.-3. (No change.)

(b) (No change.)

14:18-3.17 Notice of alteration in channel allocation

(a) Each cable TV company shall file with the Office written notice of an alteration in channel allocation, on a form prescribed by the Director, at least five days prior to the effective date for new additions which do not require **rate changes,** deletions or cutbacks in other services. For all other changes the operator must provide notice at least [35] **30** days prior to the effective date.

(b) Each cable TV company shall notify its subscribers and affected municipalities of an alteration in channel allocation at least five days prior to the effective date for new additions which do not require **rate changes,** deletions or cutbacks in other services. For all other changes the operator shall provide notice to the Office at least [35] **30** days prior to the effective date and 30 days prior to the effective date to the subscribers in a manner reasonably calculated to provide such information.

(c) (No change.)

14:18-3.18 Periodic notices to subscribers

(a) The cable operators shall provide annual notice to each subscriber of the following:

1.-4. (No change.)

5. Notice of the availability of devices for hearing impaired as required by N.J.A.C. 14:18-3.14(c); **and**

[6. Notice of the availability of A/B (input selector) switches as required by N.J.A.C. 14:18-3.14(a) and 47 C.F.R. §76.66(a);]

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[7]**6.** Notice of the availability of parental lock devices as required by N.J.A.C. 14:18-3.14(b) and 47 U.S.C. §544(d)(2)(A)[; and].

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

14:18-3.24 Late fees and charges

(a) In the event a cable television operator imposes an additional fee or charge or penalty to a subscriber for billing balances which are considered past due or late, the cable television operator shall clearly specify the amount of the fee, charge or penalty on the subscriber bill. [The cable television company shall also specify the method of calculation of the fee, charge or penalty on the bill.]

(b) (No change.)

(c) Any additional fee, charge or penalty imposed by a cable television operator to a subscriber for billing balances that are past due shall be limited to a one time flat fee of $2.00, which shall be charged to unpaid balance which is 30 days overdue. The cable television operator may not issue separate charges for multiple incidents of overdue payments against any cable subscriber.

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RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Department Organization

Adopted New Rules: N.J.A.C. 3:3-2 and 3

Proposed: January 3, 1995 at 27 N.J.R. 20(a).
Adopted: February 3, 1995 by Francis P. Carr, Assistant Commissioner, Department of Banking.
Filed: February 6, 1995 as R.1995 d.125, **without change.**
Authority: N.J.S.A. 17:1-8.1; 47:1A-2; Executive Order No. 11(1974).
Effective Date: March 6, 1995.
Expiration Date: March 6, 2000.

Summary of Public Comments and Agency Responses:
No comments received. N.J.A.C. 3:3 expired January 11, 1995. Pursuant to N.J.A.C. 1:30-4.4(g), N.J.A.C. 3:3-2 and 3 proposed for readoption are adopted herein as new rules.

Executive Order No. 27 Statement

Federal law and regulations governing the public's right to know are not applicable to N.J.A.C. 3:3-2 with the exception of N.J.A.C. 3:3-2.3. As a result of amendments to the Federal Deposit Insurance Corporation Improvement Act, each institution which engages the services of an independent auditor is required to provide the independent auditor with a copy of the institution's most recent examination report. 12 U.S.C. 1831 m(h)(l)(A). N.J.A.C. 3:3-2.3 complies with the Federal law but does not exceed it. N.J.A.C. 3:3-3 conforms to the Federal Americans With Disabilities Act, 42 U.S.C. 1201 et seq. but does not exceed its requirements; therefore, no Federal exceedance analysis is required.

Full text of the rule proposed for readoption herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 3:3-2 and 3.

(b)

NEW JERSEY CEMETERY BOARD

Organizational Meetings

Adopted New Rule: N.J.A.C. 3:40-1.9

Proposed: November 21, 1994 at 26 N.J.R. 4475(a).
Adopted: January 17, 1995 by the New Jersey Cemetery Board, William B. Waits, Executive Director.
Filed: February 3, 1995 as R.1995 d.118, **without change.**
Authority: N.J.S.A. 8A:2-1 and 2.
Effective Date: March 6, 1995.
Expiration Date: November 21, 1999.

Summary of Public Comments and Agency Responses:
The Board received no comments.

Executive Order No. 27 Statement

There are no Federal standards or requirements in Federal law on the subject matter of this proposed new rule. Therefore, no Executive Order No. 27 analysis is required.

Full text of the adopted new rule follows:

3:40-1.9 Organizational meetings

(a) The Board shall elect the following officers from among its members annually at the first Board meeting of each calendar year, which officers shall exercise the following duties:

1. A Chairman, who shall:

i. Schedule meetings of the Board;

ii. Set the agendas for Board meetings in consultation with the Executive Director, except that this shall not be deemed to bar any member of the Board or the Counsel to the Board from having a matter placed on the agenda of the next meeting;

iii. Preside at meetings of the Board;

iv. Appoint committees of the Board; and

v. Provide general oversight of, and policy guidance for, the operations of the Board office between meetings; and

2. A Vice-Chairman, who shall perform the functions of the Chairman during the absence or recusal of the Chairman.

(b) The Board may, at its discretion, elect the following officers from among its members annually at the first Board meeting of each calendar year, which officers shall exercise the following duties:

1. A Secretary, who shall perform the functions of the Chairman during the absence or recusal of both the Chairman and the Vice-Chairman; and

2. Any other officer which the Board may deem appropriate, who shall exercise whatever duties the Board may specify.

(c) In addition to the duties set forth in (b) and (c) above, each officer shall exercise such other duties as are customarily exercised by one holding such office, and such other duties as may be specified by the Board in its minutes.

(d) In the event that neither the Chairman, Vice-Chairman, or Secretary are present to preside at a meeting, the members of the Board who are present, provided that they constitute a quorum, shall elect from among their number a Chairman pro tempore who shall preside at that meeting.

(e) In the event that a person who has been serving as an officer of the Board is no longer a member of the Board, or if a person who has been serving as an officer of the Board resigns as an officer but remains a member of the Board, an election to fill the office vacated by the person shall be held at the next meeting of the Board.

(f) The excercise of the rights and duties of Board offices shall be personal to the member who is elected. Therefore, if an ex officio member of the Board namely the Attorney General, the Commissioner of Banking and the Commissioner of Health pursuant to N.J.S.A. 8A:2-1, is elected to a Board office, the designee of that ex officio member may not exercise the rights and duties of the office, and if a designee of an ex officio member of the Board is elected to a Board office the ex officio member may not exercise the rights and duties of the office.

COMMUNITY AFFAIRS

(c)

THE COMMISSIONER

Standards of Conduct

Readoption with Amendments: N.J.A.C. 5:1

Proposed: December 19, 1994 at 26 N.J.R. 4866(a).
Adopted: January 27, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: February 3, 1995 as R.1995 d.119, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 52:27D-3.
Effective Date: February 3, 1995, Readoption;
March 6, 1995, Amendments.
Expiration Date: February 3, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27(1994) Statement

The rules readopted with amendments do not contain any standards or requirements that exceed standards or requirements imposed by Federal law. The only section of the rules that relates in any way to Federal standards or requirements is N.J.A.C. 5:1-7.2, which restates the

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Federal requirement that persons who are principally employed in connection with activities of the Department that are financed in whole or in part by Federal funds be subject to the Hatch Act (5 U.S.C. Sect. 118 K).

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

5:1-5.2 Personnel actions

In furtherance of N.J.A.C. 5:1-5.1, this Department's policy is that all personnel actions, including, but without limitation, employment, promotion, demotion, transfer, recruitment, layoff or termination, rates of pay or other forms of compensation and work assignments shall be conducted on a wholly nondiscriminatory basis, and shall be on the basis of merit alone; provided, however, that nothing contained herein shall be construed to forbid the employment or upgrading of those persons who, by reason of prior invidious discrimination on the basis of race, creed, color, religion, national origin, ancestry, age, marital status, affectional or sexual orientation, sex, atypical hereditary cellular or blood trait, or liability for service in the Armed Forces of the United States have been heretofore prevented from attaining their full productive potential.

5:1-5.3 Inquiries

No person shall inquire, or cause an inquiry to be made, with respect to the race, creed, color, religion, national origin, ancestry, age, marital status, affectional or sexual orientation, sex, atypical hereditary cellular or blood trait, or liability for service in the Armed Forces of the United States of any other person or prospective officer or employee of this Department, except to the extent that such inquiry is required by law. In such event, the information so received shall be used only for the purposes for which it was gathered, and under no circumstances shall it be used for any purpose prohibited by these rules or by any applicable law, statute or ordinance.

5:1-7.1 Use of *[opposition]* ***position*** or authority; prohibition

(No change in text.)

5:1-7.2 Hatch Act

(No change in text.)

(a)

DIVISION OF FIRE SAFETY

Uniform Fire Code
Life Hazard Uses

Adopted Amendment: N.J.A.C. 5:18-2.4A

Proposed: November 7, 1994 at 26 N.J.R. 4254(a).

Adopted: December 21, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: January 3, 1995 as R.1995 d.57, **without change.**

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

Effective Date: March 6, 1995.

Expiration Date: January 4, 2000.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows:

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

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

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

1.-4. (No change.)

5. Camps where children of school age stay overnight with a maximum permitted occupancy of fewer than 50 persons with dining and/or assembly facilities.

(e) (No change.)

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

1.-5. (No change.)

6. Camps where children of school age stay overnight with a maximum permitted occupancy of 50 or more but fewer than 100 persons with dining and/or assembly facilities.

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

1.-3. (No change.)

4. Camps where children of school age stay overnight with a maximum permitted occupancy of 100 or more but fewer than 200 persons with dining and/or assembly facilities.

(h)-(i) (No change.)

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

1.-2. (No change.)

3. Camps where children of school age stay overnight with a maximum permitted occupancy of 200 or more persons with dining and/or assembly facilities.

(b)

DIVISION OF FIRE SAFETY

Uniform Fire Code; Fire Code Enforcement, High Level Alarms; Fire Service Training and Certification

Readoptions: N.J.A.C. 5:18, 5:18A, 5:18B and 5:18C
Adopted New Rules: N.J.A.C. 5:18-2.13 and 2.17
Adopted Amendments: N.J.A.C. 5:18-1.1, 1.3, 1.4, 1.5, 2.1, 2.2, 2.4, 2.5, 2.6, 2.7, 2.12, 3.1, 3.11, 3.15, 3.16, 4.1, 4.2, 4.3, 4.13; 5:18A-1.1, 1.4, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 3.1, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3 and 4.7
Adopted Recodifications with Amendments: N.J.A.C. 5:18-2.3 as 2.14, 2.8 as 2.9, 2.9 as 2.10, 2.10 as 2.11, 2.11 as 2.19, 2.14 as 2.16, 2.15 as 2.18, 2.17 as 2.12A and 2.20 as 2.3
Adopted Recodifications: N.J.A.C. 5:18-2.13 as 2.15, 2.19 as 2.20
Adopted Repeals and New Rules: N.J.A.C. 5:18-4.4, 4.5; 5:18A-2.4
Adopted Repeals: N.J.A.C. 5:18-1.6, 2.16 and 2.18

Proposed: November 7, 1994 at 26 N.J.R. 4258(a).

Adopted: December 21, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: January 3, 1995 as R.1995 d.58, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198, 201 and 219.

Effective Date: January 3, 1995, Readoption
March 6, 1995, Amendments, New Rules and Repeals.

Expiration Date: January 3, 2000.

Summary of Public Comments and Agency Responses:

Comments were received from the following individuals and organizations: John D. Garcia, Deputy Director, Bureau of Facility Planning Services, State Department of Education; Pat J. Intindola, Construction Official, Township of Nutley; Patrick J. O'Keefe, Executive Vice President and CEO, New Jersey Builders Association; Kenneth W. Krug, Building Subcode Official, East Windsor Township; Robert J. Davidson, President, Middlesex County Fire Prevention and Protection Association; Gary C. Lewis, President, New Jersey Fire Prevention and Protection Association; James E. Cunningham, President, New Jersey Association

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of Health Care Facilities; Gerald J. Naylis; John A. Maxwell, Associate Director, New Jersey Petroleum Council; and D.J. Campbell, Regulatory Affairs Advisor, Mobil Oil Corporation.

COMMENT: The rules now provide that the filing of a timely appeal stays action until a decision is made by the construction board of appeals or by the Commissioner, as the case may be. It should be amended to provide that enforcement actions must be stayed until the owner has exhausted or failed to exercise all available rights of appeal.

RESPONSE: An owner who intends to appeal a decision of a construction board of appeals to the Law Division or of the Commissioner to the Appellate Division has the right to request a stay from the board of appeals or the Commissioner, as the case may be, and, if that is denied, from the court with which the appeal is filed. This is a procedure established by the Court Rules. In the judgment of the Department, it does not impose an unreasonable burden on any party that intends to go to the effort and expense of a further appeal and it gives the local enforcing agency or the Division of Fire Safety the opportunity to argue the merits of granting such a stay. This is necessary because the granting of a stay may place people's lives in imminent peril in some situations. In any event, this is a change that cannot properly be made on adoption because it would place an obligation on enforcing agencies that does not now exist and was not proposed.

COMMENT: The 15-day time period for abatement of violations of N.J.A.C. 5:18-3 should be increased to 30 days, or at least to 15 business days. In many cases, 15 days is not enough time to correct fire safety violations.

RESPONSE: The time periods set forth in N.J.A.C. 5:18-2.10 are **minimum** time periods only. N.J.S.A. 52:27D-207 requires that a "reasonable specified period of time" be allowed to correct violations. If the nature and extent of a violation are such that it is not reasonable to allow only 15 days, the fire official must allow as much time as is reasonable. If he or she fails to do so, the owner has a right of appeal. Since there are, indeed, some violations for which 15 days is sufficient time for abatement, the Department does not consider it appropriate to extend the minimum time required to be allowed for abatement of N.J.A.C. 5:18-3 violations that are not imminent hazard violations.

COMMENT: It is unreasonable for the rules to allow penalties of up to $150,000 to be assessed when the cost of suppressing a fire resulting from a violation for which the owner of the property was previously cited may be considerably less.

RESPONSE: P.L. 1991, c.489 specifically allows local enforcing agencies to assess compensatory penalties of up to $150,000 without regard to the actual cost of suppression. The implementing rule must be consistent with the statute and cannot negate it.

COMMENT: The definition of "owner-occupied," at N.J.A.C. 5:18-1.5 as used in conjunction with "Use Group R-3," as meaning a building serving as the residence of at least one holder of record title to the property, is contrary to the statutory definition of "owner" as "a person who owns, purports to own, manages, rents, leases or exercises control over a building, structure or premises.

RESPONSE: The clear purpose of the broad definition of "owner" in N.J.S.A. 52:27D-196 was to make it possible for enforcing agencies to require the person with the ability to correct violations at a property to do so, even if that person were not the holder of record title. N.J.S.A. 52:27D-197 excludes "owner-occupied" one- and two-unit dwellings from inspection under the Uniform Fire Safety Act. If, however, the definition of "owner" in N.J.S.A. 52:27D-196 were applied to the term "owner-occupied" in N.J.S.A. 52:27D-197, the latter term would be redundant, since any one- or two-family house that is not occupied by a holder of title is presumably occupied, or intended to be occupied, by someone who is renting it. It is a principle of statutory interpretation that words and phrases should be construed, if at all possible, in a way that does not make them redundant. Therefore, it is the Department's understanding that the Legislature used the term "owner-occupied" in its generally-accepted sense and did not intend to incorporate into that phrase the definition of "owner" set forth in N.J.S.A. 52:27D-196.

COMMENT: The proposed definition of "Use-Group R-3" at N.J.A.C. 5:18-1.5 as including "not more than five lodgers or boarders per family" constitutes "social engineering." The terms "lodger" and "boarder" are not defined in either the Uniform Construction Code or the Uniform Fire Code. There is no indication in the rule of the relationship between these groups and the family. Clarification is needed in order to avoid intrusive and illegal enforcement.

RESPONSE: The terms "boarder" and "lodger" have well-established, commonly-accepted meanings. The portion of the definition to which the commenter objects is in the existing text, not in the language being added. It is consistent with the Uniform Construction Code and the model codes that it incorporates. The point of that portion of the definition is that rooming or boarding houses with fewer than six residents, none of whom require assistance in order to exit the building, are in the same category, for code enforcement purposes, as a one- or two-family house. The Department does not view this classification as "social engineering."

COMMENT: Introduction of the title of "fire marshall" at N.J.A.C. 5:18-1.5 is an unnecessary source of confusion.

RESPONSE: The title is used in many municipalities. By including it in the definition of "fire official" at N.J.A.C. 5:18-1.5, the Department wishes to make clear that the term is equivalent to "fire official," and not to "fire subcode official."

COMMENT: N.J.A.C. 5:18A-3.2 implies that the fire official need not be certified if the local enforcing agency does not inspect life hazard uses. However, the definition of "fire official" in both N.J.A.C. 5:18-1.5 and 5:18A-1.4 includes the requirement that the person be certified.

RESPONSE: The comment is correct. The text of N.J.A.C. 5:18A-3.2(a) has been revised on adoption to make it consistent with the definitions.

COMMENT: All residential Use Group definitions should be the same as those in the BOCA code.

COMMENT: Those one- and two-family dwellings that are classified as Use Group R-4 in the BOCA National Building Code should be classified in the same way in the Uniform Fire Code.

RESPONSE: BOCA Use Group definitions have been changed over time. Since the building code is primarily intended for use with new construction, this is not a problem, since the requirements in each edition of the building code is keyed to current definitions. The Uniform Fire Code, however, applies to existing buildings built prior to 1977, the year in which the Uniform Construction Code took effect. In order to assure that the most appropriate requirements apply to each type of building, a classification system is followed, for fire code purposes, that is useful for buildings of all ages, even though this may involve slight deviation from some current BOCA definitions. The Department is aware of no great difficulty arising in those cases where classification is different for different purposes.

COMMENT: This proposal and PRN 1994-566, published at 26 N.J.R. 4249(a) make different changes to some of the same provisions. This is confusing and the proposals ought to be withdrawn and a single new proposal published.

RESPONSE: Revisions have been made to both proposals that will correct this problem and avoid any confusion when both adoptions are incorporated into the New Jersey Administrative Code. Withdrawal and reproposal are not necessary.

COMMENT: The reference at N.J.A.C. 5:18-3.1(b)2 to "attached owner-occupied Use Group R-3 structures used exclusively for dwelling purposes" as being subject to subchapter 3 of the rules, even if only to the extent necessary to protect adjacent units, violates the express statutory exclusion of all owner-occupied one- and two-unit dwellings from jurisdiction under the Uniform Fire Safety Act.

RESPONSE: The Department agrees. The proposed N.J.A.C. 5:18-3.1(b)2 is being deleted on adoption.

COMMENT: The posting of the permitted number of occupants in each educational room or space at N.J.A.C. 5:18-3.15(a)3 is a waste of money. Posting should only be required for the facility as a whole and for assembly areas. Department of Education rules already limit regular classrooms to 26 occupants and posting of a higher number, as the fire code would allow, would conflict with this occupancy limit.

RESPONSE: The existing rule requires a posting "located near the main exit from the room or space." The intent of the language added to N.J.A.C. 5:18-3.15(a)3 is to clarify this existing requirement, not to add a new requirement. The cost of the signs and the time required to do a one-time posting is unlikely, in the Department's judgment, to place a noticeable economic burden on any school district. The posting of a room for purposes of fire safety does not in any way limit the right of the Department of Education to require, for educational reasons, that class sizes be less than the posted occupancy limit. Occupancy limits apply, not only to pupils, but also to teachers, aides, parents and any other non-pupils who may also be present in the room.

COMMENT: N.J.A.C. 5:18-2.1(c) should be amended to have the fire official "request" rather than "demand" entry, since "demand" may be misinterpreted to include the use of force.

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RESPONSE: "Demand" is the proper legal term. "Request" implies that there is no legal obligation to comply. In common usage, it is generally impolite to "demand" rather than to "request." However, the use of the word must be understood in the context of the provisions concerning the use of warrants and police assistance set forth at N.J.A.C. 5:18-2.1(c)1 and 2.10(f), which make it clear that the fire official is not authorized to use physical force to obtain entry. Furthermore, this is existing wording that was formerly at N.J.A.C. 5:18-2.1(e).

COMMENT: Imminent hazards for unsafe structural conditions are enforced by construction officials under the Uniform Construction Code. Fire officials do not have the same training as do construction officials and do not have authority to hire experts, if needed, to determine when a structure is not structurally safe. They should therefore not have authority to vacate structures because of unsafe structural conditions.

RESPONSE: The commenter is correct in stating that determinations of structural adequacy are primarily within the jurisdiction of the construction official. The provision giving the fire official the authority to issue "imminent hazard" orders was formerly set forth at N.J.A.C. 5:18-2.14(c). The language to which the commenter objects is, therefore, not new; it is merely being moved to N.J.A.C. 5:18-2.16 as part of the recodification of the chapter. Since a substantive change to an existing rule cannot be made on adoption if it was not proposed, the Department will propose new language to clarify this issue. Responsibility to make determinations of unsafe structural conditions is the construction official's, subject to the authority of the fire department to issue a temporary vacate order during an actual emergency, which order shall be effective until appropriate action can be taken by the construction official.

COMMENT: At N.J.A.C. 5:18-2.17(a)3, the sign posted by the fire official when he or she orders a building vacated should indicate that the determination is a temporary one. This sign should be clearly distinguished from a sign posted by the construction official.

RESPONSE: Since the other reasons listed in N.J.A.C. 5:18-2.16(b)—formerly 2.14(c)—for the issuance of an imminent hazard order by the fire official are capable of being corrected in a short period of time, any such order that is properly within the jurisdiction of the fire official would indeed be temporary in nature. The use of a sign is appropriate, since enforcement of a vacate order requires that people be informed about it, but the commenter is correct in stating that the temporary nature of the order should be made clear. It should be made clear to building occupants and others that the building is only required to be vacated until the hazardous condition is corrected and entry is permitted by the fire official. This is implicit in the proposal, as is the fact that the sign relates to violations of the fire code. To avoid any misunderstanding, however, the text is being amended on adoption at N.J.A.C. 5:18-2.17(a)3 to make these facts explicit.

COMMENT: A fire official's determination, pursuant to N.J.A.C. 5:18-2.18, to keep a building vacated and closed until a certificate of continuing occupancy is issued could be inconsistent with the Uniform Construction Code, particularly if the violations cited under the fire code are not also violations under the construction code.

RESPONSE: Punitive closing, to which N.J.A.C. 5:18-2.18 refers, is an extraordinary remedy authorized by N.J.S.A. 52:27D-209 in cases involving violations that constitute a clear danger to human life and are either willful or grossly negligent or violate a previously issued order. N.J.S.A. 52:27D-209 specifically provides that a certificate of continued occupancy issued under the Uniform Construction Code must be obtained before the premises can reopen. The intent of this provision was to ensure that a repeat offender would not reopen until all apparent health or safety problems, not just fire hazards, were corrected and to bring the expertise of the building, fire protection, plumbing and electrical subcode officials to bear on the building before it could reopen. The construction and subcode officials would only be concerned with hazards recognizable under the Uniform Construction Code rules.

COMMENT: N.J.A.C. 5:18-3.1(b)4 exempts buildings in compliance with the codes in force at the time of construction. However, subparagraph (b)4ii permits a fire official to impose additional requirements if he or she thinks them necessary. This represents a conflict with the Uniform Construction Code.

RESPONSE: The intention of this rule, which was previously codified at N.J.A.C. 5:18-1.4(f), was to prohibit the use of subchapter 3 of the Uniform Fire Code to require increased fire resistance of structural elements or installation of fire walls not required by the code under which the building was constructed, while permitting those other fire safety measures for particular **process-related** hazards that are specifically required by provisions of subchapter 3. The Department believes that the rule is reasonable in that it limits the authority of the fire official to those items required by subchapter 3 **other than** fire ratings and fire walls, but provides additional flexibility to accept process changes or limitations in lieu of additional safety systems. Upon review, however, the Department finds that this meaning is not sufficiently clear from the text. A new proposal will be made to clarify this language.

COMMENT: Aboveground tanks, referred to in N.J.A.C. 5:18-3.16(b), are already regulated under the Uniform Construction Code.

RESPONSE: The commenter is correct in noting that the Uniform Construction Code is indeed the code applicable to aboveground tanks. That was the intent of the proposal. "Approved," as used in this section, means approved under the Uniform Construction Code. This will be clarified further in a future proposal.

COMMENT: The phrase "except as otherwise specifically provided in this Code" at the end of N.J.A.C. 5:18-4.2(d) will authorize the fire official to exceed construction code requirements in a building that conforms to the Uniform Construction Code.

RESPONSE: N.J.S.A. 52:27D-213 expressly provides that a building conforming in all respects to the requirements of the Uniform Construction Code cannot be made to conform to more restrictive Uniform Fire Code standards. This provision is contained in the rules at N.J.A.C. 5:18-4.3(a). No inference to the contrary based on the amended text could therefore be valid. The intention of the Department in proposing to add the words "except as otherwise specifically provided in this Code" was to make it clear that retrofit requirements that are less restrictive than those established by the Uniform Construction Code, such as the exceptions regarding standpipe systems that are set forth at N.J.A.C. 5:18-4.8(a)1 and 2, were not in conflict with the general statement in N.J.A.C. 5:18-4.2(d).

COMMENT: At N.J.A.C. 5:18-4.3(b)1, the determination, in a disputed case, as to whether a building conforms to the Uniform Construction Code or not should be made in consultation with the local construction official.

RESPONSE: The Department agrees. The construction official is being added to the list of those required to be consulted at N.J.A.C. 5:18-4.3(b)1.

COMMENT: It is not clear who determines, under N.J.A.C. 5:18-4.4(b)1, whether or not a previously granted variation shall remain valid. If the fire official makes this determination, it should be with the consent and concurrence of the person who originally granted the variation.

RESPONSE: The rule provides objective criteria by which to determine whether or not a variation previously granted under an existing code remains valid. This basic rule was intended to "grandfather" variations that had been issued under predecessor codes, whether State or local, where such variations were a consequence of a stated conclusion by the agency that granted them that the variations provided a level of fire safety equivalent to that provided by the rule from which the variation was granted. It was not the intention of the rule to "grandfather" variations that were merely waivers granted without any basis in a finding of equivalent safety.

Since this determination is made under the fire code, it must be made by the fire official. There is no reason to require concurrence of the person or persons who allowed the original variation. Aside from the fact that the record either does or does not indicate that the criteria of N.J.A.C. 5:18-4.4(b)1i-iii have been met, it would be poor public policy to transfer the fire official's authority to make this determination to another person, particularly when the person who allowed the variation may no longer be in office and the current holder of the office may have no knowledge of the circumstances beyond what is in the record itself.

COMMENT: Proposed N.J.A.C. 5:18-2.2(e)2 would require enforcing agencies to issue two free certificates of fire code status and limit to $35.00 the fee that could be charged for any additional certificates. This does not adequately compensate local enforcing agencies for work done and will require revision of municipal ordinances that establish fees based upon current code language.

RESPONSE: The Department agrees. The rule has been amended on adoption at N.J.A.C. 5:18-2.2(e)2i to make the free certificate and $35.00 provisions applicable only to the Division of Fire Safety where it serves as the enforcing agency. The existing rule is retained for local enforcing agencies.

COMMENT: The rules improperly authorize county fire marshals to enforce the Uniform Fire Safety Act in county facilities. The act only

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refers to county fire marshals serving as local enforcing agencies in those cases where a municipality designates them as such. The rules should not provide that a county fire marshal pre-empts local enforcement of the code in county facilities.

RESPONSE: The Department does not find in the statute any intention to eliminate the pre-existing authority of county fire marshals. If municipal officials can enforce the fire code in municipal facilities, there is no inherent conflict in county fire marshals enforcing it in county facilities. There is no need to have both county and local fire inspections of the same facilities.

COMMENT: The proposed language at N.J.A.C. 5:18A-2.2(c)2 provides that the local enforcing agency only has jurisdiction over premises either leased by or to the Federal government and maintained by the Federal government by "mutual consent." "Mutual consent" of whom? What is meant by "maintained by"?

RESPONSE: The provision at N.J.A.C. 5:18A-2.2(c)2 applies to properties either owned by, or leased to and maintained by, the United States. A state or local agency does not have authority to enforce state codes against the Federal government. This rule recognizes, but does not create, the legal principle that it is only possible to secure compliance with state codes by a Federal agency with Federal consent. That is what is meant by "mutual consent." If a private owner has maintenance responsibility, orders can be issued to that private owner even if a property is leased to a Federal agency. Whether the property is "maintained by" the Federal agency or the private owner must be determined by reviewing the lease and any other documentation affecting the respective responsibilities of the lessor and the lessee. The text is being revised on adoption to make these matters clearer.

Executive Order No. 27 Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

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

(**Agency Note:** The adopted text below includes, where appropriate, rule text adopted elsewhere in this issue of the New Jersey Register, as proposed at 26 N.J.R. 4249(a).)

5:18-1.1 Title; division into subchapters

(a) The regulations contained in this chapter shall be known as the "New Jersey Uniform Fire Code" and are referred to herein as the Code.

(b) The Code is divided into four subchapters:

1. N.J.A.C. 5:18-1, entitled "General Provisions";
2. N.J.A.C. 5:18-2, entitled "Administration and Enforcement";
3. N.J.A.C. 5:18-3, entitled "State Fire Prevention Code"; and
4. N.J.A.C. 5:18-4, entitled "State Fire Safety Code."

5:18-1.3 Intent and purpose

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

5:18-1.4 Applicability

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

(e) The planning, design and construction of new buildings and structures, or the planning, design and alteration or renovation of existing buildings and structures, to provide the necessary egress facilities, fire protection and built-in fire protection equipment shall be controlled by the New Jersey Uniform Construction Code, and any alterations, additions or changes in or to buildings and structures required by the provisions of this Code which are within the scope of the Uniform Construction Code shall be made in accordance therewith, unless specifically provided otherwise by this Code.

Recodify existing (g)-(h) as (f)-(g). (No change in text.)

5:18-1.5 Definitions

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

. . .

"Day" means a calendar day, unless otherwise specified.

. . .

"Fire Official" means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code by the appointing authority of a local enforcing agency. This term shall also include "Fire Marshal" where the fire official has been appointed pursuant to N.J.A.C. 5:18A-3.2.

. . .

"Local enforcing agency" means a municipal agency, fire department, fire district or county fire marshal authorized by municipal ordinance to enforce the Act within a specific local jurisdiction or, where such authorization has not been granted by local ordinance, it means the Department of Community Affairs. "Local enforcing agency" shall also mean and include a county fire marshal authorized by ordinance or resolution of the board of chosen freeholders to enforce the Act in county facilities.

. . .

"Owner-occupied" when used in conjunction with "Use Group R-3" means a building serving as the residence of at least one holder of record of title to the property.

"Premises" means a specific locality, area of land or portion thereof, and shall include any buildings, structures or portions of buildings or structures thereon.

. . .

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

1.-15. (No change.)

16. "Use Group R-2": This Use Group shall include all multiple family dwellings having more than two dwelling units and shall also include all dormitories, rooming houses, group rentals where the occupants are living independently of each other and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature. This Use Group shall also include attached one- and two-family dwelling units which do not meet the definition for Use Group R-3.

17. "Use Group R-3": This Use Group shall include all buildings arranged for the use of detached one and two-family dwelling units, including not more than five lodgers or boarders per family. This Use Group shall also mean and include:

i. Bed and breakfast homestays; and

ii. Attached one- and two-family dwellings constructed in accordance with Uniform Construction Code requirements for multiple single family dwellings.

18.-19. (No change.)

5:18-1.6 (Reserved)

5:18-2.1 Enforcement authority

(a) It shall be the duty and responsibility of the agency having jurisdiction in accordance with N.J.A.C. 5:18A-2.2 to enforce the provisions of this Code as set forth herein.

1. Where no local enforcing agency has been created the Division shall enforce the provisions of this Code for life hazard uses or whenever conditions which constitute an imminent hazard are found to exist.

(b) The local enforcing agency shall inspect all premises, except owner-occupied detached Use Group R-3 structures used exclusively for dwelling purposes. These inspections shall be made in accordance with the schedule contained in the Code, when required under any cyclical inspection program and as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with fire operations, endanger life or any conditions constituting

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violations of the provisions or intent of this Code or a locally adopted amendment. Except in the case of cyclical inspection programs or other good cause, inspections shall not include occupied dwelling units.

(c) Whenever necessary to make an inspection to enforce any of the provisions of this Code, or whenever the fire official or his or her authorized representative has reasonable cause to believe that there exists in any or upon any premises any condition which makes such building or premises unsafe, the fire official or his or her authorized representative may enter such premises, at all reasonable times to inspect the same or to perform any duty imposed upon the fire official by this code, provided that if such premises be occupied, he or she shall first present proper credentials and demand entry; and if such premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and demand entry.

1. No owner or occupant or any other persons having charge, care or control of any premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the fire official or his or her authorized representative for the purpose of inspection and examination pursuant to this Code. If the owner or occupant denies entry, the fire official or his or her authorized representative shall obtain a proper warrant or other remedy provided by law to secure entry.

5:18-2.2 Responsibility for compliance

(a) The owner shall be responsible for the safe and proper maintenance of the premises at all times.

(b) Owners of premises which are, or which contain, one or more uses subject to this Code, shall have concurrent responsibility with the owners of any such uses for compliance with the Code. No person shall be required to abate any violations which he has no power to abate or to require to be abated. If a violation is served on an owner who cannot comply due to lack of authority, within five days of receipt of the notice of violation, the owner shall either provide notice of the violation to the party with authority or inform the fire official of such party's name and address.

(c) If an occupant of a premises creates conditions in violation of this Code, by virtue of storage, handling and use of substances, materials, devices and appliances, the occupant can be held responsible for the abatement of said hazardous conditions.

(d) A person shall be deemed to have violated or caused to have violated a provison of this Code if an officer, agent or employee under his control and with his knowledge has violated or caused to have violated any of the provisions of this Code.

(e) Subsequent owners or those succeeding to control over the premises shall be responsible for correcting unabated violations and for the payment of outstanding fees and/or penalties whether or not they have requested a certificate of fire code status.

1. Upon request of the owner, contract purchaser, transferee or the authorized agent of any of them, the enforcing agency having jurisdiction over the premises shall issue a certificate either indicating that violations exist or that fees and/or penalties remain outstanding according to its records, or which states that its records indicate that no violations remain unabated and no penalties or fees remain unpaid. Upon request, the agency shall provide copies of the violations list and penalty orders.

2. ***Fees for the issuance of certificates of fire code status shall be as follows:**

i. In any jurisdiction in which the Division of Fire Safety serves as the local enforcing agency* *[If an owner is current in payments of applicable life hazard or non-life hazard fees]*, there shall be no charge for the first two certificates requested in any *[twelve]* month period ***by an owner who is current in payment of applicable life hazard or non-life hazard fees***. Thereafter, or if an owner has not made such payment, a notation to that effect shall be made on the bill and the requestor *[may]* ***shall*** be charged a fee for the issuance of the certificate *[not to exceed]* ***in the amount of*** $35.00.

ii. The fire official of a local enforcing agency other than the Division of Fire Safety may establish a reasonable fee for the issuance of a certificate of fire code status.

5:18-2.14 Variances

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

(d) Copies of all variance applications and records of the action taken on them shall be maintained as permanent public records by the fire official.

1. A fire official shall promptly provide the Division with copies of all decisions granting or denying variances after they have been rendered.

(e) Variations to requirements found in the Uniform Construction Code may only be granted by the Construction Official in accordance with the Uniform Construction Code.

5:18-2.4 Scope and classification of life hazard uses

(a) The premises and uses identified as life hazard uses shall be divided into four basic groups designated as types "A", "B", "C", and "D." The premises and uses included in each of these types are set forth in N.J.A.C. 5:18-2.4A, 2.4B, 2.4C and 2.4D, respectively. This designation is for reference purposes only and shall not be determinative of the degree of hazard associated with them. Within each group, the various uses shall be specifically identified or described and subdivided by the use of lower case letters.

(b) Premises that are incidental or auxiliary to the agricultural use of a farm property shall not be classifed as life hazard uses.

(c) Each individual life hazard use shall be registered separately and treated as separate and distinct for the administrative purposes of this Code whether or not there are other life hazard uses at the same premises.

(d) Wherever used in N.J.A.C. 5:18-2.4A, 2.4B, 2.4C and 2.4D, the following words shall have the meanings indicated:

"Day care center" shall include any facility licensed by the Department of Human Services as a day care center, regardless of the ages of the persons in the care of the center.

"Day nursery" shall include any facility licensed by the Department of Human Services as a day nursery.

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

"K-12 educational building" shall mean an educational building serving 50 or more students from kindergarten through grade 12 and also means and includes any educational building serving 50 or more students in some, but not all, of the grades from kindergarten to grade 12, inclusive.

"Motor vehicle" shall include all motor-powered means of transportation, including, without limitation, boats and airplanes.

5:18-2.5 Required inspections

(a) All life hazard uses shall be inspected for compliance with the provisions of this Code periodically but not any less often than specified herein:

1.-3. (No change.)

4. Type Da through Dc life hazard uses: once every three months. The periodic inspection of a covered mall may be limited to the common areas.

(b) Where a life hazard use is operated on a seasonal basis, the number of required annual inspections shall not be reduced. Inspections of type Ca through Ci and type Da through Dc life hazard uses which are in operation for only a portion of the year shall be conducted immediately prior to opening and closing and twice during operation of the use.

(c) Within 30 days following each annual and every other quarterly inspection of a life hazard use, the owner shall file an application for a certificate of inspection on forms provided by the local enforcing agency. Forms shall be provided either before or at the time of inspection. The form shall be returned to the local enforcing agency.

(d) Upon completion of a required inspection, the local enforcing agency shall issue a certificate of inspection. A certificate of inspection shall not be issued until all violations cited have been corrected.

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The certificate of inspection shall be posted by the owner of the use in a conspicuous location therein.

5:18-2.6 Registration of buildings and uses

(a) Whenever the Commissioner or any local enforcing agency shall have cause to believe that a building or use is a life hazard use, then the Commissioner or the agency shall submit a registration application to the owner. It shall be a violation of the Code for an owner to fail to complete and return such an application within 30 days.

1. (No change.)

(b) The owner of a life hazard use shall file with the Commissioner, upon forms provided by the Commissioner, a registration application. Each registration application shall include at least the following information:

1.-4. (No change.)

5. Where the owner of the use and the owner of the building in which it is located are not the same then the application shall include the same information for the owner of the building as is herein required for the owner of the use.

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

(e) When applying for registration, the owner of each life hazard use shall appoint an agent for the purpose of receiving service of process and orders or notices issued by the Commissioner or a local enforcing agency pursuant to the Act and designate the street address of the location at which such agent may be served. Each agent shall be either a resident of this State or a person who maintains a bona fide office in this State or shall be a corporation licensed to do business in this State.

(f) If the ownership of a life hazard use is transferred, whether by sale, assignment, gift, intestate succession, testate devolution, reorganization, receivership, foreclosure or execution process, the new owner shall file with the Commissioner, within 30 days of the transfer, an application for a certificate of registration, and appoint an agent for the service of process, pursuant to this section.

(g) (No change.)

(h) The owner of each life hazard use in the State shall pay to the Department an annual fee in the amount specified in this subchapter. The owner shall pay the annual fee within 30 days of the bill date. If the owner fails to do so, the Department may, pursuant to N.J.S.A. 52:27D-201, issue a certificate to the clerk of the Superior Court stating that the owner is indebted to the Department for the payment of the annual fee and the clerk shall immediately enter upon his record of docketed judgments the name of the owner and of the Department, a designation of the statute under which the fee is assessed, the amount of the fee certified and the date the certification was made. The making of the entry shall have the same effect as the entry of a docketed judgment in the office of the clerk, but without prejudice to the owner's right of appeal. The owner shall also be subject to a penalty in accordance with N.J.A.C. 5:18-2.12(b)8ii.

1. (No change.)

5:18-2.7 Permits required

(a) Permits shall be required and obtained from the local enforcing agency for the activities specified in this section, except where they are an integral part of a process by reason of which a use is required to be registered and regulated as a life hazard use. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1.-7. (No change.)

Recodify existing (c)-(g) as (b)-(f) (No change in text.)

(g) A permit shall remain in effect until revoked, or for one year unless a shorter period of time is otherwise specified. Permits are not transferable and any change in use, operation or tenancy shall require a new permit.

1. Exception: A type 1 permit for welding or cutting shall be effective throughout the local enforcing agency's jurisdiction and shall be issued on an annual basis.

(h) Any permit issued shall become invalid if the authorized work or activity is not commenced within six months after issuance of the permit, or if the authorized work or activity is suspended or abandoned for a period of six months after the time of commencement.

Recodify existing (j) as (i) (No change in text.)

5:18-2.9 Fees: registration, certificate of smoke detector compliance and permit

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

(d) The application fee for a certificate of smoke detector compliance, as required by N.J.A.C. 5:18-2.3, shall be $20.00.

(e) (No change.)

5:18-2.10 Enforcement procedures

(a) Whenever the fire official or the fire inspector observes a violation of a provision of this Code or locally adopted amendments the fire official shall prepare and serve on the owner a written notice of violation identifying the condition which is in violation, including the location, the appropriate Code section, and specifying time limits for the required repairs or improvements to be made. The notice shall contain or be accompanied by a written statement of the owner's right to appeal as set forth in N.J.A.C. 5:18-2.19.

(b) Time periods allowed for abatement of violations of this Code shall be as follows:

1. For any violation of N.J.A.C. 5:18-3, the fire official shall allow a minimum of 15 days.

i. The fire official may specify a time period of not less than three days where there is a dangerous condition that is liable to cause or contribute to the spread of fire or endanger the occupants.

2. For any violation of N.J.A.C. 5:18-4, the fire official shall allow a minimum of 30 days for abatement of the submission of a request for an extension, in accordance with (d) below.

(c) These time limits shall not apply to violations constituting an imminent hazard in accordance with N.J.A.C. 5:18-2.16 or to the revocation of permits in accordance with N.J.A.C. 5:18-2.7(f).

(d) The fire official may grant extensions of time whenever he shall determine that despite diligent effort compliance cannot be accomplished within the time specified in the notice.

1. No extension shall be granted unless it is requested in writing by the owner. A request for extension shall set forth the work which has been accomplished, the work that remains, the reason why an extension is necessary and the date by which the work will be completed.

2. An application for an extension shall be deemed to be an admission that the notice of violation is factually and procedurally correct and that the violations do or did exist.

i. An owner who inquires concerning an extension shall be informed of the provisions of (d)2 above.

ii. If the local enforcing agency provides forms for an application for extension, the provisions of (d)2 above shall be prominently printed on them.

(e) If the notice of violation is not complied with within the time specified by the fire official, the fire official shall institute the appropriate enforcement proceedings to restrain, correct or abate such violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this Code or of any order or direction made pursuant thereto.

(f) If the fire official determines that the Code cannot be adequately or safely enforced without police support, he ***or she*** shall request the *[chief of]* police to provide assistance. If no assistance is forthcoming, he ***or she*** shall pursue formal action to address the situation and shall not use physical force.

(g) Any person, firm or corporation violating any of the provisions of the Code or failing to comply with any order issued pursuant to any section thereof, shall be subject to the penalties provided in N.J.A.C. 5:18-2.12. The imposition of penalties shall not prevent the fire official from instituting appropriate action to restrain, correct or abate a violation; or to prevent illegal occupancy of a building, structure or premises; or to stop an illegal act, business or use in or about any premises.

5:18-2.11 Service of notice and orders

(a) Notice, rules, decisions and orders issued and served pursuant to the Act shall be effective if served by any one of the methods set forth below:

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1. By personal delivery; or

2. By leaving the document at the addressee's office or dwelling unit with a person 14 years of age or older; or

3. By certified mail return receipt requested to the person's last known address; however, if the document is returned as "refused" or "unclaimed" with no indication of a change of address, service may be made by ordinary mail to the same address; or

4. If on an owner, by serving the document on the Secretary of State, who shall be deemed the owner's agent for service of process; if:

i. A certified mailing was returned; and

ii. A copy of the document is posted in a conspicuous location on the premises, which location shall include the walls in a front vestibule, common foyer or hallway near the inside main front entrance.

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

5:18-2.19 Appeals

(a) The person aggrieved may appeal any enforcement action, including rulings, orders and notices, by submitting a written hearing request as set forth herein. Either the owner of the premises or of the use, or an authorized agent of the owner, may be a person aggrieved.

1. (No change.)

2. If from the act of the Department the request shall be made to the Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, New Jersey 08625. The hearing shall be conducted by the Office of Administrative Law, with the Commissioner or his or her designee issuing the final decision.

3. (No change.)

(b) (No change.)

(c) In imminent hazard cases, except in emergent circumstances, and in punitive closure cases, the owner shall have a period of 24 hours to request a hearing before the order to close, vacate or remove shall be effective. In emergent circumstances, orders may be effective immediately. Hearing requests within the 24 hour period may be made orally to the person designated on the form served but shall be written in accordance with (a)3 above and served on the enforcing agency at the hearing. At the expiration of 24 hours, if the action required in the order has been taken, the owner shall have a period of 15 days to request a hearing.

1. (No change.)

2. If the request is to a Construction Board of Appeals and no final decision is issued within two working days, thereafter, the owner may make written application for a hearing to the Department at the address specified in (a)2 above. The application shall clearly state that it is an imminent hazard appeal and shall identify the local enforcing agency and Construction Board of Appeals. In such case, a hearing shall be held and a final decision issued within three working days from receipt of the request.

3. (No change.)

5:18-2.12 Penalties

(a) The Commissioner or a local enforcing agency may assess, levy and collect penalties to ensure compliance with the Code. No penalty shall be imposed except upon issuance of a written order requiring abatement and the allowance of a reasonable specified period in which to comply, unless clear notice of the violation otherwise exists.

(b) The maximum penalty for any act or omission in violation of the act or code but not enumerated in this subsection is $5,000 per violation per day. Except as specified below, a violation of N.J.A.C. 5:18-3 or 4 shall subject a violator to a maximum penalty of $500.00 per violation, per day. Specific violations shall subject violators to penalties as follows:

1. Imminent hazard—punitive closure:

i. Failure to obey an imminent hazard order—a maximum of $5,000 per day for each day that the failure continues.

ii. Failure to obey an order to close for fixed period of time issued pursuant to N.J.A.C. 5:18-2.17—a maximum of $5,000 per day for each day that the failure continues.

2. Egress:

i. Blocking, locking, or obstructing required exits in a place of public assembly or education—a maximum of $5,000 per occurrence;

ii. Blocking, locking, or obstructing required exits in any other place—a maximum of $2,500 per occurrence.

3. Occupancy:

i. Exceeding the maximum permitted occupancy in a place of public assembly or education;

(1) For the first offense—a maximum of $2,500;

(2) For a subsequent offense—a maximum of $5,000;

ii. Exceeding the maximum permitted occupancy in any other place;

(1) For the first offense—a maximum of $500.00;

(2) For a subsequent offense—a maximum of $2,500.

4. Fire protection equipment:

i. Failure to install a required suppression or detection device after having been given written notice of the requirement to do so:

(1) In a place of public assembly or education—a maximum of $2,500 per violation per day;

(2) In any other place—a maximum of $1,000 per violation per day.

ii. Disabling or decreasing the effectiveness of any fire suppression or alarm device or system.

(1) In a place of public assembly or education—a maximum of $5,000 per occurrence;

(2) In any other place—a maximum of $1,000 per occurrence.

5. Failure to comply with a lawful action:

i. A negligent or inadvertent failure to comply with a lawful order, ruling, notice or other action of the Commissioner or a local enforcing agency—a maximum of $2,000 per occurrence.

ii. A refusal or deliberate failure to comply with a lawful order, ruling, notice or other action of the Commissioner or a local enforcing agency—a maximum of $5,000 per occurrence.

6. Obstruction:

i. Anyone who obstructs, hinders, delays or interferes by force or otherwise with the Commissioner or any member of a local enforcing agency in the exercise of any power or the discharge of any function or duty under the provisions of this Code—a maximum of $2,500 per occurrence.

7. Permits:

i. Failure to obtain a required permit prior to commencing the operation, process or activity for which a permit was required—a maximim of double the amount of the applicable permit fee.

ii. Failure to obtain a required permit after being ordered to do so while continuing the operation, process or activity—a maximum of $5,000 per day during which the operation, process, or activity continues.

8. Registration:

i. Failure to file a registration application after having been ordered to do so—an amount equal to double the applicable registration fee, but not less than $200.00 or more than $1,000 for each registration.

ii. Failure to pay the required annual registration fee when due—an amount equal to the unpaid fee. Payment of the fee after imposition of the penalty shall not absolve the owner from responsibility for the penalty nor shall payment of the penalty be deemed to absolve the owner from the obligation to pay the fee.

9. False statements:

i. Preparing, uttering or rendering any false statement, pertaining to reports, documents, plans or specifications permitted or required under the provisions of this code—a maximim of $5,000.

ii. Submission of a materially false application for a permit or registration—a maximum of $1,000 per occurrence.

10. Special hazards:

i. For any violation of N.J.A.C. 5:18-3 or 4 of this Code which is not specifically enumerated above but which, under the circumstances, presents a specific hazard to life—a maximum of $5,000 per violation per day. The violation notice must set forth the basis for determining the basis for a special hazard.

(c) Each day during which the violation remains unabated after the date or time specified in the order or notice for its correction or termination shall constitute an additional and separate violation.

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(d) The filing of a timely appeal shall stay the action until a decision is made by the construction board of appeals or the Commissioner, as the case may be.

(e) A violation that is recurring justifies imposition of an immediate penalty without the necessity for an interval in which correction can be made. A violation shall be deemed to be a recurring violation if a notice has been served within two years from the date that a previous notice was served and the violation, premises and responsible party are substantially the same.

(f) If a penalty order has not been satisfied by the 30th day after its issuance, the Commissioner or local enforcing agency may institute a civil penalty action by a summary proceeding under the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.) in the Superior Court or municipal court.

1. A person who fails to pay immediately a money judgment rendered against him may be sentenced to imprisonment by the court for a period not exceeding six months, unless the judgment is sooner paid.

2. All moneys that are recovered as a result of the assessment of penalties shall be paid into the designated trust account and shall be appropriated to support the local enforcing agency's operation.

(g) The Commissioner or fire official may offer to reduce any penalty provided that such reduction is in the best interest of fire safety and will assure compliance. No penalty reduction can be made final while the violation that led to its assessment remains in existence.

5:18-2.13 Fire department costs

(a) An owner who has been given notice of a violation shall be responsible for a penalty not exceeding $150,000 or the costs of suppressing any fire which directly or indirectly results from the violation, whichever is greater. To create an obligation, the violation need not have been the initial cause of the fire; it is sufficient if the violation's existence has increased the intensity of the fire or the difficulty of its extinguishment. This penalty is independent of any penalty issued in accordance with N.J.A.C. 5:18-2.12 for failure to abate the violation. Suppression costs may be imposed for a fire which occurs during the period allowed for abatement.

(b) The suppression costs shall include, but not be limited to, costs of labor, equipment and material incurred by municipalities, fire districts or fire departments involved in suppressing the fire, as well as any other actual expenses, included attorney fees, incurred for the collection of the penalty. If a compensatory penalty in excess of $150,000 is sought, the cost of suppression shall be certified to the fire official of the area in which the fire occurred by the chiefs of the suppression units involved.

(c) The fire official shall serve notice on the owner and order payment. The notice shall state the violations justifying imposition of the penalty. If payment is not received within 30 days, the fire official shall pursue collection in the manner specified herein for penalties. The monies collected shall be paid to the municipalities or districts and appropriated in accordance with N.J.A.C. 5:18-2.12A(b).

5:18-2.16 Imminent hazards

(a) If, upon an inspection, the enforcing agency discovers a violation of the Act that constitutes an imminent hazard as defined in (b) below, the enforcing agency shall issue and cause to be served on the owner of the premises, or on the violator, a written order directing that the premises be vacated, closed, or removed forthwith or that the violation be corrected within a period not to exceed 24 hours. The order shall state the nature of the violation and the date and hour by which the premises shall be vacated, closed or removed or the violation shall be abated.

(b) (No change in text.)

(c) Upon determination of the existence of an imminent hazard in accordance with this section, the fire official shall immediately notify the construction code official of his or her findings.

(d) The enforcing agency shall reinspect the premises within 48 hours of receiving written notice from the owner, violator or agent thereof stating that the violation has been terminated. If, upon reinspection, the enforcing agency determines that the violation has been terminated, it shall mark the violation "abated", and rescind the order requiring the vacation of the premises and occupancy may be resumed immediately. If the reinspection is not made by the local enforcing agency within 48 hours of the receipt of the notice, the owner, violator or agent may apply to the Division for a reinspection and shall provide a copy of such application to the local enforcing agency. The Division shall complete a reinspection and make a determination within three working days from the date of notification. If a local enforcing agency completes its reinspection prior to issuance of the Division's notice, it shall immediately notify the Division; an oral notification shall be followed promptly in writing.

5:18-2.17 Evacuation of unsafe premises

(a) When, in the opinion of the fire official, there is actual and/or potential danger to the occupants or those in proximity to any premises because of any condition constituting an imminent hazard in accordance with N.J.A.C. 5:18-2.16, the fire official is hereby authorized and empowered to order the imminent evacuation of said premises.

1. All occupants so notified shall immediately leave the premises and no person shall enter or re-enter until authorized to do so by the fire official.

2. Any person who shall refuse to leave, or who shall interfere with the evacuation of other occupants or continue any operation after having been given an evacuation order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be deemed to have violated this Code, and may be subject to arrest as provided in N.J.A.C. 5:18-2.10(f). This paragraph shall not be used to penalize a properly qualified individual who is authorized to perform, and is performing, work to abate the violation and eliminate the unsafe condition.

3. The fire official shall cause to be posted at each entrance to such premises a notice reading as follows: This premises is unsafe ***due to violations of the Uniform Fire Code*** and its use or occupancy has been prohibited by the fire official***.*** *[and it]* ***It*** shall be unlawful for any person to enter such premises***,*** except for the purpose of making the required repairs***, until fire safety hazards have been removed and entry is permitted by the fire official***.

5:18-2.18 Punitive closing

If the enforcing agency finds a violation of the provisions of the Act in a life hazard use to be willful or grossly negligent, or to be in violation of a previously issued order, and to constitute a clear danger to human life, in addition to ordering the building, structure or premises vacated and closed until the violation is abated, the enforcing agency may order the building, structure or premises to remain vacated and closed for a further period not to exceed 60 days and until such time as a certificate of continued occupancy, issued pursuant to the Uniform Construction Code shall be obtained by the owner.

5:18-2.12A Dedicated and compensatory penalties

(a) When an owner has been given notice of the existence of a violation and has not abated the violation, that owner shall, in addition to being liable to the penalty provided for by N.J.A.C. 5:18-2.12, be liable to a dedicated penalty assessed pursuant to this subsection.

1. (No change.)

2. The amount of any dedicated penalty assessed pursuant to this subsection shall be in accordance with the standards set forth in N.J.A.C. 5:18-2.12(b), except that a dedicated penalty of up to $50,000 for each violation may be assessed where there is a serious injury or loss of human life directly or indirectly resulting from any unabated violation.

3. (No change.)

(b) (No change in text.)

Agency Note: N.J.A.C. 5:18-2.11 is recodified as 2.19.

5:18-2.20 (No change in text.)

5:18-2.3 Certificate of smoke detector compliance

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

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(d) No CSDC shall be issued until inspection of the structure indicates compliance with N.J.A.C. 5:18-4.19, except as provided in (d)1 below.

1. (No change.)

5:18-3.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall be applicable to:

1. (No change.)

[2. Attached owner-occupied Use Group R-3 structures used exclusively for dwelling purposes only to the extent necessary to protect adjacent dwelling units; and]

*[3.]***2.*** (No change in text.)

*[4.]***3.*** Buildings or other facilities built under and in full compliance with the codes in force at the time of construction or alteration thereof, and that have been properly maintained and used for such use as originally permitted, shall be exempt from the requirements of this subchapter pertaining to any of the following matters:

i. Fire protection of structural elements except as provided for existing buildings under the Uniform Construction Code;

ii. Isolation of hazardous operations: provided, however, that the fire official may require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where, in the judgment of the fire official, they are necessary to provide safety to life and property.

iii. In lieu of requiring the installation of safety devices or systems or when necessary to secure safety in addition thereto, the fire official may prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property.

(c) Whenever, in this subchapter, reference is made to the Appendix, the provisions in the Appendix shall not apply unless specifically adopted herein.

5:18-3.11 Crop ripening or coloring processes

(a) (No change.)

(b) Fire safety requirements are as follows:

1. (No change.)

2. The location of buildings in which crop ripening or coloring processes utilizing gas containers of ethylene are conducted shall be approved by the fire official.

i.-ii. (No change.)

iii. Ethylene gas containers other than those connected for use shall be stored outside of the building or in a special building except that not more than two portable U.S. Department of Transportation (DOT) containers not connected for use may be stored inside of the building premises. Such inside rooms or portions of buildings used for storage of these containers shall be constructed in accordance with N.J.A.C. 5:18-3.29(g)4.

iv. (No change.)

3.-6. (No change.)

5:18-3.15 Places of assembly and education

(a) General provisions concering places of assembly and education are as follows:

1.-2 (No change.)

3. Each place of assembly or education, including each separate room or space used for purposes of assembly or education, shall be posted with an approved legible sign in contrasting colors conspicuously located near the main exit from the room or space stating the number of occupants permitted within such space. The number of occupants permitted shall be determined by the Fire Safety Code, N.J.A.C. 5:18-4.11(f). Assembly rooms or spaces which have multiple use capability shall be posted for all such uses. The owner shall be responsible for installing and maintaining such signs.

i. (No change.)

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

5:18-3.16 Service stations, garages and fuel dispensing operations

(a) (No change.)

(b) Flammable and combustible liquids used or intended to be used as fuel for motor vehicles shall be stored in underground or approved aboveground tanks on the premises in conformance with N.J.A.C. 5:18-3.28.

1. Flammable and combustible fuel may be stored in approved containers inside a building provided the total amount does not exceed 120 gallons.

(c)-(g) (No change.)

5:18-4.1 Code adopted; scope

(a) (No change.)

(b) All buildings for which requirements are established in this subchapter shall be in compliance with such applicable requirements of this subchapter, unless a date for compliance is set forth in this subchapter.

1. Use Group R-3 structures used exclusively for dwelling purposes shall not be subject to any requirements of this subchapter other than N.J.A.C. 5:18-4.19.

5:18-4.2 Compliance with the State Fire Prevention Code and other fire safety regulations

(a) The requirements established by this subchapter are in addition to, and not in lieu of, requirements established by the State Fire Prevention Code (N.J.A.C. 5:18-3).

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

(d) Existing fire suppression and detection systems that were installed in accordance with the Uniform Construction Code, the Uniform Fire Code or which met the intent of the applicable NFPA standards at the time of installation shall be accepted as meeting the requirements of this Code, except as otherwise specifically provided in this Code.

5:18-4.3 Relationship to the Uniform Construction Code

(a) (No change.)

(b) A building in full compliance with the current fire safety requirements of the Uniform Construction Code, as determined by the construction official with the concurrence of the fire subcode official and in consultation with the fire official, shall not be required to conform to more restrictive requirements established by this subchapter.

1. A determination as to whether a Uniform Construction Code requirement involves fire safety shall, in a disputed case, be determined by the Division of *[Housing and Development]* ***Codes and Standards*** after consultation with the Division of Fire Safety ***, the construction official*** and the fire official and, if necessary, with the concurrence of the Assistant Commissioner, Department of Community Affairs***, responsible for overseeing the Divisions of Fire Safety and Codes and Standards***.

2. (No change.)

5:18-4.4 General provisions

(a) The applicability of provisions of this subchapter to existing buildings or structures, identified or classified by the Federal, State or local government authority as historic buildings, shall be determined by the local construction code enforcing agency in consultation with the fire official, as outlined in Section 513.0 of the Building Officials and Code Administrators, Inc. (BOCA) Basic/National Building Code, 1984 edition.

(b) A variation previously granted to a provision of an existing code, which provision contains requirements substantially the same as the comparable provision of this subchapter, shall remain valid, subject to the following conditions:

1. To be accepted the variation must have been:

i. Granted in writing;

ii. Granted through a formal process or procedure; and

iii. Granted upon a finding that equivalent life safety was provided.

(c) Nothing in this Code shall be construed as preventing any State agency from exceeding provisions of this Code in making improvements to buildings under their jurisdiction, ownership or control when such changes are mandated by or through Federal law or Federal regulations as a condition of funding such agency. Such action shall not reduce the requirements of these regulations.

(d) The provisions of N.J.A.C. 5:18-4.1 through 4.3 shall not prevent the fire official from making a finding of imminent hazard

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pursuant to N.J.A.C. 5:18-2.16 or the construction official from making a finding of unsafe building pursuant to the Uniform Construction Code and requiring correction of such hazard or unsafe condition in accordance with those regulations.

5:18-4.5 Comprehensive facility fire protection plans

(a) A comprehensive facility fire protection plan may be submitted for facilities located within the jurisdiction of more than one local enforcing agency which are under single facilities management, ownership and operational control.

1. The plan shall be submitted to the Division for approval and shall include an original and one copy plus a copy for each local enforcing agency in which the subject facilities are located. The plan shall include the following:

i. All buildings which are part of the facilities at every location included in the plan and for each building, the use group and an evaluation of the fire protection, including all requirements established in this subchapter;

ii. A timetable for compliance with the requirements of this subchapter; and

iii. A written application for a variance submitted in accordance with N.J.A.C. 5:18-2.14 for any proposed deviations from this subchapter.

2. The Division shall consult with each local enforcing agency in which facilities included on the plan are located before taking any final action.

3. Within 60 days after receiving the plan, the Division shall approve or disapprove it in writing. If the plan is disapproved, then the written statement shall include the reason(s) for the disapproval.

i. A plan which is not approved within 60 days shall be deemed to have been disapproved unless the 60 day period is extended by mutual agreement of the Division and the applicant;

ii. A disapproval may be appealed as provided in N.J.A.C. 5:18-2.19;

iii. No owner shall be required to retrofit a facility pending approval or disapproval of the plans by the Division.

4. The original approved plan shall be maintained on file by the Division. One copy of the approved plan shall be returned to the applicant and one copy shall be supplied to each local enforcing agency in which facilities included on the plan are located.

5. Any deviation from the plan as approved must be submitted to the Division for approval in accordance with the procedure established herein for the submission and approval of plans.

6. Inspections for compliance with the plans as approved shall be conducted by the local enforcing agency in which facilities are located.

5:18-4.13 Protection of interior stairways and other vertical openings

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

(c) Interior stairways and other vertical openings connecting no more than three levels shall be enclosed with approved assemblies and opening protectives having a fire resistance as follows:

1. (No change.)

2. In Use Group B, a minimum 30 minutes fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barriers may be omitted in buildings not exceeding 3,000 square feet per floor or when the building is protected throughout by an approved automatic fire suppression system.

3. In Use Group E, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings connecting not more than three floor levels. Such barrier may be omitted when the building is protected throughout by an approved automatic fire suppression system.

4. In Use Group F, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted:

i.-ii. (No change.)

5. In Use Group H, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when necessary for manufacturing operations in a building where every floor level has direct access to at least two remote enclosed stairways or other approved exits.

6. In Use Group I-1, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings exceeding three floor levels. Such fire barrier may be omitted at either the top or bottom of a stairway which connects not more than two floor levels when such stairway does not serve as a required means of egress and the occupant load does not exceed 12, excluding staff.

7. In Use Group I-2, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when connecting not more than two floor levels which are separated by a one-hour fire barrier equipped with a self-closing or automatic-closing 20 minute door at the top or bottom of the stairway, when such stairway does not serve as a required means of egress.

8. (No change.)

9. In Use Group M, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when:

i.-ii. (No change.)

10. In Use Group R-1, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i.-iii. (No change.)

11. In Use Group R-2, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted.

i.-iii. (No change.

5:18A-1.1 Title; scope; division into parts

(a) These regulations shall be known as the "Regulations for Fire Code Enforcement".

(b) The regulations are divided into four subchapters:

1. N.J.A.C. 5:18A-1, entitled "General Provisions";

2. N.J.A.C. 5:18A-2, entitled "Enforcing Agencies, Establishment and Responsibilities";

3. N.J.A.C. 5:18A-3, entitled "Organization, Administration and Enforcement"; and

4. N.J.A.C. 5:18A-4, entitled "Certification of Fire Officials."

5:18A-1.4 Definitions

(a) As used in this chapter:

. . .

"Fire district" means a district established pursuant to N.J.S.A. 40A:14-70.

. . .

"Fire Official" means a person certified by the Commissioner of the Department of Community Affairs and appointed or designated to direct the enforcement of the Code. This term shall also include "Fire Marshal" where the fire official has been appointed pursuant to N.J.A.C. 5:18A-3.2.

. . .

"Local enforcing agency" means a municipal agency, fire department, fire district, or county fire marshal authorized by municipal ordinance to enforce the act within a specific local jurisdiction; or where such authorization has not been granted by local ordinance, it means the Department of Community Affairs. "Local enforcing agency" shall also mean and include a county fire marshal authorized by ordinance or resolution of the board of chosen freeholders to enforce the Act in county facilities.

. . .

5:18A-2.2 Matters covered; jurisdictions; exceptions

(a) (No change.)

(b) Jurisdictional responsibilities for enforcing the Code are as follows:

1. A local enforcing agency, where established, shall be responsible for enforcement of the Code within its jurisdictional area for:

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i. All privately-owned premises subject to the Code, including, but not limited to, premises leased to but not maintained by the State, or any of its boards, commissions, agencies or authorities;

ii. All premises owned by or leased to any municipality or local authority, board, commission or agency;

iii. All premises owned by or leased to any county or any regional authority or its boards, commissions, agencies or authorities if no county enforcing agency has been designated to enforce the Code or if requested to do so in accordance with N.J.A.C. 5:18A-2.9(a)1.

2. County enforcing agencies, where established, shall be responsible for enforcement of the Code for:

i. All premises owned by or leased to the county or any of its boards, commissions, agencies or authorities;

ii. All privately-owned premises within its jurisdictional area in which a municipality has designated the county as its local enforcing agency;

iii. All premises owned by or leased to a municipality or municipal authority, in the area in which the county has been designated as the local enforcing agency as well as any such premises for which it is requested to inspect pursuant to N.J.A.C. 5:18A-2.9(a)1; and

iv. All premises leased to but not maintained by the State of New Jersey or any of its boards, commissions, agencies or authorities within the jurisdictional area for which the county has been designated as the local enforcing agency.

3. The Division shall have concurrent jurisdiction with any local or county enforcing agency and shall enforce the Code in all premises subject to it as follows:

i. In life hazard uses; or whenever conditions may exist that constitute an imminent hazard and as the interest of safety requires; in jurisdictions where neither a local nor a county enforcing agency has been established or designated to enforce the Code; and

ii. In all premises owned or maintained by the State of New Jersey or any of its boards, commissions, agencies or authorities; and

iii. In accordance with N.J.A.C. 5:18A-2.10(e) and 4.3(c); and

iv. In premises within the jurisdiction of a local or county enforcing agency if necessary to properly enforce the Code or avoid a conflict of interest.

4. (No change.)

(c) Special matters of jurisdiction are as follows:

1. Agencies created by Interstate Compact may be inspected by the State and shall conform to the Code but shall not be subject to fees or penalties nor to the enforcement jurisdiction of any local or county enforcing agency.

2. Premises owned by***,*** or leased to and maintained by***,*** the United States or ***any of*** its agencies or instrumentalities shall not be subject to the enforcement jurisdiction of any State, county or local enforcing agency except by mutual consent ***of the Federal agency or instrumentality and of the enforcing agency***. Premises leased to***,*** but not maintained by***,*** the United States or any of its agencies or instrumentalities shall be subject to the jurisdiction of the appropriate enforcing agency.

5:18A-2.3 Local enforcing agencies; establishment

(a) Creation of a local agency shall be subject to the following:

1. (No change.)

2. The governing body may create or designate a local enforcing agency within the limits of a requesting fire department or district, subject to N.J.A.C. 5:18A-2.4.

3. The governing body may designate as its local enforcing agency a requesting fire department, fire district, or an available county agency. In the event that none of the entities enumerated are available for designation, the governing body may elect to create or designate a local enforcing agency within the municipality. If no agency is created or designated, the Division shall exercise jurisdiction in accordance with N.J.A.C. 5:18A-2.2(b)3.

4. A municipality that has two or more departments or districts within its limits may make different provisions as requested by each. Such provisions shall not establish differing fees or standards within the areas served by separate agencies.

5. Where the governing body shall create two or more agencies because there are two or more departments or districts within its limits, jurisdictional limits for each shall be specified so that each has a distinct geographic area, without overlap.

(b) An ordinance creating one or more local enforcing agencies shall include at least the following provisions:

1. A designation of the organization, office or agency to enforce the Code. The fire official and all other local enforcing agency personnel shall be considered public employees.

2. Provisions governing the appointment of a fire official or fire marshal to serve as the chief administrator of the local enforcing agency, fire inspectors and other personnel as may be necessary to enforce the Code.

i. If the ordinance provides that more than one fire department chief or board of fire commissioners may recommend appointments, the ordinance shall provide a mechanism to facilitate a recommendation.

ii. Nothing in this subsection shall be construed to conflict with or in any way limit the rights of any person under State or local personnel rules or other employment rights provided by Law.

3. A designation of the agency that will be responsible for the periodic inspection of life hazard uses, if such agency is different from the one designated to perform inspections pursuant to the Code for non-life hazard uses. This agency may be the local enforcing agency, the county enforcing agency, or the Division. The ordinance shall not designate any agency that does not have at least one paid fire official and such paid fire inspectors as may be necessary to enforce the Code.

4. Any locally desired Code or permit requirements, provided that such requirements exceed those contained in the Code.

5. Any fees to be charged for non-life hazard uses, or permit inspections which differ from those set forth in the Code, shall be specified.

6. Adoption of any local amendments desired to N.J.A.C. 5:18-3 or 4 in accordance with N.J.A.C. 5:18A-2.8.

7. Repeal any earlier ordinances which the governing body may deem to conflict with or cause confusion with the State Uniform Fire Code.

(c) Creation of a county agency shall be subject to the following:

1. A county enforcing agency shall only be created by ordinance or resolution adopted by the Board of Chosen Freeholders in a county with a duly authorized county fire marshal.

2. Only a county fire marshal shall be designated to serve as the fire official for a county enforcing agency.

3. The ordinance or resolution shall specify whether the county enforcing agency shall:

i. Limit its activity to the inspection of county facilities;

ii. Be available for designation as a local enforcing agency at the request of a local governing body for the inspection of both or either life hazard and non-life hazard uses;

iii. Establish, where necessary, additional periodic inspections, permits or permit requirements beyond those specified in the Code for areas within its jurisdiction. In the event that additional fees for non-life hazard uses are desired, the county shall inform the municipality and coordinate an appropriate enactment.

5:18A-2.4 Fire districts

(a) If a fire district designated as a local enforcing agency under this subchapter is dissolved, the fire department within the territorial area of the dissolved district shall have the option, within 30 days of the dissolution, to assume the local enforcing agency responsibilities. If the fire department does not exercise the option, it shall pass to another district within the municipality, and if not exercised by another district shall pass to the municipality itself. The district and municipality shall each have 15 days in which to decide the matter.

1. If the dissolved district has combined with another district or districts, the remaining district(s) shall have the option, within 30 days of the dissolution, to assume local enforcing agency responsibilities. If this option is not exercised, it shall pass to the fire department within the territorial area of the dissolved districts and, if not exercised, shall pass to the municipality. The department and municipality shall each have 15 days in which to decide the matter.

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2. Exercise of the option shall be evidenced by a written notice signed by the party authorized to act on behalf of the entity. This notice shall be delivered to the municipal governing body which enacted the ordinance authorizing local enforcement. In addition, a copy shall immediately be forwarded to the Division.

3. The local enabling ordinance governing the local enforcing agency shall be modified if necessary and promptly filed with the Division. The new local enforcing agency shall promptly assume local enforcing agency responsibilities and notify the Division.

4. If, within 60 days of dissolution, the Division has not received proper written notice of the assumption of a dissolved district's obligations, the Division shall assume responsibility.

(b) Fire districts created after June 18, 1985, shall have 60 days from the date of the first meeting of the Board of Commissioners in which to request designation as a local enforcing agency in accordance with the provisions set forth in this subchapter. If such a request is made and a local enforcing agency exists, the district and such agency shall cooperate in transferring the local enforcing agency responsibilities.

5:18A-2.5 State enforcing agency; establishment

(a) The Division is constituted as the State enforcing agency for the purpose of administering and enforcing the Code in those areas where a local enforcing agency has not been established or designated for the inspection of life hazard uses and as provided in N.J.A.C. 5:18-2.2(b)3.

5:18A-2.6 Collection of and accounting for fees and penalties

(a) Collection of registration fees:

1. The Division shall annually bill for and take such steps as may be necessary to collect or provide for the collection of the annual registration fees provided for by the Code. No fee shall be assessed against premises owned by the agency enforcing the Code.

2.-3. (No change.)

4. Where a local enforcing agency has been assigned a certificate of judgment in accordance with N.J.A.C. 5:18-2.6(g)1, it shall remit 35 percent of the net amount collected to the Division by the end of the quarter next succeeding the one in which the fees were collected.

i. (No change.)

(b) Permit fees and other fees provided for or allowed by the Code or any local ordinance or any penalties shall be collected and retained fully on behalf of the enforcement agency having jurisdiction. Penalties collected by the Division for failure to register or for late payment of fees shall be retained fully by the Division.

(c) All revenues collected by the Division shall be deposited in the Fire Safety Revolving Fund created by the Treasurer of the State of New Jersey. Expenditures may be made from the fund to carry out any of the responsibilities of the Division.

(d) All revenues generated pursuant to the Act or local implementing ordinance which are collected by or provided to a county or municipality shall be appropriated by the local governing body to the local enforcing agency for the purpose of enforcing the Code, operating the local enforcing agency and advancing local fire prevention interests.

(e) (No change.)

5:18A-2.7 Registry of agencies

(a) Each municipality that passes an ordinance establishing a local enforcing agency shall file a copy of same with the Division within two weeks of final adoption. Each county that passes an ordinance or resolution establishing a county enforcing agency shall file a copy of same with the Division within two weeks of adoption.

1. Any municipality or county that later amends a resolution or an ordinance that established an enforcing agency shall file a copy of the amendments with the Division within two weeks of adoption.

2. A municipality or county that does not file an ordinance or resolution shall be deemed not to have passed one, in which case, the Division shall enforce the Code in that jurisdiction.

(b) The Division shall compile those ordinances and resolutions and shall issue quarterly a Registry of Enforcing Agencies. The Registry shall be made available to the general public and shall show what agency is responsible to enforce the Code and what agency is responsible to inspect life hazard uses in every area of the State.

(c) The status of any enforcing agency with respect to responsibility to enforce the Code or inspect life hazard uses shall change as of the deadline date for submission to the next applicable quarterly registry unless the Division assumes jurisdiction in accordance with these regulations. Submission deadline dates for the registry are as follows:

i. For the annual (first quarter) registry, December 31 of the previous year.

ii. For the second quarter registry, March 31; for the third quarter registry, June 30; and, for the fourth quarter registry, September 30.

(d) If the Commissioner returns jurisdiction to a local enforcing agency pursuant to N.J.A.C. 5:18A-2.10, the effective date shall be the deadline date for submission of the next quarterly publication of the Registry of Enforcing Agencies following the Commissioner's decision.

(e) When the Division assumes responsibility pursuant to N.J.A.C. 5:18A-4.3(c), then the effective date shall be the 61st day after the vacancy occurs unless the Division grants a 30 day extension as provided in N.J.A.C. 5:18A-4.3(c).

5:18A-2.8 Amendments to the Code

(a) Local amendments of the technical standards of N.J.A.C. 5:18-3 and 4 are permitted to be adopted by ordinance but no such amendment shall require a building which complies with the Uniform Construction Code to conform to a more restrictive standard.

(b) No amendment to N.J.A.C. 5:18-1 and 2 is permitted except for permit and certificate of smoke detector compliance fees in accordance with N.J.A.C. 5:18-2.7.

(c) Any amendments adopted shall be filed with the Division in accordance with N.J.A.C. 5:18A-2.7(a).

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

5:18A-2.9 Conflict of interest

(a) No person employed by an enforcing agency as a fire official or fire inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she or a member of his or her immediate family has an economic interest.

1. Where an inspection or enforcement procedure is necessary or required in any such property or business, then the fire official shall arrange for the inspection or enforcement to be carried out by the county enforcing agency, the local enforcing agency of an adjoining jurisdiction or the Division of Fire Safety.

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

5:18A-2.10 Departmental monitoring

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

(e) Where the local enforcing agency shall fail to take corrective action, where the failure to enforce the Code is pervasive and substantial, or if the agency is improperly constituted then the Division shall notify the local enforcing agency of its determination or final finding and shall thereafter assume responsibility for all inspection and enforcement with respect to life hazard uses within the jurisdiction of the local enforcing agency. All fees and penalties associated with the enforcement in life hazard uses shall from that date forward be paid to the Division.

(f) Where the Division has assumed responsibility the local agency may petition the Commissioner to return jurisdiction. The petition shall set forth the corrective action the local enforcing agency has taken, or will take, to ensure proper enforcement of the Code. The Commissioner may return jurisdiction if he or she finds that the Code will be properly and fully enforced.

5:18A-2.11 Right of appeal

In accordance with N.J.S.A. 52:27D-206, any person or agency aggrieved by a notice, order, action or decision of the Division pursuant to this subchapter shall be entitled to a hearing before the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1, provided that a request for a hearing is submitted to the Hearing Coordinator, Department of

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Community Affairs, CN 802, Trenton, New Jersey 08625 within 15 days of the person or agency's receipt of the notice or order complained of.

5:18A-3.1 Applicability

The provision of this subchapter shall apply to all local and county enforcing agencies. The term local enforcing agency shall mean and include county enforcing agencies whenever the term is used in this **sub**chapter.

5:18A-3.2 Local enforcing agencies; organization

(a) The fire official shall be appointed in the manner provided for in the ordinance establishing the local enforcing agency. He ***or she*** shall serve as the chief administrator of the agency. He ***or she*** shall establish the day-to-day operating routines of the agency and shall coordinate the activities of any inspectors or other staff. He ***or she*** shall be certified in accordance with N.J.A.C. 5:18A-4 *[if the local enforcing agency inspects life hazard uses for compliance with the Code]*.

(b) The municipality, fire district and the fire department shall ensure that the enforcing agency has an adequate number of inspectors to complete all necessary inspections and review all permit applications and act on them in a timely manner as well as sufficient staff to ensure that enforcement actions are taken in a timely manner when violations are found and not corrected. Any inspectors engaged in the inspection of life hazard uses shall be certified as specified in N.J.A.C. 5:18A-4.

(c) (No change.)

(d) The municipality or fire district shall specifically appoint legal counsel to assist and represent the local enforcing agency in all matters related to the Code. Such legal counsel shall advise the agency and undertake such actions at law as the fire official shall deem necessary.

5:18A-3.3 Duties of fire officials and fire inspectors

(a) The fire official shall enforce the code and the regulations and shall:

1.-7. (No change.)

8. Assist the Division, when requested, with any registration application;

9.-11. (No change.)

12. Ensure that all persons seeking to appeal are promptly referred to the Construction Code Board of Appeals;

13.-22. (No change.)

23. Carry out such other functions as are necessary and appropriate to the position of fire officials including coordinating transition to a successor fire official;

24. Respond to and cause to be investigated any complaints brought under the Code;

25. (No change.)

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

5:18A-3.5 Coordination with construction, fire subcode and other officials

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

(c) Whenever, in the enforcement of the fire code and other codes and ordinances, it becomes necessary to subject a given building to multiple inspections in the same general time frame, it shall be the duty of all involved inspectors to coordinate their inspections and administrative orders as much as possible so that the owners and occupants of the structure shall not be subjected to inspections more numerous than necessary, nor to multiple conflicting orders. Whenever an inspector observes a violation of some law, ordinance or code of the jurisdiction that is not within the inspector's authority to enforce, the inspector shall report the findings to the official having jurisdiction in order that such official may institute the necessary corrective measures.

5:18A-3.6 Coordination for State licensed and regulated facilities

(a) The provisions of this section shall apply to the following types of facilities which are licensed or regulated by State agencies:

1.-2. (No change.)

3. Department of Community Affairs:

i.-ii. (No change.)

iii. Hotels;

iv. Multiple dwellings.

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

(f) In addition to inspecting life hazard uses, a local enforcing agency may, by giving notice to the Division, accept responsibility for cyclical inspection and enforcement of the Uniform Fire Code in hotels and multiple dwellings that are not life hazard uses. A local enforcing agency that accepts this responsibility shall inspect each multiple dwelling that is not a life hazard use and each hotel that is not a life hazard use at a frequency not less than that currently provided for in the rules for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10.

1. A local enforcing agency may, by ordinance, establish reasonable fees to cover the cost of such inspections, in accordance with N.J.A.C. 5:18A-2.3(b).

5:18A-4.2 Authority; hearings

(a) The following rules concern Office of Training and Certification:

1. There is hereby established in the Division, an Office of Training and Certification. The Office shall consist of such employees of the Department of Community Affairs as may be required for the efficient implementation of this subchapter.

2. The responsibilities of the Office, in addition to all others provided in this subchapter, are as follows:

i.-iii. (No change.)

(b) The following rules concern hearings:

1. Any person aggrieved by any notice, action, ruling or order of the Division, with respect to this subchapter, may have a right to a hearing before the Office of Administrative Law, conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 et seq. The final decision in any such case shall be issued by the Commissioner.

2. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being contested. The request shall be mailed to the Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, New Jersey 08625. The request for hearing shall raise all issues that will be set forth at the hearing.

5:18A-4.3 Certification required

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

5:18A-4.5 Renewal of certification

(a) Every three years, any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Office of Training and Certification that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Division shall renew, for a term of three years, the certification previously issued. The expiration date of the certification shall be January 31 or July 31.

(b) (No change.)

(c) Continuing education requirements, as follows, must be met for renewal of certification. The requirements are based upon the type(s) of certification(s) held and not upon employment position held. Continuing education units (CEU's) shall be approved by the Division for technical and administrative courses (one CEU equals 10 contact hours).

1. Fire inspector certification—2.0 CEU's (technical);

2. Fire official certification—3.0 CEU's (2.0 technical and 1.0 administrative).

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

5:18A-4.6 Revocation of certifications and alternative sanctions

(a) The following shall be deemed a violation of the Uniform Fire Safety Act subject to a penalty of not more than $500.00 for each offense:

1. To carry out inspections or issue notices or orders pursuant to the Act in connection with life hazard uses if not certified;

i. This shall not preclude notifying the owner of a life hazard use of a perceived violation observed by a firefighter during the course

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of any normal fire service activity, such as routine inservice inspections. A copy of such notification shall be transmitted to the fire official for appropriate action.

2. To appoint or employ a person who is not certified to carry out the responsibilities of fire official in connection with life hazard uses; or

3. To fail to notify the Division concerning a vacancy as required by N.J.A.C. 5:18A-4.3.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

(d) The Commissioner shall appoint a review committee to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons holding certifications who are alleged to have done any act or omission proscribed by (b) above. The Department shall provide necessary staff for the review committee.

1.-3. (No change.)

4. In any case in which the Department makes a preliminary finding that a person holding certification has done any act or omission proscribed under (b) above, it shall have the case reviewed by the review committee prior to the issuance of any order revoking or suspending the certification or assessing a civil penalty.

5. (No change.)

6. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Deputy Director, Division of Fire Safety within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the Deputy Director. Failure of the review committee to submit a timely recommendation shall be deemed to be in concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the person holding certification.

7. (No change.)

Recodify existing (d)-(f) as (e)-(g) (No change in text.)

5:18A-4.7 Fees

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

1. The initial application fee shall be $45.00.

2. The three-year renewal application fee shall be $45.00.

(a)

DIVISION OF FIRE SAFETY

Uniform Fire Code

Fire Service Training and Certification

Adopted New Rule: N.J.A.C. 5:18-2.22

Adopted Amendments: N.J.A.C. 5:18-1.5, 2.7, 2.9, 3.3, 3.4, 3.5, 4.9 and 4.13; 5:18C-2.4

Proposed: November 7, 1994 at 26 N.J.R. 4249(a).

Adopted: December 21, 1994 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: January 3, 1995 as R.1995 d.59, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198 and 52:27D-25d.

Effective Date: March 6, 1995.

Expiration Date: January 4, 2000.

Summary of Public Comments and Agency Responses:

Comments were received from Kenneth W. Krug, Building Subcode Official of East Windsor Township, and from Patrick J. O'Keefe, Executive Vice President and CEO of the New Jersey Builders Association.

COMMENT: The smoke detector testing requirements of N.J.A.C. 5:18-3.4 should continue to be applicable to facilities that are now to be classified as bed and breakfast homestays.

RESPONSE: The Department agrees and is making the necessary change on adoption at N.J.A.C. 5:18-3.4(g)2. The requirements of inspecting detectors when there is a change of occupancy, cleaning detectors and replacing batteries when necessary, but at least once a year, are not unduly burdensome and the creation of a new category of bed and breakfast homestays, designated as R-3, should not relieve the owner of the existing responsibility to make sure that guests are protected by functioning smoke detectors.

COMMENT: This proposal and PRN 1994-569, published at 26 N.J.R. 4258(a), make different changes to some of the same provisions. This is confusing and the proposals ought to be withdrawn and a single new proposal published.

RESPONSE: Revisions have been made to both proposals that will correct this problem and avoid any confusion when both adoptions are incorporated into the New Jersey Administrative Code. Withdrawal and reproposal are not necessary.

COMMENT: The Department should use BOCA definitions of Use Groups without modification. There is no need to specify that dwelling units that do not meet the definition of R-3 are to be classified as R-2, since they either are R-2 or they are not.

RESPONSE: Unlike the Uniform Construction Code, which is primarily concerned with new construction, the Uniform Fire Code applies to existing buildings that were constructed prior to 1977, when the Uniform Construction Code became effective. Therefore, there are many attached one- and two-family dwelling units that do not meet Uniform Construction Code fire protection requirements for multiple single family dwellings. Uniform Fire Code classifications must take into account the differences between those multiple single family dwellings that were built to the Uniform Construction Code and those that were not.

Summary of Agency-Initiated Change:

At N.J.A.C. 5:18-4.13(c)10, long-passed compliance deadline has been deleted.

Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

5:18-1.5 Definitions

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

. . .

"Bed and breakfast" means a facility providing sleeping or dwelling accommodations to transient guests which:

1. Is comprised of a structure originally constructed as a private residence or a bed and breakfast;

2. Includes individual sleeping accommodations for 50 or fewer guests;

3. Has at least one dwelling unit occupied by the owner of the facility as his place of residence during any time that the facility is being used for the lodging of guests;

4. Has not less than 300 square feet of common area for the exclusive use of the guests, including, but not limited to, parlors, dining rooms, libraries and solariums;

5. Prohibits cooking and smoking in guest rooms;

6. Provides a meal to the guests in the forenoon of each day but does not operate as a restaurant open to the general public;

7. Is not a "rooming house" or "boarding house" as defined in N.J.S.A. 55:13B-3; and

8. Does not allow:

i. More than 15 percent of the guests to remain more than 30 successive days or more than 30 days of any period of 60 successive days or more than 30 days of any period of 60 successive days; or

ii. Any guest to remain more than 60 successive days or more than 60 days of any period of 90 successive days.

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"Bed and breakfast guesthouse" means a bed and breakfast designed to accommodate at least six guests, but not more than 25 guests.

"Bed and breakfast homestay" means a bed and breakfast designed to accommodate five or fewer guests.

"Bed and breakfast inn" means a bed and breakfast designed to accommodate at least 26 guests, but not more than 50 guests.

"Carnival" means a traveling circus or other traveling amusement show having one or more of the following uses:

1. Mobile enclosed structures used for human occupancy;

2. Tents or temporary tension membrane structures requiring a permit in accordance with N.J.A.C. 5:18-2.7(b)3iii;

3. Any use involving open flame or flame producing device(s).

. . .

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

1.-14. (No change.)

15. "Use Group R-1": This Use Group shall include all hotels, motels, and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than 30 days. This definition shall also mean and include bed and breakfast guesthouses and bed and breakfast inns.

16. "Use Group R-2": This Use Group shall include all multiple family dwellings having more than two dwelling units and shall also include all dormitories, rooming houses, group rentals where the occupants are living independently of each other and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature. This Use Group shall also include attached one- and two-family dwelling units which do not meet the definition for Use Group R-3.

17. "Use Group R-3": This Use Group shall include all buildings arranged for the use of detached one- and two-family dwelling units, including not more than five lodgers or boarders per family. This definition shall also mean and include:

i. Bed and breakfast homestays; and

ii. Attached one- and two-family dwellings constructed in accordance with the Uniform Construction Code requirements for multiple single family dwellings.

18.-19. (No change.)

5:18-2.7 Permits required

(a)-(k) (No change.)

(l) No permit(s) shall be issued for a carnival, as defined in N.J.A.C. 5:18-1.5, if the carnival has not been registered in accordance with N.J.A.C. 5:18-2.21.

5:18-2.9 Fees: registration; certificate of smoke detector compliance; permit; carnival registration certificate

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

(e) The application fee for a carnival registration certificate shall be as follows:

1. For 10 or fewer locations: $50.00;

2. For 11 to 25 locations: $75.00;

3. For 26 or more locations: $100.00.

Recodify existing (e) as (f) (No change in text.)

5:18-2.22 Registration of carnivals

(a) No carnival shall be operated at any time or at any location unless a carnival registration certificate has been issued by the Division.

(b) The owner of every carnival shall apply for a carnival registration certificate at least 30 days before the first intended operation. The application shall include the following:

1. Dates and locations of intended operation;

2. All uses requiring a permit under N.J.A.C. 5:18-2.7;

3. Complete plans for all mobile enclosed structures to be used for human occupancy;

4. Flame spread certifications, seating and usage diagrams for all tents;

5. Certificate of insurance;

6. Name, address and telephone number of the owner(s) of the carnival; and

7. Name of the person who will be with the carnival and will be responsible for securing all permits required by N.J.A.C. 5:18-2.7 and for the correction of any violations of this Code.

(c) Upon review and approval of the application, the Division will issue a carnival registration certificate to the owner. Additionally, copies shall be provided to all local enforcing agencies identified on the submitted schedule.

1. The certificate must be maintained by the responsible party identified pursuant to (b)7 above at all show locations and be available for inspection by the fire official.

2. Possession of a carnival registration certificate shall not relieve the owner of responsibility for obtaining permits as required by N.J.A.C. 5:18-2.7 or for otherwise complying with the requirements of this chapter.

(d) Any application for a carnival registration certificate shall be accompanied by the fee as set forth in N.J.A.C. 5:18-2.8.

5:18-3.3 General precautions against fire

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

(d) Any person using a torch or other flame-producing device for removing paint, for the sealing of membrane roofs, or for any similar use in or around any building, structure or combustible material is responsible for the prevention of fire and shall do the following:

1. Provide, in a ready state, within 15 feet, (4.6 meters) travel distance of the work being done, either an approved fire extinguisher having a minimum 2A rating or a water hose connected to a reliable water supply. If a water hose is used as the approved extinguisher, it shall be charged and be equipped with a suitable nozzle;

2. Provide shielding, wetting, or other approved means to protect exposed combustible material in close proximity of the flame. Approved stored pressure water fire extinguisher shall not be used to wet combustible material; and

3. Remain in the immediate vicinity for a minimum of one hour or a period of time sufficient to assure that no fire will result from the work that was done or to detect any fire that does occur, which fire shall be reported immediately.

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

(h) The following apply to open flame or light:

1.-2. (No change.)

3. Portable LP-gas cooking equipment such as barbecue grills shall not be stored or used:

i. On any porch, balcony or any other portion of a building;

ii. Within any room or space of a building;

iii. Within five feet of any combustible exterior wall;

iv. Within five feet, vertically or horizontally, of an opening in any wall; or

v. Under any building overhang.

(i)-(m) (No change.)

(n) The following apply to asphalt (tar) kettles:

1.-4. (No change.)

5. When liquified petroleum gas cylinders or containers are utilized for fueling asphalt (tar) kettles, the LPG cylinder shall be protected against vandalism and tampering.

i. (No change.)

Recodify existing iii. as ii. (No change in text.)

(o)-(w) (No change.)

5:18-3.4 Fire protection systems

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

(g) The following apply to fire alarm systems:

1. (No change.)

2. Battery operated smoke detectors in Use Group R-1 and R-2 buildings ***and in bed and breakfast homestays*** shall be maintained, tested and inspected as follows:

i. The owner of the building or his representative shall inspect each detector whenever a change of occupant occurs; and

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ii. The owner of the building or his representative shall clean the detector and/or replace the batteries as necessary, but at least once a year, to assure proper operation.

5:18-3.5 Means of egress

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

(e) The following apply to signs and lighting:

1.-5. (No change.)

6. Emergency lighting units shall be maintained, operable and ready for use at all times and shall activate upon primary power failure. Nothing shall be placed so as to block or obstruct these devices.

i. Emergency lighting units shall be tested on at least an annual basis.

ii. The owner of the building or his representative shall maintain a written record of all maintenance and tests on the premises.

(f) (No change.)

5:18-4.9 Automatic fire alarms

(a) An automatic fire alarm system shall be installed as required below in accordance with the New Jersey Uniform Construction Code.

1. (No change.)

2. In all buildings of Use Group R-1 and R-2 and in R-3 bed and breakfast homestays;

i. (No change in text.)

ii. In dwelling units or guestrooms, battery-powered single station detectors may be installed, provided that the detectors are maintained in accordance with N.J.A.C. 5:18-3.4(g)2.

iii. In bed and breakfast homestays of Use Group R-3, the system shall not be required to be supervised or connected to an emergency power supply.

iv. (No change in text.)

3.-4. (No change.)

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

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1. (No change.)

2. When more than one exit is required, an existing fire escape shall be accepted as providing one of the required means of egress unless judged to be dangerous for use under emergency exiting conditions.

3. Any new fire escapes shall be constructed and installed in accordance with the Uniform Construction Code Formal Technical Opinion No. FTO-3, dated March 1985.

i. (No change in text.)

4. In all buildings of Use Group E, up to and including the 12th grade, buildings of Use Group I, rooming houses and child care centers, ladders of any type are prohibited on all new and existing fire escapes used as a required means of egress.

5. All occupants shall have unobstructed access to all new and existing fire escapes without having to pass through a room subject to locking.

6. In all bed and breakfast homestays, every sleeping room shall be provided with an approved window having sill height of not more than 44 inches.

Recodify existing 3. as 7. (No change in text.)

(b)-(i) (No change.)

(j) Means of egress lighting shall be connected to an emergency electrical system conforming to NFiPA 70 (National Electrical Code) to assure continued illumination for a duration of not less than one hour in case of primary power loss in all buildings, rooms, or spaces required to have more than one exit or exit access.

(k) In all buildings, rooms or spaces required to have more than one exit or exit access, all required means of egress shall be indicated with approved internally illuminated or self-luminous signs reading "Exit", visible from the exit access and, when necessary, supplemented by directional signs in the exit access indicating the direction and way of egress. All "Exit" signs shall be located at exit doors or exit access areas, so as to be readily visible.

1. Exceptions to (k) above:

i. Exit signs shall not be required in buildings of Use Groups I-1, R-2 and R-3 having a total occupant load, excluding staff, of 20 or less.

ii. Exit signs shall not be required when the second means of egress is a fire escape that is accessed directly from the individual sleeping rooms.

iii. Approved main exterior doors that are clearly identified as exits are not required to have "Exit" signs.

2.-4. (No change.)

(l)-(o) (No change.)

5:18-4.13 Protection of interior stairways and other vertical openings

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

(c) Interior stairways and other vertical openings connecting no more than three levels shall be enclosed with approved assemblies and opening protectives having a fire resistance as follows:

1.-9. (No change.)

10. In Use Group R-1, a minimum one-hour fire barrier shall be provided *[by November 6, 1990]* to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i. In buildings which are protected throughout by an approved automatic fire suppression system installed in accordance with NFPA 13 or 13R; or

ii. In buildings with not more than 25 guests in which the following conditions are met:

(1)-(4) (No change.)

11. (No change.)

5:18C-2.4 Facility requirements

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

(f) Smoke building requirements are as follows:

1. (No change.)

2. The smoke building shall meet the following requirements:

i. There shall be an exterior exit or secondary means of egress on every floor;

ii.-iii. (No change.)

iv. There shall be a means to provide emergency ventilation which may include automatic or manual control of roof openings, doors and exterior windows.

3. (No change.)

(g) (No change.)

(h) Live burn facility requirements are as follows:

1. The following apply to burn buildings:

i. The purpose of the burn building is to safely train firefighters in methods of interior fire suppression. Every floor shall have an exterior exit or a second means of egress.

ii. (No change.)

iii. Class B materials shall not be used for fuel except when part of an engineered and designed system, such as propane or natural gas simulation, certified by the manufacturer as having been installed and maintained in accordance with the manufacturer's instructions and recommendations.

iv. Emergency ventilation should be provided by automatic or manual control of the roof openings, doors, and exterior shuttered windows.

2. (No change.)

(i) (No change.)

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(a)

DIVISION OF CODES AND STANDARDS
Uniform Construction Code
Abandonment of Septic Systems
Adopted Amendment: N.J.A.C. 5:23-3.15

Proposed: December 19, 1994 at 26 N.J.R. 4874(a).
Adopted: January 27, 1995 by Harriet Derman, Commissioner Department of Community Affairs.
Filed: February 3, 1995 as R.1995 d.122, **without change.**

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

Effective Date: March 6, 1995.
Operative Date: July 1, 1995.
Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows:

5:23-3.15 Plumbing subcode
(a) (No change.)
(b) The following pages, chapters, sections or appendices of the plumbing subcode are amended as follows:
1.-15. (No change.)
16. Except as otherwise indicated in (b)16i below, sections 16.1 through 16.12.1.13 of chapter 16 of the plumbing subcode, entitled "Regulations governing individual sewage disposal systems for homes and other establishments where public sewer systems are not available" are deleted in their entirety.
i. Section 16.1.7 is retained and amended to read as follows: "When a sewage disposal system is being abandoned and a connection is being made to the public sewer system, the plumbing subcode official shall ensure that the abandoned septic system is disconnected from the building, pumped out and filled with gravel, stones or soil material."
Note: Existing standards of the Department of Environmental Protection and boards of health with respect to individual on-site sewage disposal systems remain in effect.
17.-19. (No change.)

(b)

DIVISION OF CODES AND STANDARDS
Uniform Construction Code
Mechanical Subcode
Adopted Amendment: N.J.A.C. 5:23-3.20

Proposed: December 19, 1994 at 26 N.J.R. 4874(b).
Adopted: January 27, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: February 3, 1995 as R.1995 d.120, **without change.**

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

Effective Date: March 6, 1995.
Operative Date: July 1, 1995.
Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows:

5:23-3.20 Mechanical subcode
(a) (No change.)
(b) The following chapters, sections or pages of the BOCA National Mechanical Code/1993 are amended as follows:
1.-6. (No change.)
7. Chapter 16 of the mechanical subcode entitled "Ventilation Air" is amended as follows:
i. Section M 1604.0 is deleted in its entirety and substitute in lieu thereof "Requirements for ventilation air shall be as set forth in N.J.A.C. 5:23-3.20A".
ii. Section M-1605.1 is amended to delete the words "spaces designated by Note b of Table M-1604.3" and replace them with the words "smoking lounges; autopsy rooms; bathrooms of hotels, motels and dormitories; garages common to multiple dwelling units; public restrooms; and locker and dressing rooms".
Recodify existing 7.-10. as 8.-11. (No change in text.)

(c)

DIVISION OF CODES AND STANDARDS
Uniform Construction Code
Interpretations
Adopted Repeal: N.J.A.C. 5:23-9.4

Proposed: December 19, 1994 at 26 N.J.R. 4875(a).
Adopted: January 27, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.
Filed: February 3, 1995 as R.1995 d.121, **without change.**

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

Effective Date: March 6, 1995.
Operative Date: July 1, 1995.
Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:
Comments were received from the Engineering Department of Knoll Pharmaceutical Co. and from Distasio & Van Buren, Inc.
COMMENT: The text of N.J.A.C. 5:23-9.4(b)2ii, as it appears in the proposal, gives a figure for Warren, Morris, Passaic and Bergen counties of .102. The correct figure is .120.
RESPONSE: The commenters are correct. The figure given in the New Jersey Administrative Code is .120. However, the fact that this typographical error was made is of no consequence, since the section of which it is a part is being repealed.

Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows:

5:23-9.4 (Reserved)

EDUCATION

(d)

STATE BOARD OF EDUCATION
Organization of the Department
Adopted Amendments: N.J.A.C. 6:5-2.4

Adopted: December 7, 1994 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: January 6, 1995 as R.1995 d.64.

Authority: N.J.S.A. 52:14B-3(l).

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Effective Date: January 6, 1995.
Expiration Date: April 22, 1997.

Executive Order No. 27 Statement

The adopted amendments to the Department's organization are not subject to Federal requirements.

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

6:5-2.4 Reporting responsibilities

(a) The following senior managers report directly to the Commissioner:

1. The Deputy Commissioner of Education. The following organizational units and their chief officers report directly to the Deputy Commissioner of Education for the Division of Information, Management and Financial Services:

i. The *[Assistant Commissioner]* ***Director*** of Finance;

ii.-vi. (No change.)

2. (No change.)

3. The Assistant Commissioner for Academic Programs and Standards. The following organizational units and their chief officers report directly to the Assistant Commissioner for the Division of Academic Programs:

i. The *[Director]* ***Assistant Commissioner*** of Standards ***and Assessment***;

[ii. The Director of Assessment;]

*[iii.]****ii.*** The Director of Innovative Programs;

*[iv.]****iii.*** The Director of School-To-Work ***Initiatives***; and

*[v.]****iv.*** The Director of Professional Development.

4. The Assistant Commissioner for Student Services. The following organizational units and their chief officers report directly to the Assistant Commissioner for the Division of Student Services:

i.-ii. (No change.)

iii. The Director of ***Safe and*** Drug Free *[and Safe]* Schools;

iv.-vi. (No change.)

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL PROTECTION
DAM SAFETY SECTION

Dam Restoration and Inland Waters Projects Loans

Adopted New Rules: N.J.A.C. 7:24A

Proposed: June 6, 1994 at 26 N.J.R. 2228(a).
Adopted: February 2, 1995 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Filed: February 2, 1995 as R.1995 d. 117, **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. 13:1D-9, 58:4-1 et seq., and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88.

DEP Docket Number: 25-94-04/335.
Effective Date: March 6, 1995.
Expiration Date: March 6, 2000.

The Department of Environmental Protection (Department) is adopting new rules at N.J.A.C. 7:24A to administer the loan program for dam restoration and inland waters projects under the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88. The rules establish the basic loan eligibility criteria for proposed dam restoration and inland waters projects, the priority point system for ranking approved projects, the loan application procedures, the conditions an applicant must satisfy before the Department will award a loan, and the Department's remedies when a borrower fails to comply with these rules or the loan award agreement. The loans will be made to local government units, and private lake associations and private dam owners as co-applicants with local government units.

Summary of Public Comments and Agency Responses:

Four individuals submitted written comments on the proposed new rule within the comment period, which closed July 6, 1994. The commenters, and their affiliations, if any, are listed below:

1. Richard H. Bagger, Assemblyman, 22nd District
2. Robert S. Ellenport, Mayor, Township of Clark
3. John G. Moore, Medford Lakes Colony
4. Peter J. Wolfson, Hersh, Ramsey and Berman

The following is a summary of the comments timely submitted on the proposed new rules and the Department's responses. The number(s) in parentheses after each comment identify the commenter(s) listed above.

1. COMMENT: An additional section should be added to N.J.A.C. 7:24A-1.1 to assure flexibility of funding options, as follows: "The award of any loan under this program is not in lieu of any other grant or loan from federal, state, local municipal, or private sources for which a project may be eligible." (1,2)

RESPONSE: The Department does not believe this language is necessary since the rule does not prohibit a prospective applicant from pursuing any other funding sources, and the Department will encourage applicants to do so. The Department has added, at N.J.A.C. 7:24A-2.3(a)3iv, a provision that makes it clear that costs funded by any Federal or other State grant or loan are not allowable costs under this program.

2. COMMENT: The definition of "flood control facility" should be revised to add that a flood control benefit shall include but not be limited to control of water detention, flow velocity, flow volume or bank overrun to help clarify the range of flood control projects that will be considered. (2)

RESPONSE: The Department believes that the definition is adequate and that the commenter's concern is addressed through the priority ranking at N.J.A.C. 7:24A-5. Proposed projects will be assigned points according to the level of protection they will provide for homes, businesses, industry, and agricultural land downstream. In order to achieve these protective flood control benefits, flood control projects will incorporate control of water detention, flow velocity and volume and bank overrun to varying degrees.

3. COMMENT: A definition of private dam owner should be added to clarify that a public utility company which owns a dam is considered a private dam owner. (1,2)

RESPONSE: The rules at N.J.A.C. 7:24A-1.7 define "applicant" either as a local government unit that applies for a loan under this program independently, or as a private lake association, similar organization or private dam owner which has a local government unit as a co-applicant. Since a public utility does not fit the definition of "local government unit" (that is, a county or a municipality or instrumentality thereof), the public utility would necessarily be classified as a private dam owner for the purposes of these rules.

4. COMMENT: In N.J.A.C. 7:24A-2.2(a)4, the word "obtained" should be replaced with "identified" so that if a project cannot proceed until loan funds are received, the applicant's and Department's time would not be wasted in processing permits for a project that ultimately is not awarded a loan under the program. (2)

RESPONSE: The Department believes that simply identifying the necessary permits in the loan application is not sufficient to demonstrate that the applicant will be able to meet the six-month limit established in N.J.A.C. 7:24A-3.2(c) for obtaining those permits upon qualifying for a loan. This time limit is necessary so that funding of projects and subsequent application periods are not delayed. The Department recognizes that the permitting process can be time consuming and that withholding an application pending receipt of all permits can be a hardship. The rule does allow some flexibility in this regard however. The applicant may submit, with its application, evidence that while it has not yet obtained such permits, it has taken steps to initiate the permit review process.

5. COMMENT: In N.J.A.C. 7:24A-2.2(a)7, the statement "for the project" should be changed to "for the project or preliminary construction studies for the project" since it is unlikely a construction schedule will be available for a project that will not proceed until loan funds are received. (2)

RESPONSE: The submittal of a proposed construction schedule with the loan application is required in order to demonstrate to the Department that the project will proceed in a timely manner. If the project is funded, a final working construction schedule will be developed as part of the loan award agreement.

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6. COMMENT: In N.J.A.C. 7:24A-2.2(a)12, the statement "undertaking the project" should be changed to "undertaking the project or the statement of a governmental intention to acquire that property" since in the case where a local government unit needs to acquire property through negotiation or declaration of eminent domain, the local government unit would be at a disadvantage in acquisition negotiations if it needs to obtain permission of the current property owner to make the application for a loan necessary to go forward with the project. (2)

RESPONSE: The rule at N.J.A.C. 7:24A-2.2(a)12 has been modified for clarification of what proof of "capability to use" the property is sufficient for application purposes. The Department will consider a local government unit's power to condemn under eminent domain, or a property purchase contract conditioned upon obtaining a loan from this program to complete the project as adequate proof of capability to use the property for undertaking the project.

7. COMMENT: N.J.A.C. 7:24A-3.2(c)2 should be changed to restrict the Department's discretion to disqualify a project when a permit has been delayed through no fault of the applicant. (2)

RESPONSE: The Department concurs with this comment and has modified the language of N.J.A.C. 7:24A-3.2(c)1 and 2 to require an extension be granted under such circumstances.

8. COMMENT: The assignment of priority points should be restructured according to project type in order to provide additional points to projects of multiple type. (2)

RESPONSE: The priority points were established with public safety as the leading criterion for ranking projects. The goal of the priority ranking is to fund projects which provide the greatest public safety benefit. Thus dam restoration projects at high hazard dams will be awarded more priority points than such projects at lesser hazard dams or flood control, pollution control or recreation and conservation projects generally. See N.J.A.C. 7:24A-5.1(b). The Department believes that to assign priority points to the component projects in a multiple type project, such as, for example, a pollution control project combined with a dam restoration project, might result in such a multiple type project providing relatively less public safety benefit being ranked ahead of a project providing relatively greater public safety benefit. Each project type must therefore be considered as independent project and ranked accordingly.

9. COMMENT: For the applications of local government units, points should be assigned according to the level—county or municipal—of the applicant because projects would create the greatest financial burden if undertaken at the municipal level. (2)

RESPONSE: The Department does not believe that it should distinguish between the levels of local government units in the assignment of priority points. The priority points were established with public safety as the leading criteria for ranking projects. The goal of the priority ranking is to fund projects which provide the greatest public safety benefits. Assignment of priority points in the recommended manner is not consistent with this goal.

10. COMMENT: The assignment of priority points for flood control projects protecting agricultural land should be revised to reflect the lesser significance of flood damage to farmland as compared to loss of life or damage to structures. (2)

RESPONSE: The Department believes that assigning priority points for control of flood damage to agricultural land as presented by the commenter would have minimal impact on the ranking of projects. The Department will, however, take this comment under advisement and monitor its potential impact on the ranking of submitted projects. The Department will give consideration to the appropriateness of proposing such a change to the rule in the future if it finds that the assignment of priority points for flood control projects protecting agricultural land draws funds away from projects which could provide greater public safety benefits.

11. COMMENT: Additional priority points should be assigned to a flood control project which protects cemetery grounds to reflect both the public health and emotional consequences associated with disruption of cemetery grounds. (2)

RESPONSE: The Department believes that the flood control project priority point assignments reflect both public safety benefits and the varying degrees of impact projects will have upon lives, property and employment. It would be impractical, however, to further differentiate based upon individual land uses in a flood plain, and to assign specific priority points to each.

12. COMMENT: The assignment of priority points for recreation and conservation projects should be revised to allow the assignment of points to projects in areas that lack open space. (2)

RESPONSE: The Department believes that the quantity of land that a particular municipality or county maintains as open space should have no bearing on the priority ranking. The intent of the loan program as it pertains to recreation and conservation projects, is to encourage the construction, rehabilitation or restoration of a project to enhance the overall quality of inland waters. Assignment of additional priority points based upon the lack of open space in a particular area could result in the loss of funding for a project which is more beneficial to the overall quality of inland waters.

13. COMMENT: A new point assignment should be added to reflect the importance of maintaining habitats for threatened or endangered species and a definition of threatened and endangered species should be added to N.J.A.C. 7:24A-1.7. (2)

RESPONSE: The Department believes that the addition of a new priority point assignment as recommended would not be appropriate. The intent of the Act authorizing this loan program is the funding of construction, rehabilitation or restoration projects furthering public safety and overall quality of inland waters. The Department notes, however, that any construction projects approved for funding under this loan program will be reviewed through the permit application process by the program in the Department under which the construction would be regulated (dam safety, stream encroachment, freshwater wetland or waterfront development) for impacts to threatened and endangered species.

14. COMMENT: The rule should be changed to allow a lake dredging project to be implemented simultaneously with a dam restoration where a dam is not in compliance with the Dam Safety Standards, N.J.A.C. 7:20. (3)

RESPONSE: The intent of the Department is to disqualify a lake dredging project only when the dam impounding the waters will not be in compliance with the Dam Safety Standards at N.J.A.C. 7:20, even after completion of the proposed lake dredging project. Consistent with this intent, N.J.A.C. 7:24A-1.3(b)2 has been clarified to indicate that if the Department has already awarded a loan under this program to restore the unsafe dam, or if the applicant for the lake dredging project submits with its loan application proof that funding dedicated to the necessary repair of the dam has been otherwise obtained, the lake dredging project will be eligible under this program.

15. COMMENT: A new category of priority points should be added which assigns priority points to a project in proportion to the applicant's degree of commitment to partially fund the project's allowable costs, therefore reducing the total loan amount. This should reflect the lower risk to the State and local government unit of uncompleted projects, and would also stretch program funds to support more projects. (4)

RESPONSE: The Department believes that by adding points that are unrelated to the determination of public safety benefits provided by a project, the suggested assignment of points could allow a project of lesser public safety benefit to be ranked ahead of a project having a greater public safety benefit, and possibly deprive the latter project of funding. The degree of financial involvement and risk which a local government unit is willing to assume as a co-applicant with a private owner-borrower will be determined by and is subject to the control of the local government unit.

16. COMMENT: The rule leaves uncertainty as to the timing of future application periods. There should be a series of back-to-back application periods in order to give prospective applicants incentive to move forward with project design, and allow the Department to fund more high priority projects. (4)

RESPONSE: The intent of the Department regarding application periods is to initially establish, and provide notice in the manner set forth in these rules, three back-to-back application periods at yearly intervals. Each period will make available $5 million in loan funds. This will enable applicants who are not ready to apply when the first application period is offered to complete their design and meet eligibility requirements for a loan for either of the subsequently funded application periods. Beyond the initial three application periods, the Department will establish and publish notice of future application periods as the funds in the 1992 Dam Restoration and Clean Water Trust Fund allow.

17. COMMENT: A provision should be added to the proposed rules to require applicants to first file an Intent to Apply document which would provide the Department with formal advance notice of probable

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applications. This would give the Department foresight of the total pool of competing applications, providing the Department with the ability to defer a decision on a borderline priority project. (4)

RESPONSE: The Department believes that the Intent to Apply document as recommended would give the impression that the Department may use this information to arbitrarily eliminate an otherwise qualifying project from possible funding by delaying application periods until higher priority projects are received, or to postpone action on a low ranking application to a subsequent application period with fewer higher ranking competing projects. The Department does not intend to do this, nor give the impression that it could. As noted, the Department will establish fixed application periods and will award loans on the basis of the applications received during each separate application period.

18. COMMENT: N.J.A.C. 7:24A-4.1(d) should be rewritten to reflect that an assessment against the real estate being benefited by the loan program will be made only if the private applicant is in default on its debt service obligations and the local government unit is forced to make such payments.

RESPONSE: The regulatory language requiring the assessment against real estate benefited by a loan to a private lake association of similar organization of owner of a private dam, as a co-applicant with a local government unit, is taken directly from the Act. Since the Act requires that assessments against benefited real estate be undertaken in the same manner as assessments for local improvements, the appropriateness of an assessment and the procedures to undertake such an assessment are controlled by the statute governing assessments for local improvements, specifically, N.J.S.A. 40:56-1 et seq. The regulation is not intended to set forth the legal requirements for assessments against benefited property, but to advise applicants of the Act's mandate in that regard.

Summary of Agency Initiated Changes:

The following technical changes have been made on adoption. In N.J.A.C. 7:24A-2.1(b), the word "Division" has been changed to "Section" and "and Energy" has been removed from the Department's name to reflect recent organizational changes to the Department. The subsection codification in N.J.A.C. 7:24A-2.2 has been corrected, and in subsection (e), "and Energy" has been removed from the Department's name. Similarly, "and Energy" has been removed from the Department's name at N.J.A.C. 7:24A-4.19(b) and in several definitions at N.J.A.C. 7:24A-1.7. In N.J.A.C. 7:24A-5.1(b)10 the word "agriculture" has been changed to "agricultural."

Executive Order No. 27 Statement

These new rules are not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. The new rules also are not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) does not require a comparison with Federal law.

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

CHAPTER 24A
DAM RESTORATION AND INLAND WATERS PROJECTS LOAN PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:24A-1.1 Scope and construction

(a) The following constitute the rules governing loans to assist local government units, private lake associations or similar organizations, and owners of private dams for dam restoration and inland waters projects pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88. These rules prescribe the procedures, minimum standards for the conduct of borrowers, and standards for obtaining loans.

(b) These rules shall be liberally construed to permit the Department to effectuate the purposes of the Act.

7:24A-1.2 Purposes

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88;

2. To establish policies and procedures for the administration of funds appropriated pursuant to the Act for the purpose of making loans for dam restoration and inland waters projects;

3. To protect the public and the State of New Jersey by ensuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To ensure that the distribution and use of funds is consistent with the laws and policies of the State of New Jersey;

5. To establish minimum standards of conduct to prevent conflicts of interest and ensure proper administration of loans; and

6. To establish accounting procedures for the administration of loans.

7:24A-1.3 Project eligibility

(a) Any local government unit with a proposed dam restoration or inland waters project as defined in N.J.A.C. 7:24A-1.7 is eligible to apply for loan under this chapter. Any private lake association or similar organization or any owner of a private dam with a proposed project is eligible to apply for loan as a co-applicant with a local government unit.

(b) To be eligible for a loan in any loan period, a proposed dam restoration or inland waters project, as defined in N.J.A.C. 7:24A-1.7, must satisfy the following criteria:

1. The proposed design of a dam restoration project must meet all requirements of the Dam Safety Standards, N.J.A.C. 7:20, including the development of an Operation and Maintenance Manual and Emergency Action Plan. The Operation and Maintenance Manual and Emergency Action Plan are not required to be completed at the time of application but must be completed as a condition of the loan award agreement;

2. A dredging or lake restoration project at a site where the dam impounding the lake is not in compliance with the Dam Safety Standards, N.J.A.C. 7:20, shall not be eligible ***unless the Department has awarded a loan for dam restoration pursuant to this chapter or the applicant provides with its application proof of other funding dedicated to the necessary dam repairs***;

3. The project shall be an independent and complete project;

4. The project shall not be excessively expensive; and

5. The project shall not conflict with any other State projects.

7:24A-1.4 Project phases

(a) The application phase of a dam restoration or inland waters project shall consist of the following:

1. Pre-application conference;

2. Application submittal;

3. Review of application;

4. Priority ranking of project; and

5. Notice of qualification.

(b) The development phase of a dam restoration or inland waters project shall consist of the following:

1. Pre-loan conference;

2. Submittal and review of the materials required under N.J.A.C. 7:24A-3.2; and

3. Preparation and execution of the loan award agreement.

(c) The implementation phase of a dam restoration or inland waters project shall consist of the completion of the project in accordance with the terms of the loan award agreement and the requirements of this chapter.

7:24A-1.5 Legislative appropriations

Funding of loans shall be conditioned upon the appropriation by the legislature of funds from the 1992 Dam Restoration and Clean Water Trust Fund pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88, and subsequent bond acts.

7:24A-1.6 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these rules shall not be affected thereby.

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7:24A-1.7 Definitions

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

"Act" means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88, and any subsequent bond acts and legislative appropriations made for the purposes provided in this chapter.

"Administrator" means the Section Chief of the Dam Safety Section of the Department or other person designated by the Commissioner to carry out the functions of the Administrator.

"Allowable project costs" means the costs which are determined by the Department under the Act and this chapter to be eligible for a dam restoration or inland waters project loan.

"Applicant" means any local government unit that applies independently, or a private lake association or similar organization or private dam owner who has a local government unit as a co-applicant, for a loan pursuant to the provisions of this chapter.

"Bonds" means the bonds authorized under the Green Acres, Clean Water, Farmland, and Historic Preservation Bond Act of 1992, P.L. 1992, c.88, and subsequent bond acts.

"Borrower" means an applicant who has been awarded a loan pursuant to the Act and this chapter, and who has executed a loan award agreement.

"Commissioner" means the Commissioner of the Department of Environmental Protection *[and Energy]* or his or her designated representative.

"Construction" means, in addition to the usual meaning thereof, acts of construction, reconstruction, replacement, and improvement, and includes the solicitation of bids in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules N.J.A.C. 5:34-1.

"Dam restoration project" means the demolition, reconstruction, rehabilitation, or restoration of a dam that impounds water for water supply, flood control or recreation purposes.

"Department" means the New Jersey Department of Environmental Protection *[and Energy]*.

"Flood control facility" means any dam, basin, dike, channelization or other measure which provides a flood control benefit to a documented flood-prone, previously developed area.

"Flood control project" means the construction, reconstruction, rehabilitation, or restoration of a flood control facility.

"Fund" means the 1992 Dam Restoration and Clean Water Trust Fund established pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88.

"Height of dam" means the vertical dimension from the lowest point in the streambed or ground surface at the downstream toe of the dam to the elevation of the top of dam (without camber).

"High hazard dam" means a dam, the failure of which may cause the probable loss of life or extensive property damage, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

"Inland waters" means any lake, river, pond, stream, marsh, or freshwater wetland; any floodway, flood fringe area, or flood hazard area as defined in N.J.S.A. 58:16A-51 or as delineated by the Department pursuant to N.J.S.A. 58:16A-52; and any area delineated by or for the Federal government which, if appropriately regulated by a local government unit, qualifies the residents therein for Federal flood insurance.

"Inland waters project" means any flood control project, pollution control project, or recreation and conservation project as defined in this chapter.

"Loan" means a loan awarded pursuant to the Act and this chapter.

"Local government unit" means a county or a municipality, or any agency, authority, board, commission, or other instrumentality thereof; or any two or more counties or municipalities operating jointly through a joint meeting or interlocal services agreement, permitted by law, or any agency, authority, board, commission or other instrumentality thereof; or any other local or regional entity created by the legislature as a political subdivision of the State, or any agency, authority, board, commission, or other instrumentality thereof.

"Low hazard dam" means a dam, the failure of which would result in the loss of the dam itself but little or no additional damage to other property, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

"Pollution control facility" means any water conveyance or containment facility (basin, well, swale or other practice acceptable to the Department), proposed or existing, which contributes to the abatement of pollution from stormwater runoff, soil erosion, or other nonpoint sources in previously developed areas.

"Pollution control project" means the construction, reconstruction, rehabilitation, or restoration of a water pollution control facility.

"Project costs" means the applicant's expenses incurred in connection with all things deemed by the Department to be necessary or useful and convenient for completion of a project; the execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with any project authorized by the Act; the procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of the Act.

"Recreation and conservation project" means the construction, rehabilitation, or restoration of a facility, lake or stream to improve the overall quality of inland waters, including the dredging of lakes, cleaning of streams, construction of water quality related facilities to enhance recreational fishing and wildlife preserves, or other practices acceptable to the Department.

"Significant hazard dam" means a dam, the failure of which may cause significant damage to property and project operation, but loss of human life is not envisioned, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

SUBCHAPTER 2. PROJECT APPLICATION PHASE

7:24A-2.1 Pre-application procedures

(a) Each applicant shall request a pre-application conference prior to making a formal application for a loan. During the conference, the Department shall identify and explain all loan application procedures and requirements. The Department shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a loan. Neither written nor oral statements made during the pre-application conference shall bind the Department. The Department may waive the pre-application conference at its discretion.

(b) Questions concerning the dam restoration and inland waters projects loan program and requests for a pre-application conference may be directed to:

Department of Environmental Protection *[and Energy]*
Dam Safety *[Division]* ***Section***
CN 419
Trenton, NJ 08625
(609) 984-0859

7:24A-2.2 Application procedures

(a) To apply for a dam restoration or inland waters project loan, the applicant shall submit the following:

1. A completed loan application on the form available from the Department which shall include the information specified in (a)2 through 13 below;

2. A description of the applicant's plans to repay the loan and pay any other expenses necessary to fully complete and implement the project and the steps the applicant has taken or will be taking to implement this plan;

3. Evidence that all Federal, State, regional and local agencies with jurisdiction over the project have been notified of the project, including, but not limited to, the appropriate municipal planning board and environmental commission and county planning board and environmental commission;

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4. Evidence that all required permits have been obtained or that steps have been taken to initiate the permit review process for the required permits in order to demonstrate that the requirements of N.J.A.C. 7:24A-3.2(c) can be met;

5. An explanation of the need for the project and a discussion of alternatives to the proposed project;

6. A statement explaining how the loan will accomplish the goal set out in the application;

7. A proposed construction schedule for the project;

8. Details of proposed financial arrangements for construction of the project;

9. All other forms, supplementary materials, agreements and subagreements which the Department may require as determined in the pre-application conference required pursuant to N.J.A.C. 7:24A-2.1(a);

10. An estimate of construction costs by unit price for the project. Estimated costs for labor, equipment, materials, supplies, overhead and contractors' and consultants' profit margins with supporting background and summary sheets as may be requested by the Department to substantiate the estimate of unit costs. Total project costs and those project costs that the applicant anticipates will be allowable project costs must be separately summarized;

11. A brief description of the environmental impact of the proposed project, including the environmental impact of the proposed project on water quality, plant and animal life, project site land characteristics, historical sites and other pertinent environmental factors;

12. Proof of the applicant's ownership of the real property on which the project is located, or the capability (***right of eminent domain, conditional contract for property acquisition,*** easement or property owner's permission) to use that property for undertaking the project; and

13. All documentation and other information as the Department may require to adequately determine the applicant's priority point total pursuant to N.J.A.C. 7:24A-5.1.

(b) The application shall be signed by a person authorized by written resolution or ordinance of a local government unit to file an application for a loan under this chapter or to apply as a co-applicant with a private lake association or similar organization or private dam owner, to represent the local government unit in all matters relating to the application process, and to obligate the local government unit to the terms and conditions of a loan award agreement. A copy of the resolution or ordinance shall accompany the application.

(c) The application of a private lake association or similar incorporated organization shall be signed by a person authorized by written resolution of the association's or organization's board of directors or governing body to file an application for a loan under this chapter, to represent the private lake association or similar organization in all matters relating to the application process, and to obligate the private lake association or similar organization to the terms and conditions of a loan award agreement. A copy of the resolution shall accompany the application, along with the resolution required pursuant to (b) above.

(d) An application shall be submitted prior to the application closing date for the application period in which the applicant wishes to be awarded a loan. No application will be accepted after the close of business on the application closing date.

1. The initial application period and application closing date will be established subsequent to the adoption of this chapter. A notice of the details of the application period will be published in the New Jersey Register.

2. Additional application periods may be established as deemed necessary by the Department upon publication of a notice of the details of the additional application period in the New Jersey Register.

3. The application closing date for any application period may be extended, if deemed necessary by the Department, upon publication of a notice of extension in the New Jersey Register.

*[(d)]**(e)* Applications shall be sent to:

Department of Environmental Protection *[and Energy]*
Dam Safety Section
CN 419
Trenton, NJ 08625

7:24A-2.3 Allowable project costs

(a) Project costs shall be allowed to the extent permitted under this chapter and the loan award agreement. Allowable project costs shall be those costs set forth below:

1. For a dam restoration project:

i. All items deemed by the Department to be necessary or useful and convenient in connection with a dam restoration project;

ii. Execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with a dam restoration project;

iii. Procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and

iv. Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter.

2. For an inland waters project:

i. All items deemed by the Department to be necessary or useful and convenient in connection with an inland waters project;

ii. Execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with an inland waters project;

iii. Procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and

iv. Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter.

3. The project costs set forth below shall not be allowable:

i. Project design and development costs incurred in preparing necessary documentation for the application phase of this loan program;

ii. Any costs associated with a project for which construction commenced prior to the filing of a loan application with the Department;

iii. Any items deemed by the Department to be unnecessary or not useful and convenient for the project; *[and]*

iv. Any costs funded by any Federal or other State grant or loan to the applicant; and

*[iv.]**v.* Any costs not listed in (a)1 or (a)2 above.

7:24A-2.4 Use and disclosure of information

Any loan application, pre-application, or other submittal, when received by the Department, constitutes a public record. The Department shall make such records available to persons who request them to the extent allowed by State and Federal law.

7:24A-2.5 Application review

(a) The Department shall review each application according to the following protocol:

1. Administrative review to determine the completeness of the application;

2. Project, technical, scientific and environmental review to determine the merit and relevance of the project to the Department's program objectives;

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

4. Eligibility determination.

7:24A-2.6 Approval or disapproval of application

(a) Upon completion of its review of an application, the Department shall take one of the following actions:

1. Request additional information to complete the application;

2. Approve the application for priority ranking and possible loan; or

3. Disapprove the application.

(b) The Department shall promptly notify the applicant in writing of any disapproval and provide the reasons for such disapproval.

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A disapproval of an application shall not preclude its reconsideration during a subsequent application period if revised and resubmitted by the applicant.

7:24A-2.7 Notice of qualification

(a) The Department shall send a notice of qualification to an applicant who has submitted an application approved pursuant to N.J.A.C. 7:24A-2.5 and 2.6 and ranking high enough on the priority list pursuant to N.J.A.C. 7:24A-5.1 to be awarded a loan. An applicant who has submitted an application approved pursuant to N.J.A.C. 7:24A-2.5 and 2.6 but not ranking high enough on the priority list pursuant to N.J.A.C. 7:24A-5.1 to be awarded a loan shall be so notified by the Department.

(b) Any applicant who receives a notice of qualification but who decides not to proceed with a project shall so notify the Department within 30 days of the date of the notice.

(c) The Department shall award a loan to any applicant who receives a notice of qualification subject to available appropriations, execution of a loan award agreement and submittal of required permits and materials, prepared to the satisfaction of the Department, within six months after the Department issues the notice of qualification or within any extension of the period for such submittals granted pursuant to N.J.A.C. 7:24A-3.2(c).

(d) An applicant with a project on a priority list who is not awarded a loan in any application period may reapply for a position on any subsequent priority list for a subsequent application period by timely filing a new loan application form and by updating the other application documents required under N.J.A.C. 7:24A-2.2. The reapplication will be treated as a new application for a loan and will be evaluated in accordance with the requirements of this chapter.

SUBCHAPTER 3. PROJECT DEVELOPMENT PHASE

7:24A-3.1 Pre-loan conference

(a) Each applicant who receives a notice of qualification shall arrange to have a pre-loan conference within 30 days from the date of the notice of qualification and shall submit all materials required pursuant to N.J.A.C. 7:24A-3.2(a) to the Department within six months after the date of the notice of qualification or within any extension of the period for materials submittal granted pursuant to N.J.A.C. 7:24A-3.2(c).

(b) During the pre-loan conference the Department shall identify and explain the submittals required before a loan award agreement can be executed.

7:24A-3.2 Required submittals prior to execution of a loan award agreement

(a) An applicant who receives a notice of qualification shall submit the following materials prepared in accordance with accepted engineering practices, within the time period specified in N.J.A.C. 7:24A-3.1(a):

1. A complete engineer's report prepared, signed and sealed by a New Jersey-licensed professional engineer experienced in hydrologic, hydraulic, structural and geotechnical engineering. The report shall include, but is not limited to, the engineering assumptions, references, calculations and conclusions relative to the structural, hydrologic and hydraulic design of all elements within the project scope, as well as all information, narrative, data, and computations necessary to support and describe the design developed in such detail as to permit complete understanding of the project design;

2. Plans for the loan project prepared by a New Jersey-licensed professional engineer. Each drawing shall be signed and sealed and shall have a title block giving the name and location of the project, the scale or scales used, date, the name of the engineer and his or her license number. Plans shall show clearly the datum to which elevations shown are referred. The National Geodetic Vertical Datum of 1929 (U.S.G.S.) should be used wherever possible or an equation converting to that datum given. The plans shall clearly reflect and label all existing and proposed features;

3. Construction specifications, including, but not limited to:

i. General provisions, specifying the rights, duties, and responsibilities of the applicant, engineer and builder, and the prescribed order of work;

ii. Technical provisions, describing in detail the work methods, equipment, and materials to be used, the results to be obtained and the project and payment schedule; and

iii. All other provisions, submissions and certifications deemed necessary by the Department;

4. A detailed cost estimate of expenses for the project. The breakdown of the cost estimates shall be by unit price covering estimated labor, equipment, materials, supplies and contractor's overhead and profit. A summary form showing item number, description, estimated quantity, unit, unit price, and estimated amount is required; and

5. A description of the applicant's plan to repay the loan and pay any other expenses necessary to fully complete and implement the project and the steps the applicant has taken or will be taking to implement this plan.

(b) The Department reserves the right to waive any of the submission requirements of (a) above if it determines that the submission of such information is not required or necessary in order for the Department to enter into a loan award agreement with the applicant.

(c) An applicant who receives a notice of qualification shall obtain all necessary Federal, State and local permits and approvals within six months of the date of the notice of qualification. Failure to obtain the required permits within the required time period shall disqualify the project for a loan for that application period unless prior written approval for an extension has been granted by the Department.

1. The Department *[may]* ***will*** extend the time for submission of the required materials and/or permits for up to three months if the applicant provides written justification of the need for such extension to the satisfaction of the Department. The applicant must submit such written justification to the Department no later than 30 days before the expiration of the specified six-month period.

2. The Department *[may]* ***will*** grant an additional extension for the submission of the required permits and/or materials if the applicant demonstrates to the satisfaction of the Department that the permits are delayed through no fault of the applicant.

7:24A-3.3 Execution of a loan award agreement

(a) The Department shall prepare and transmit duplicate copies of the loan award agreement to the applicant.

1. The applicant shall execute such duplicate copies of the loan award agreement and return them within 30 calendar days after the date of the Department's transmittal letter. The Department may, in its discretion, extend the time for execution. The loan award agreement of a local government unit applicant shall be signed by a person authorized by written resolution or ordinance to obligate the applicant to the terms and conditions of the loan award agreement. The loan award agreement shall be signed by, or on behalf of, each co-applicant, if any.

2. The loan award agreement shall set forth the terms and conditions of the loan, including an estimated loan repayment schedule, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

3. The loan award agreement is deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department during the application phase of the project.

4. After the Department has executed the loan award agreement, it shall transmit a copy of the executed loan award agreement to the applicant, and co-applicant, if any.

5. The Department shall not execute the loan award agreement if the applicant is in default on any State loan.

(b) The loan award shall become effective upon execution of a loan award agreement by the Department and the applicant, and shall constitute an obligation of the Fund in the amount and for the purposes stated in the loan award agreement.

(c) The loan award shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project.

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Cost overruns for any project or portion thereof are solely the responsibility of the borrower.

SUBCHAPTER 4. PROJECT IMPLEMENTATION PHASE

7:24A-4.1 Amount and terms of loan

(a) The amount of the loan, determined by the Department, shall be based upon allowable project costs as set forth in this chapter.

(b) The interest rate for loans made pursuant to the Act from the 1992 Dam Restoration and Clean Water Trust Fund shall not exceed two percent per year.

(c) The loan maturity period shall be for a period not to exceed 20 years from the date that disbursements to the borrower begin. The Department and borrower may establish a shorter repayment schedule by mutual agreement. Principal and accrued interest may be prepaid by the borrower prior to the end of the loan maturity period without penalty.

(d) The cost of payment of the principal and interest of any loan made to a private lake association or similar organization or owner of a private dam, as a co-applicant with a local government unit, shall be assessed by the local government unit against the real estate benefited thereby in proportion to and not in excess of the benefits conferred. Such assessments shall bear interest and penalties from the same time and at the same rate as assessments for local improvements in the municipality where they are imposed. From the date of confirmation, the assessments shall be a first and paramount lien upon the real estate assessed to the same extent, and be enforced and collected in the same manner as assessments for local improvements.

(e) A local government unit may be required to secure a loan awarded under this chapter in a manner acceptable to the Department. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, municipal bond insurance and surety bonds.

(f) An estimated amortization or loan repayment schedule will be provided to the borrower by the Department and be made part of the loan award agreement. The schedule will indicate installment dates and loan repayment amounts. The Department reserves the right to unilaterally adjust the loan repayment dates and amounts on the amortization schedule if the timetable for completion and the actual project costs and disbursements vary from the estimated amortization schedule.

(g) The loan shall be repaid in semi-annual installments over a period which will not exceed 20 years from the date of the first drawdown to the date of the borrower's final repayment.

(h) Interest shall accrue on the amount of loan funds disbursed from the Fund at a rate of two percent per year, computed from the date of disbursement to the date of the final repayment of principal. Interest accrued against each interim drawdown, from the date of the first drawdown to a date three months following the last project drawdown, must be paid to the Treasurer of the State of New Jersey three months after the date of the final drawdown.

(i) The first principal repayment will be made to the Treasurer of the State beginning nine months after the final project drawdown, or two years from the date of the first disbursement, or as per a schedule prescribed by the loan award agreement, whichever comes first.

(j) The borrower shall allocate a portion of its budget in an amount sufficient to meet the annual debt service on the loan. Repayment funds must be deposited into a fund specifically established for the purpose of assuring repayment of the loan to the Treasurer of the State.

(k) The borrower's failure to make any repayment within 30 days of the scheduled payment due date will result in the Department's assessing a late fee. The late fee is computed on the following basis:

1. When a payment is 30 days past due, the late fee shall be five percent of the payment amount due.

2. When a payment is 60 days past due, the late fee shall be 10 percent of the payment amount due.

3. When a payment is 90 days past due, the late fee shall be 15 percent of the payment amount due, and the borrower will be in default of the loan award agreement. Upon default, all outstanding principal, interest, and penalty amounts immediately become payable to the Treasurer of the State.

4. On a loan in default, interest charges at a rate of two percent accrue on the outstanding principal, interest, and penalty charges calculated from the date the repayment was due.

7:24A-4.2 Loan conditions

(a) The following requirements, in addition to the requirements of such other statutes, rules, terms and conditions as may be applicable to a particular loan, are conditions of each loan and conditions precedent to each disbursement under a loan award agreement:

1. No disbursement shall be made under a loan award agreement until a specific appropriation therefore has been made by the Legislature.

2. The borrower shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the loan award agreement.

3. The borrower shall certify that the borrower and its contractors and subcontractors shall comply with all insurance requirements of the loan award agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The borrower shall include the State and its agencies, employees and officers as additional named insureds on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The borrower shall provide the Department with a copy of the certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to proceeding with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional named insureds through the completion of construction. The borrower shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation.

4. The borrower shall certify that the borrower and its contractors and subcontractors maintain their financial records in accordance with N.J.A.C. 7:24A-4.20.

5. The borrower shall certify that the borrower and its contractors and subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the rules promulgated pursuant thereto.

6. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project.

i. The performance bond or performance guarantee shall remain in effect until the Department conducts its final inspection of the project and states in writing to the applicant that the project is satisfactorily completed.

ii. The performance bond or performance guarantee shall be both nondiscriminatory and financially satisfactory to the Department, and meet all statutory requirements.

7. The borrower shall certify that the borrower is in compliance with all other requirements and conditions of the loan award agreement.

8. Bid specifications shall require that project elements which constitute unallowable project costs be bid as line items in the total bid specifications separate from project elements which constitute allowable project costs.

9. Bid specifications shall require that each general contractor who bids on the project shall identify in the bid submission to the borrower the principal subcontractors.

10. Before the borrower makes any final award of a construction contract, the borrower shall submit to the Department for review and approval the final construction contract, with work specifications detailing any changes made since submittal of the materials required during the project development phase pursuant to N.J.A.C. 7:24A-3.

11. Concurrent with the submittal to the Department required under (a)10 above, the borrower shall provide the Department with

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a tabulation of bids received and identify the general contractor to be awarded the construction contract for the project. In the event a contract is not proposed to be awarded to the contractor who has submitted the lowest bid, the borrower shall provide adequate justification for said award.

12. The Department reserves the right to require the borrower to readvertise the bid specifications for the project if the Department deems the certifications required in (a)13 below unsatisfactory.

13. The borrower shall certify the following to the Department before the borrower awards any contract on a bid.

i. The borrower is in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34;

ii. All contracts for the project will be awarded to the qualified, responsible and responsive bidder who submits the lowest acceptable bid; and

iii. The bid prices included in the bid specifications are reasonably balanced.

14. The borrower shall insert in all contracts or subcontracts that the borrower awards pursuant to this chapter the Department's subcontractor certification form as included in the loan award agreement.

15. The borrower shall submit one copy of the executed construction contract and subcontracts and associated documents to the Department within 10 days of their execution.

7:24A-4.3 Formal amendments to loan award agreement

(a) A formal amendment means any written alteration of any term or condition, budget or project scope or construction method or other administrative, technical or financial provision of the loan award agreement.

(b) A formal amendment shall not increase the loan amount. Any increased costs resulting from a formal amendment pursuant to (a) above shall be the sole responsibility of the borrower.

(c) The borrower shall promptly notify the Administrator in writing (certified mail, return receipt requested) of any event or proposed project change which may require a formal amendment, including, but not limited to:

1. Rebudgeting;

2. Any changes in approved technical plans or specifications for a project;

3. Any changes in the approved scope or objective of a project;

4. Any significant, changed conditions at the project site;

5. Any delay in the time for the completion of the project or any major phase thereof;

6. Any changes which may increase or substantially decrease the total cost of a project; and

7. Any changes in personnel identified in the loan award agreement or a reduction in time or effort devoted to the project by such personnel.

(d) If the Department determines that a formal amendment to the loan award agreement is necessary, it shall notify the borrower and prepare the formal amendment. If the Department determines that a formal amendment is not necessary, N.J.A.C. 7:24A-4.4 or 4.5 shall apply.

7:24A-4.4 Other changes to loan award agreement

If the Department determines that a proposed project change does not require a formal amendment to the loan award agreement, the Administrator shall provide the borrower with written approval of such a change.

7:24A-4.5 Modification of administrative provisions

The Department may effect a modification of an administrative provision of the loan award agreement by notifying the borrower by letter (certified mail, return receipt requested). Such a modification of an administrative provision may include a change in the designation of key Department personnel, a change in address to which a report is to be transmitted by the borrower, or a change in the payment schedule.

7:24A-4.6 Loan disbursements

(a) Loan disbursements shall be made only to the local government unit as sole borrower or as co-borrower, unless otherwise indicated in the loan award agreement.

(b) Funds shall be released to the borrower upon completion of the entire project to the satisfaction of the Department, or on an interim basis. If interim disbursements are made, each will be equal to the loan amount corresponding to the percentage of the total project completed. Ten percent of each disbursement shall be withheld until the whole project has been completed to the satisfaction of the Department. No disbursement shall be made until the Department receives the necessary information to document project cost. The information shall include all forms and documentation required by the Department as specified in the loan award agreement.

7:24A-4.7 Unused loan funds

Unused loan funds for a project for which actual allowed implementation costs are less than the amount appropriated for the loan shall be retained by the State and deposited in the Fund to be applied to other dam restoration and inland waters projects, as appropriate, pursuant to the Act and this chapter.

7:24A-4.8 Assignment

The right to receive disbursements from the State pursuant to a loan award agreement under this chapter shall not be assigned.

7:24A-4.9 Publicity and signs

(a) Any press release or other public dissemination of information by the borrower concerning the project shall acknowledge State loan support.

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

7:24A-4.10 Access

(a) The borrower and its contractors and subcontractors shall allow Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the project.

1. Each contract executed by the borrower and its contractors and subcontractors shall contain provisions allowing for such access to any facilities, premises and records related to the project.

2. The borrower shall submit to the Department any documents and information related to the project as requested by the Department.

7:24A-4.11 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer the loan and shall award contracts and subcontracts pursuant to the loan award agreement, free from bribery, graft, and other corrupt practices. The borrower bears primary responsibility for prevention and detection, and shall cooperate in the prosecution of any such conduct.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall notify the Administrator immediately after such allegation or evidence comes to its attention, and shall periodically advise the Administrator of the status and ultimate disposition of such matter.

7:24A-4.12 Debarment

(a) No borrower shall enter into a contract for work on a project with any person debarred, suspended or disqualified from contracting with the Department pursuant to N.J.A.C. 7:1-5.

(b) Each borrower shall insert in every contract for work on a project a clause that states that the contractor may be debarred, suspended or disqualified from contracting with the State and the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) Each borrower shall prepare bid specifications which require bidders to submit a sworn statement of the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is,

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at the time of the bid, included on the State Treasurer's list of debarred, suspended and disqualified bidders. Bid specifications prepared by the borrower shall also state that the borrower will immediately notify the Department whenever a bidder is on the Treasurer's list. The Department reserves the right, in such circumstances, to immediately suspend such bidder from Department contracting, and to take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the borrower may take into account, in determining whether such bidder is the lowest responsible bidder pursuant to law, the loss of Department loan funds under these rules which would result from awarding a contract to such bidder. The borrower may advise prospective bidders that the procedures of (c) above and (e) below will be followed.

(e) Any person included on the Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a state agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a loan under this chapter may submit information to the Department to demonstrate why this section should not apply to such person. If the Commissioner determines that contracting with such a bidder is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may make an exception from the application of this section with respect to a particular bidder pursuant to N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such other action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:24A-4.13 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of a borrower's, contractor's or subcontractor's noncompliance with any requirement of this chapter, or term or condition of the loan award agreement, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:24A-4.14;
2. Withhold loan funds pursuant to N.J.A.C. 7:24A-4.15;
3. Order stoppage of the project work pursuant to N.J.A.C. 7:24A-4.16; or
4. Terminate or annul a loan pursuant to N.J.A.C. 7:24A-4.17 or 4.18, respectively.

7:24A-4.14 Notice of noncompliance

When the Department determines that a borrower is not in compliance with any requirement of this chapter or with any term or condition of the loan award agreement, it shall notify the borrower in writing (certified mail, return receipt requested or hand delivery) of the noncompliance. The Department may require the borrower, its engineer and/or contractor to take and complete corrective action within 10 working days of the date of delivery of a notice of noncompliance. If the borrower, its engineer and/or contractor do not take corrective action or if such corrective action is not adequate in the judgment of the Department, then the Department may withhold payment or issue a stop work order pursuant to N.J.A.C. 7:24A-4.15 or 4.16.

7:24A-4.15 Withholding of funds

The Department may withhold a loan disbursement or any portion thereof when it determines and provides notification in writing that a borrower has failed to comply with any provision of this chapter, or any term or condition of the loan award agreement.

7:24A-4.16 Stop work order

(a) The Department may order that work on a project be stopped for good cause. Good cause shall include, but is not limited to, default by the borrower or noncompliance with the terms of the loan award agreement or where the Department determines it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) A stop work order shall contain:

1. The reasons for issuance of the stop work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the borrower for materials or services;
4. Instructions as to action to be taken by the borrower on subagreements;
5. Other suggestions to the borrower for minimizing costs; and
6. A notice of noncompliance pursuant to N.J.A.C. 7:24A-4.14.

(c) The Department may, by written order to the borrower (certified mail, return receipt requested), require the borrower to stop all, or any part of, the project work for a period of not more than 45 days after the borrower receives the order, and for any extension of such period to which the parties may agree.

(d) Upon receipt of a stop work order, the borrower shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the stoppage period or within any extension of such period to which the parties agree, the Department shall either:

1. Rescind the stop work order, in full or in part;
2. Terminate the work covered by such order; or
3. Authorize resumption of work.

(e) If a stop work order is rescinded or the period of the order or any extension thereof expires, the borrower shall promptly resume the previously suspended work. The Department may, in its discretion, make an equitable adjustment to the loan period, the project, or both, and shall amend the loan award agreement in accordance with N.J.A.C. 7:24A-4.3 or make other changes in accordance with N.J.A.C. 7:24A-4.4.

7:24A-4.17 Termination of loan

(a) The Department may terminate a loan in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. Good cause shall include, but is not limited to, default by the borrower or noncompliance with the terms and conditions of the loan.

1. The Department shall give written notice to the borrower (certified mail, return receipt requested) of its intent to terminate a loan in whole or in part at least 10 days prior to the proposed date of termination, which notice shall state the reasons for the proposed termination.

(b) If a borrower completely or partially terminates the project for which a loan has been awarded, the borrower shall promptly give written notice to the Administrator. The Department may enter into a loan termination agreement or unilaterally terminate the loan, effective as of the date that the borrower terminated work on the project. The Department may also annul the loan pursuant to N.J.A.C. 7:24A-4.18.

(c) The Department and borrower may enter into a loan termination agreement at any time, on terms consistent with the requirements of this chapter. The agreement shall establish the effective date of termination of the project and loan, basis for settlement of loan termination costs, and the amount and date of payment of any sums due either party.

(d) Upon termination of a loan, the borrower shall refund or credit to the State of New Jersey that portion of loan funds paid to the borrower and allocable to the terminated portion of the project, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination of the loan and as may be otherwise allowable as determined by the Department.

1. Upon receipt of written notice of the Department's intent to terminate the loan, the borrower shall make no new financial commitments of loan funds without Department approval.

2. Upon receipt of written notice of the Department's intent to terminate the loan the borrower shall reduce the amount of outstanding commitments of loan funds insofar as possible and report to the Administrator the uncommitted balance of loan funds.

7:24A-4.18 Annulment of loan

(a) The Department may, in writing, annul the loan if it determines that:

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1. Without good cause, the borrower has not substantially completed the project;

2. The borrower obtained the loan by fraud; or

3. The borrower has committed corrupt practices in administering the project.

(b) The Department shall give written notice to the borrower (certified mail, return receipt requested) of its intent to annul the loan at least 10 days prior to the intended date of annulment. Upon annulment of the loan, the borrower shall return all loan funds disbursed to it. The Department shall make no further disbursements to the borrower.

(c) The Department may pursue such other remedies as may be available under Federal, State and local law.

7:24A-4.19 Adjudicatory hearings

(a) The Administrator shall decide any dispute arising under a loan upon written request by the borrower. The borrower must specify in detail the basis of the dispute and the relief sought. The Administrator will reduce the decision to writing and send a copy to the borrower.

(b) Within 20 days of receipt of the Administrator's decision, a borrower may submit a written request for an adjudicatory hearing to contest the Administrator's decision. The hearing request shall be submitted to the Department at the following address:

Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
Department of Environmental Protection *[and Energy]*
CN 402
Trenton, New Jersey 08625-0402.

(c) The borrower shall include the following information in a request for an adjudicatory hearing:

1. The location of the project;

2. A copy of the Administrator's decision and the loan award agreement;

3. The legal and factual questions at issue; and

4. Documents and other information supporting the request.

(d) Following receipt of a timely and complete hearing request, the Department may attempt to settle the dispute through whatever proceedings, meetings and conferences that the Department deems appropriate.

(e) If efforts at settlement fail, the Department shall decide whether to grant the hearing request. A granted hearing request shall be transmitted to the Office of Administrative Law and conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(f) The Department, if it denies a hearing request, shall briefly state the reasons for the denial. A denial shall be considered a final agency action.

7:24A-4.20 Accounting procedures, financial records and auditing requirements

(a) The borrower's accounting system must be adequate to identify all costs associated with the project.

(b) The borrower must maintain records, books, documentation, and other evidence and appropriate accounting procedures and practices to reflect:

1. The total cost of the project, including all eligible costs;

2. The amount, date of receipt, and disposition of all assistance received for the project, including both Department loan assistance and any other grants, contributions, gifts, or donations; and

3. In the case of more than one loan, separate records must be maintained for each project.

(c) All financial records of the borrower and of its contractors and subcontractors shall conform to generally accepted accounting principles.

(d) The Department, or its duly authorized representative or representatives, shall have access to all records, books, documents and papers pertaining to the loan award agreement and/or the approved project for audit examination, excerpt and transcription purposes. All records shall be maintained and made available to the Department during the performance of the approved project and for three years after the date of final disbursement by the Department or the date of audit resolution, whichever is later. The borrower shall reference N.J.A.C. 7:24A-4.20(d) in all project-related contracts.

(e) The borrower shall conduct annual audits in conformance with the Federal Single Audit Act of 1984, P.L. 98-502, Federal OMB Circular A-128, "Audits of State and Local Governments," and State OMB Circular 87-11 "Single Audit Policy," incorporated herein by reference. The documents may be obtained from the Department.

(f) Each audit report must document the borrower's compliance with the material terms and conditions of the loan award agreement and applicable laws and regulations.

(g) Each audit report shall contain an itemized schedule of all of the borrower's State grant and other financial assistance that identifies grantor agency, program title, State account number, total amount of assistance, and total disbursement to date.

(h) The Department may adjust the borrower's account or final disbursement, if necessary, upon the Department's completion of its review of the annual audit reports.

SUBCHAPTER 5. PRIORITY RANKING OF PROJECTS

7:24A-5.1 Criteria for priority determination

(a) The Department shall assign priority points in accordance with the provisions set forth in (b) below to each project for which an application has been approved pursuant to N.J.A.C. 7:24A-2.6.

(b) Priority points shall be assigned according to the following protocol:

1. Priority points shall be assigned according to the project type.

i. 100 points shall be assigned for a dam restoration project for a high hazard dam.

ii. 75 points shall be assigned for a flood control project or a dam restoration project for a significant hazard dam.

iii. 50 points shall be assigned for a pollution control project or a dam restoration project for a low hazard dam.

iv. 25 points shall be assigned for a recreation and conservation project.

2. For dams, priority points shall be assigned according to the volume of water stored behind the dam at normal pool elevation.

i. One point shall be assigned for storage volumes of less than 75 acre-feet.

ii. Three points shall be assigned for storage volumes of 75 acre-feet or greater, but less than 200 acre-feet.

iii. Six points shall be assigned for storage volumes of 200 acre-feet or greater, but less than 500 acre-feet.

iv. Nine points shall be assigned for storage volumes of 500 acre-feet or greater.

3. For dams, priority points shall be assigned according to the height of the dam.

i. One point shall be assigned for a height of less than 10 feet.

ii. Three points shall be assigned for a height of 10 feet or greater, but less than 20 feet.

iii. Six points shall be assigned for a height of 20 feet or greater, but less than 40 feet.

iv. Nine points shall be assigned for a height of 40 feet or greater.

4. For dams, priority points shall be assigned according to the findings contained in the U.S. Army Corps of Engineers Phase 1 Inspection Report.

i. Zero points shall be assigned for a green-covered report or if no report was prepared.

ii. Three points shall be assigned for a yellow-covered report.

iii. Six points shall be assigned for a white-covered report.

iv. Nine points shall be assigned for a red-covered report.

5. For dams, priority points shall be assigned according to the surface area of water at normal pool created by the dam.

i. One point shall be assigned for a surface area of less than 20 acres.

ii. Three points shall be assigned for a surface area of 20 acres or greater, but less than 50 acres.

iii. Six points shall be assigned for a surface area of 50 acres or greater, but less than 150 acres.

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iv. Nine points shall be assigned for a surface area of 150 acres or greater.

6. For dams, priority points shall be assigned according to the use of the dam. A particular dam may be assigned points for more than one use.

i. One point shall be assigned if the impoundment created by the dam is used for recreation.

ii. Two points shall be assigned if the dam is used as a municipal roadway for public use.

iii. Three points shall be assigned if the dam is used as a county roadway for public use.

iv. Four points shall be assigned if the dam's primary design purpose is for flood control.

v. Six points shall be assigned if the water stored behind the dam is used as a potable water supply.

7. For flood control projects, priority points shall be assigned according to the extent the project protects homes.

i. Three points shall be assigned for a project that protects one to five homes.

ii. Five points shall be assigned for a project that protects six to 10 homes.

iii. Seven points shall be assigned for a project that protects 11 to 20 homes.

iv. Nine points shall be assigned for a project that protects 21 or more homes.

8. For flood control projects, priority points shall be assigned according to the extent the project protects commercial businesses.

i. Three points shall be assigned for a project that protects one or two businesses.

ii. Five points shall be assigned for a project that protects three or four businesses.

iii. Seven points shall be assigned for a project that protects five to 10 businesses.

iv. Nine points shall be assigned for a project that protects 11 or more businesses.

9. For flood control projects, priority points shall be assigned according to the extent the project protects industrial facilities.

i. Three points shall be assigned for a project that protects facilities which employ up to 50 people.

ii. Five points shall be assigned for a project that protects facilities which employ 51 to 100 people.

iii. Seven points shall be assigned for a project that protects facilities which employ 101 to 200 people.

iv. Nine points shall be assigned for a project that protects facilities which employ 201 or more people.

10. For flood control projects, priority points shall be assigned according to the extent the project protects *[agriculture]* ***agricultural*** land.

i. Three points shall be assigned for a project that protects less than 100 acres.

ii. Five points shall be assigned for a project that protects 100 acres or more, but less than 200 acres.

iii. Seven points shall be assigned for a project that protects 200 acres or more, but less than 300 acres.

iv. Nine points shall be assigned for a project that protects 300 acres or more.

11. For pollution control projects, priority points shall be assigned according to the extent the project addresses the water quality of stormwater runoff from the area affected by the project.

i. One point shall be assigned for a project that addresses water quality for an area covering less than five acres.

ii. Three points shall be assigned for a project that addresses water quality for an area covering five acres or more, but less than 10 acres.

iii. Five points shall be assigned for a project that addresses water quality for an area covering 10 acres or more, but less than 20 acres.

iv. Seven points shall be assigned for a project that addresses water quality for an area covering 20 acres or more.

12. For pollution control projects, priority points shall be assigned according to the extent the project protects against permanent soil erosion.

i. One point shall be assigned for a project that protects less than five acres.

ii. Three points shall be assigned for a project that protects five acres or more, but less than 10 acres.

iii. Five points shall be assigned for a project that protects 10 acres or more, but less than 20 acres.

iv. Seven points shall be assigned for a project that protects 20 acres or more.

13. Pollution control projects not assigned points under (b)11 and 12 above will be assigned points only pursuant to (b)1iii above.

14. For recreation and conservation projects, priority points shall be assigned according to area of the lake dredged.

i. One point shall be assigned for dredging less than 20 acres.

ii. Three points shall be assigned for dredging 20 acres or more, but less than 50 acres.

iii. Five points shall be assigned for dredging 50 acres or more, but less than 150 acres.

iv. Seven points shall be assigned for dredging 150 acres or more.

15. For recreation and conservation projects, priority points shall be assigned according to the length of the stretch of stream cleaned.

i. One point shall be assigned for a project that cleans less than 0.25 miles of stream.

ii. Three points shall be assigned for a project that cleans 0.25 miles or more, but less than 0.5 miles of stream.

iii. Five points shall be assigned for a project that cleans 0.5 miles or more, but less than 1.0 miles of stream.

iv. Seven points shall be assigned for a project that cleans 1.0 miles of stream or more.

16. For recreation and conservation projects, priority points shall be assigned for projects which provide fish passage.

i. Five points shall be assigned for a project that provides fish passage located on the existing obstruction furthest downstream.

ii. Three points shall be assigned for a project that provides fish passage on an existing structure which blocks the passage of migratory fish and is not the furthest downstream.

17. Recreation and conservation projects not assigned points under (b)14, 15, and 16 above will be assigned points only pursuant to (b)1iv above.

(c) The Department shall determine the total number of priority points assigned to each project under (b) above.

(d) The Department shall rank the projects on a priority list according to the total number of priority points assigned each project, with the project assigned the greatest total number of priority points ranking first.

(e) The Department may, when two or more projects are assigned the same total number of priority points, take geographical distribution of projects into consideration when assigning rank to obtain greater geographical distribution.

(f) The Department shall establish and maintain a separate priority list for each application period.

(a)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Assessment of Generators for the Cost of Siting and Developing a Low-Level Radioactive Waste Disposal Facility

Adopted Amendments: N.J.A.C. 7:60-1.2, 1.3, 1.4 and 1.6

Proposed: December 19, 1994 at 26 N.J.R. 4946(a).

Adopted: February 2, 1995 by the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board, Paul E. Wyszkowski, Chairman.

Filed: February 8, 1995 as R.1995 d.130, **without change.**

Authority: N.J.S.A. 13:1E-177 et seq., specifically 113:1E-181(o)-181.1; N.J.S.A. 32:31-1 et seq.

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Effective Date: March 6, 1995.
Expiration Date: March 2, 1997.

Summary of Public Comments and Board Responses:

Secondary notice was accomplished by publication in The Trenton Times, Newark Star-Ledger, Asbury Park Press, Camden Courier Post, New Brunswick Home News, Bergen Record, Plainfield Courier, Atlantic City Press, Burlington County Times, Bridgeton Evening News and Gloucester County Times, and by direct mail to 140 persons whose facilities use or have utilized low-level radioactive waste disposal facilities.

A public hearing was held at the First Floor Hearing Room located at Station Plaza III, 44 South Clinton Avenue, Trenton, New Jersey on January 11, 1995. Two persons attended the hearing. No one offered public comment.

The New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board (Board) reviewed written comments from two individuals received within the comment period, which ended on January 20, 1995.

The following individuals submitted comments:

1. M. Alvarez, Radiation Safety Officer, FMC Corporation
2. Vincent Lehotsky, private citizen.

General Comments

COMMENT: Mr. Alvarez: It is not practical to require a corporate vice president to certify generator waste reports because the vice president may not be at the site where radioisotopes are used. It is suggested that the top person at the site—site manager, research director, etc.—be authorized to certify the waste management report.

RESPONSE: Information provided by the generators in the waste management reports will be used in assessing a generator's proportionate share of each year's assessment budget, in projecting the size of the disposal facility needed, in designing the facility, in evaluating the ability of the facility and site to contain the radionuclides, and in the license application submitted to the U.S. Nuclear Regulatory Commission (NRC). The ability to assess fees accurately and to design and evaluate the ability of the disposal site to protect public health, safety and the environment will depend on the quality of informationa provided by the generators. Because the information is important for establishing equitable fees as well as for developing a disposal facility that can meet the NRC's regulatory requirements and the disposal needs of the generators, the Board believes it is appropriate to have a person who is in a position of responsibility for a company sign the certification. The Board believes, in part because only one commenter raised this issue, that the rule will enable each generator to designate an officer of the company it considers appropriate to certify the waste reports. The Board will consider amending this provision when the rule expires in two years, or before, if it receives evidence that this provision as adopted is unnecessarily burdensome.

COMMENT: Mr. Alvarez: There is no reference to the Radiation Safety Officer (RSO), who generally prepares the report and is generally more familiar with radiological safety. Perhaps the RSO should be part of the certification process as well.

RESPONSE: The Board recognizes the Radiation Safety Officer may well be more familiar with radiological safety. The waste management report will ask for the name of the person preparing the report, the radiation safety officer and the principal officer of the company. The Board considered having the radiation safety officer also sign the certification but decided it was not necessary in this case. In smaller companies, the radiation safety officer is a consultant. The Board has determined that the certification should be signed by an officer of a company and that person would not sign a certification without being satisfied that the waste management report has been completed in accordance with company procedures.

COMMENT: Mr. Lehotsky: If the three low-level radioactive disposal facilities (landfills) are closed, where would the generators in general and "Foster Wheeler" specifically dispose of radioactive waste mixed with diatomacious earth?

RESPONSE: Beginning July 1, 1994, New Jersey generators are unable to send their waste to a low-level radioactive waste disposal facility. Generators will store waste until there is a disposal facility available that will accept low-level radioactive waste generated in New Jersey. According to Board information, Foster Wheeler has not generated any radioactive waste.

COMMENT: Mr. Lehotsky: The Board should consider involving the generators more in dealing with communities in regard to the siting process, not the Board alone approaching the community.

RESPONSE: The Board agrees with the comment. The Board recognizes generators must be involved in the public dialogue on the need for a disposal facility and the benefits that potential host communities may receive for having the disposal facility.

COMMENT: Mr. Lehotsky: Did the Board go to Bergen County yet?

RESPONSE: The Board has not yet been to Bergen County. Every municipality is on the Board's mailing list to receive information such as Board's monthly meeting agenda, newsletters, informational materials, reports, and notices of public meetings and hearings. In addition, the Board is contacting groups such as local Chambers of Commerce, Rotary Clubs, chapters of the League of Women Voters, environmental commissions and planning boards throughout the State about the Board's availability to speak to groups.

Summary of Hearing Officer's Report and Board Response:

John R. Weingart, Executive Director, New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board, served as hearing officer at the public hearing. No public comment was offered. Mr. Weingart recommended that the Board adopt the proposed amendments, without change.

The Board accepts the recommendation.

Mr. Weingart's recommendation is set forth in the hearing officer's report. A copy of the record of public hearing, which includes the hearing officer's report, is available upon payment of the Board's normal charges for copying. Persons requesting copies should contact:

Mr. John R. Weingart, Executive Director
New Jersey Low-Level Radioactive Waste Diposal
Facility Siting Board
CN-410
Trenton, New Jersey 08625-0410

Executive Order No. 27 Statement

The adopted amendments are not subject to any Federal standard or requirement; therefore, no Federal exceedance analysis is required.

Full text of the adoption follows:

7:60-1.2 Definitions

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

. . .

"DA(YR,G)" means the individual generator's (G) annual activity (DA) of low-level radioactive waste produced in New Jersey and disposed in calendar year (YR) in a disposal facility subject to or developed to comply with the Federal Low-Level Radioactive Waste Policy Amendments Act, as compiled from manifests prepared in accordance with U.S. Nuclear Regulatory Commission regulations, standards and guidance, and reported in the U.S. Department of Energy's National Information Management System.

"DA(YR,NJ)" means the sum of all the individual generator's (NJ) annual activity (DA) of low-level radioactive waste produced in New Jersey and disposed in calendar year (YR) in a disposal facility subject to or developed to comply with the Federal Low-Level Radioactive Waste Policy Amendments Act, as compiled from manifests prepared in accordance with U.S. Nuclear Regulatory Commission regulations, standards and guidance, and reported in the U.S. Department of Energy's National Information Management System.

"DEP" means the Department of Environmental Protection.

"Disposal" means the isolation of low-level radioactive waste from the biosphere for the hazardous life of the waste.

"DV(YR,G)" means the individual generator's (G) annual volume (DV) of low-level radioactive waste produced in New Jersey and disposed in calendar year (YR) in a disposal facility subject to or developed to comply with the Federal Low-Level Radioactive Waste Policy Amendments Act, as compiled from manifests prepared in accordance with U.S. Nuclear Regulatory Commission regulations, standards and guidance, and reported in the U.S. Department of Energy's National Information Management System.

"DV(YR,NJ)" means the sum of all the individual generator's (NJ) annual volume (DV) of low-level radioactive waste produced in New Jersey and disposed in calendar year (YR) in a disposal facility subject to or developed to comply with the Federal Low-Level Radioactive Waste Policy Amendments Act, as compiled from

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manifests prepared in accordance with U.S. Nuclear Regulatory Commission regulations, standards and guidance, and reported in the U.S. Department of Energy's National Information Management System.

. . .

"Interim storage" means the holding, by or for a generator, whether at the generator's facility or elsewhere, of low-level radioactive waste after initial collection of the waste from the users of radioactive materials, for treatment, processing and/or storage pending disposal at, or pending, during and after, treatment or processing prior to disposal at, a disposal facility subject to or developed to comply with the Federal Low-Level Radioactive Waste Policy Act Amendments.

. . .

"Radioactive waste" means radioactive material which is discarded or intended to be discarded; or is accumulated, stored or physically, chemically or biologically treated prior to, or in lieu of, being discarded; or is applied to the land or placed on the land or contained in product that is applied to or placed on the land in a manner constituting disposal; or has served their intended purpose; or has an expired shelf life.

"SA(YR,G)" means the individual generator's (G) annual activity (SA) of low-level radioactive waste produced in New Jersey, placed into interim storage during calendar year (YR) which is processed or in interim storage and counted for reporting purposes no later than March 31 of the following calendar year, as compiled from records maintained in compliance with U.S. Nuclear Regulatory Commission regulations, standards and guidance, and reported under N.J.A.C. 7:60-1.3.

"SA(YR,NJ)" means the sum of all the individual generator's (NJ) annual activity (SA) of low-level radioactive waste produced in New Jersey, placed into interim storage during calendar year (YR) which is processed or in interim storage and counted for reporting purposes no later than March 31 of the following calendar year, as compiled from records maintained in accordance with U.S. Nuclear Regulatory Commission regulations, standards and guidance, and reported under N.J.A.C. 7:60-1.3.

. . .

"Store for decay" or decay in storage means the holding, as authorized by the U.S. Nuclear Regulatory Commission, of waste for a defined period of time, at the end of which the waste is not low-level radioactive waste.

"SV(YR,G)" means the individual generator's (G) annual volume (SV) of low-level radioactive waste produced in New Jersey, placed into interim storage during calendar year (YR) which is processed or in interim storage and counted for reporting purposes no later than March 31 of the following calendar year, as compiled from records maintained in compliance with U.S. Nuclear Regulatory Commission regulations, standards and guidance, and reported under N.J.A.C. 7:60-1.3.

"SV(YR,NJ)" means the sum of all the individual generator's (NJ) annual volume (SV) of low-level radioactive waste produced in New Jersey, placed into interim storage during calendar year (YR) which is processed or in interim storage and counted for reporting purposes no later than March 31 of the following calendar year, as compiled from records maintained in accordance with U.S. Nuclear Regulatory Commission regulations, standards, and guidance, and reported under N.J.A.C. 7:60-1.3.

. . .

7:60-1.3 Reporting requirements for generators

(a) By April 30 of each year, each generator shall provide to the Board certified information on the radioactive waste managed by the generator in the preceding calendar year.

1. The certification shall read as follows, Certification Statement: I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information.

2. The certification required by (a)1 above shall be signed by one of the following as appropriate:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

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

7:60-1.4 Establishment of annual budget

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

(c) In determining the portion of the annual budget which comprises the assessment budget, the Board shall take into consideration any surpluses which can be credited or deficits to be assessed and other available sources of funds. At a public meeting, the Board shall approve the assessment budget for the next fiscal year. The Board shall provide public notice of the public meeting, in the New Jersey Register and in several newspapers with general circulation, at least 30 days prior to the date of the public meeting. At the public meeting, the Board will take comments on the proposed assessment budget.

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

(f) The Board shall provide public notice of the availability from the Board of the approved budget, the assessment budget, the list of fees calculated in accordance with N.J.A.C. 7:60-1.6, and the results of the most recent annual audit, in the New Jersey Register and several newspapers with general circulation before sending out the bills.

7:60-1.6 Fees for generators

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

(e) For fiscal year 1996, each generator's base fee shall be calculated using the following formula:

$$\left[\frac{1}{6}\right]\left[\frac{DV(1991,G)}{DV(1991,NJ)} + \frac{DV(1992,G)}{DV(1992,NJ)} + \frac{DV(1993,G)}{DV(1993,NJ)} + \frac{DA(1991,G)}{DA(1991,NJ)} + \frac{DA(1992,G)}{DA(1992,NJ)} + \frac{DA(1993,G)}{DA(1993,NJ)}\right]$$

multiplied by [93% of the Assessment Budget]

(f) For fiscal year 1997, each generator's base fee shall be calculated using the following formula:

$$\left[\frac{1}{6}\right]\left[\frac{DV(1992,G)}{DV(1992,NJ)} + \frac{DV(1993,G)}{DV(1993,NJ)} + \frac{DV(1994,G) + SV(1994,G)}{DV(1994,NJ) + SV(1994,NJ)} + \frac{DA(1992,G)}{DA(1992,NJ)} + \frac{DA(1993,G)}{DA(1993,NJ)} + \frac{DA(1994,G) + SA(1994,G)}{DA(1994,NJ) + SA(1994,NJ)}\right]$$

multiplied by [93% of the Assessment Budget]

(g) For fiscal year 1998, each generator's base fee shall be calculated using the following formula:

$$\left[\frac{1}{6}\right]\left[\frac{DV(1993,G)}{DV(1993,NJ)} + \frac{DV(1994,G) + SV(1994,G)}{DV(1994,NJ) + SV(1994,NJ)} + \frac{DV(1995,G) + SV(1995,G)}{DV(1995,NJ) + SV(1995,NJ)} + \frac{SA(1993,G)}{SA(1993,NJ)} + \frac{DA(1994,G) + SA(1994,G)}{DA(1994,NJ) + SA\ (1994,NJ)} + \frac{DA(1995,G) + SA(1995,G)}{DA(1995,NJ) + SA(1995,NJ)}\right]$$

multiplied by [93% of the Assessment Budget]

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(h) For fiscal year 1999, each generator's base fee shall be calculated using the following formula:

$$\left[\frac{1}{6}\right]\left[\frac{DV(1994,G) + SV(1994,G)}{DV(1994,NJ) + SV(1994,NJ)} + \frac{DV(1995,G) + SV(1995,G)}{DV(1995,NJ) + SV(1995,NJ)} + \frac{DV(1996,G) + SV(1996,G)}{DV(1996,NJ) + SV(1996,NJ)} + \frac{DA(1994,G) + SA(1994,G)}{DA(1994,NJ) + SA(1994,NJ)} + \frac{DA(1995,G) + SA(1995,G)}{DA(1995,NJ) + SA(1995,NJ)} + \frac{DA(1996,G) + SA(1996,G)}{DA(1996,NJ) + SA(1996,NJ)}\right]$$

multiplied by [93% of the Assessment Budget]

(i) For fiscal year 2000, each generator's base fee shall be calculated using the following formula:

$$\left[\frac{1}{6}\right]\left[\frac{DV(1995,G) + SV(1995,G)}{DV(1995,NJ) + SV(1995,NJ)} + \frac{DV(1996,G) + SV(1996,G)}{DV(1996,NJ) + SV(1996,NJ)} + \frac{DV(1997,G) + SV(1997,G)}{DV(1997,NJ) + SV(1997,NJ)} + \frac{DA(1995,G) + SA(1995,G)}{DA(1995,NJ) + SA(1995,NJ)} + \frac{DA(1996,G) + SA(1996,G)}{DA(1996,NJ) + SA(1996,NJ)} + \frac{DA(1997,G) + SA(1997,G)}{DA(1997,NJ) + SA(1997,NJ)}\right]$$

multiplied by [93% of the Assessment Budget]

(j) For fiscal year 2001, each generator's base fee shall be calculated using the following formula:

$$\left[\frac{1}{6}\right]\left[\frac{DV(1996,G) + SV(1996,G)}{DV(1996,NJ) + SV(1996,NJ)} + \frac{DV(1997,G) + SV(1997,G)}{DV(1997,NJ) + SV(1997,NJ)} + \frac{DV(1998,G) + SV(1998,G)}{DV(1998,NJ) + SV(1998,NJ)} + \frac{DA(1996,G) + SA(1996,G)}{DA(1996,NJ) + SA(1996,NJ)} + \frac{DA(1997,G) + SA(1997,G)}{DA(1997,NJ) + SA(1997,NJ)} + \frac{DA(1998,G) + SA(1998,G)}{DA(1998,NJ) + SA(1998,NJ)}\right]$$

multiplied by [93% of the Assessment Budget]

(k) (No change in text.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services
Hospital Inpatient Reimbursement Methodology
Adopted Amendments: N.J.A.C. 10:52-5.1, 5.3, 5.4, 5.6, 5.9, 5.12 through 5.15, 5.17, 5.18, 5.20, 6.13, 7.2 and 9.1

Proposed: January 3, 1995 at 27 N.J.R. 34(a).
Adopted: February 10, 1995 by Millicent A. Wasell, Deputy Commissioner, Department of Human Services.
Filed: February 10, 1995 as R.1995 d.141, **without change**.

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b, and c; 30:4D-12, P.L. 1992, c.160; 1902(a)(13)(A) of the Social Security Act; 42 U.S.C. 1396a(a)(13)(A).

Agency Control No: 94-A-40.
Effective Date: March 6, 1995.
Expiration Date: February 3, 2000.

Summary of Public Comments and Agency Responses:
The following is a list of those who submitted comments.

Besler & Company, Inc., North Brunswick, N.J., Philip A. Besler, C.P.A., President.

Cathedral Healthcare System, Inc., Saint James Hospital and Saint Michael's Medical Center, Newark, N.J., George A. Popko, Sr. Vice President, Administration and Finance, Consolidated Fiscal Services.

Christ Hospital, Jersey City, N.J., Paul A. Hoyt, President & CEO.

Cohen, Shapiro, Polisher, Shiekman and Cohen, Lawrenceville, N.J., Murray J. Klein, Esq.

Community Medical Center, Toms River, N.J., John A. Forsman, Senior Vice President.

The Concord Group, Consultants to the Health Care Industry, Chester, N.J.

Deborah Heart and Lung Center, Browns Mills, N.J., R. Grant Leidy, Assistant Administrator/Finance.

East Orange General Hospital, East Orange, N.J., Rodney Reid, Asst. Vice President for Finance.

Elizabeth General Medical Center, Elizabeth, N.J., Frank Vellares, Vice President/Finance.

Greenville Hospital, Jersey City, N.J., Jonathan M. Metsch, Dr. P.H., President.

Healthcare Financial Management Association, New Jersey Chapter, John Calandriello, CPA, President.

Holy Name Hospital, Teaneck, N.J., Jennifer Schertl, C.P.A., Vice President, Finance, CFO.

Hospital Alliance of New Jersey, Trenton, N.J., Mary K. Brennan, Executive Director.

Irvington General Hospital, Irvington, N.J., Gerry E. Goodrich, President.

JFK Medical Center, Edison, N.J., Glenn McCreesh, Budget and Reimbursement Manager.

Jersey City Medical Center, Jersey City, N.J., Jonathan M. Metsch, Dr. P.H., President.

Jersey Shore Medical Center, Neptune, N.J., William N. Phillips, Vice President, Finance.

Kimball Medical Center, Lakewood, N.J., John A. Forsman, Senior Vice President, Corporate CFO.

KPMG Peat Marwick LLP, Short Hills, N.J., Gary Mann, Partner.

The Mountainside Hospital, Glen Ridge/Montclair, N.J., William Klutkowski, Director, Budgets and Reimbursement.

Muhlenberg Regional Medical Center, Plainfield, N.J., John R. Kopicki, President & CEO.

Newark Beth Israel Medical Center, Newark, N.J., Lester M. Bornstein, President.

New Jersey Hospital Association, Princeton, N.J.

Our Lady of Lourdes Medical Center, Camden, N.J., James W. Heflin, Senior Vice President of Fiscal Affairs.

Overlook Hospital, Summit, N.J., Joseph R. Samples, Jr., Executive Director, Financial Services and CFO.

Passaic Beth Israel Hospital, Passaic, N.J., Joseph Aquilante, Vice President/Fiscal Affairs.

Raritan Bay Medical Center, Perth Amboy, New Jersey, Donald R. Parseghian, Vice President, Finance.

St. Elizabeth Hospital, Elizabeth, N.J., Rosetta Chan, Manager, Financial Operations.

St. Joseph's Hospital and Medical Center, Paterson, N.J., John G. Barone, Vice President for Fiscal Affairs.

The Hospital Center at Orange, Orange, N.J., Mohamed Hebela, Senior Vice President, Finance.

United Hospitals Medical Center, Newark, N.J., Ronald P. Jones, Executive Vice President/CFO.

University Health System of New Jersey, New Brunswick, N.J., Thomas G. Terrill, Ph.D., Executive Vice President.

Wayne General Hospital, Wayne, N.J., Kevin Kelly, CPA, Vice President and CFO.

General comments and comments on the Social and Economic Impact statements follow:

Time Allowed for Comments and Data Available

COMMENTERS: The commenters to this section are as follows: Cathedral Healthcare Systems, Inc.; Christ Hospital; Elizabeth General Hospital; Hospital Alliance of New Jersey; Greenville Hospital; Jersey City Medical Center; Jersey Shore Medical Center; JFK Hospital-Edison; Our Lady of Lourdes Medical Center; Overlook Hospital; and Passaic Beth Israel Hospital.

COMMENT: One commenter felt that the Administrative Procedure Act does not give providers ample time to review the proposed amendments.

Several commenters stated that they lacked data and/or time to assess the impact of these proposed changes on the institutions.

RESPONSE: The proposal officially gave the hospitals a 30-day comment period, but the hospital industry actually had over two months to review and comment. The Department supplied a copy of the proposal to the industry on December 2, 1994, when the proposal was filed.

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Earlier, on November 22, 1994, the Department met with the New Jersey Hospital Association, the Hospital Alliance of New Jersey, University Health Systems, and several individual hospital representatives and others to outline the proposed changes. The meeting was followed by a press conference where further questions were answered.

The proposal essentially makes only four changes to the established reimbursement methodology. The Department provided a chart of the estimated economic impact on each hospital in the November 22, 1994 press release and in the meeting with the industry. In addition, the Department met with a consultant to the New Jersey Hospital Association to assist the consultant to replicate and analyze the estimated dollar impact of the rule upon each hospital.

While the Department understands that hospitals would like to know the exact dollar impact in advance, the proposed amendments are not designed to achieve a specific dollar impact or percentage change in the rates. The proposed changes are intended to revise the underlying reimbursement methodology in order to make it more consistent with efficiency and economy. Specifically, the 9.15 percent transition adjustment and the 2.5 percent operating margin can be eliminated because they do not correspond to specific cost items incurred by hospitals. The third change, adopting the median plus 5% as the standard cost for direct patient care for inlier cases, is an adequate measure of efficiency and economy because it sets payment at a level at which hospitals have been able to provide care in more than half of the cases in each DRG. Finally, the proposal promotes efficiency and economy by recognizing a standard method of reimbursing hospitals for capital costs. Given the limited number of revisions and the nature of the revisions, the standard 30-day comment period was adequate, particularly where the industry received the proposal a month before the comment period opened. The Department has also responded to comments received a few days after the end of the comment period.

Although, a number of hospitals requested additional information, the industry already had in its possession information necessary to estimate the impact of the proposed changes. The rates that will be developed under this proposal are derived from the same hospital-submitted data that were used to establish rates in previous years, as the regulations specify. Therefore, there is no need to delay the adoption of the rule because data needed to estimate the impact of the proposed changes on an individual hospital have been in the possession of the hospital industry for the last two years.

COMMENT: Several commenters made "right-to-know" requests, without citation to statutory or common law authority. The New Jersey Hospital Association (N.J.H.A.) requested information under the New Jersey "Right-to-Know" Act, N.J.S.A. 47:1A-1 et seq. On February 1, 1995, the N.J.H.A. filed a complaint seeking immediate response to its "right-to-know" request, which complaint was withdrawn based upon the Department's response to the underlying request.

RESPONSE: The State will respond to these "right-to-know" requests. "Right-to-know" requests that were broadly or generally framed, or expressly sought internal deliberative material, need to be evaluated to determine if this information is privileged. The State does not need to defer the rule adoption in order to respond to these "right-to-know" requests for the reasons discussed above.

Impact on Charity Care and Managed Care Payments

COMMENT: Our Lady of Lourdes Medical Center; Cohen, Shapiro, Polisher, Sheikman and Cohen (hereafter referred to as Cohen and Shapiro); Wayne General Hospital, St. Elizabeth Hospital; Deborah Heart and Lung Hospital; St. Joseph Hospital; New Jersey Hospital Association; Healthcare Financial Management Association; and Holy Name Hospital expressed concern that the economic impact was understated, because Medicaid payments are also used as the basis for the payment of charity care claims.

RESPONSE: The Economic Impact statement of the proposal did not include an estimate of loss to hospitals resulting from a potential secondary impact of the regulations on charity care calculations because any such impact of the current proposal cannot be known at this time.

Although charity care cases are priced at the Medicaid rate, there may be no Statewide impact because the charity care regulations are in the process of being amended to relax the eligibility requirements for charity care. As a result, even though the price per case may decrease, the total amount of charity care reimbursement available to individual hospitals could increase because of additional volume. In any event, the total amount of the funding for charity care is capped by statute and is not affected by these rule changes.

COMMENT: Cohen and Shapiro also commented that the Medicaid rates should follow the Chapter 83 attempt to correct for imperfections in order to assure appropriate reimbursement.

RESPONSE: The Department responds that Medicaid reimbursement is fundamentally different from Chapter 83 "all payer" rate setting. The goal of Medicaid reimbursement is to meet the costs that must be incurred by efficient and economic hospitals in the provision of care, in conformity with Federal law. The Chapter 83 "all payer" system was not designed to meet this standard and reimbursed many types of costs above the costs necessarily incurred by efficiently and economically operated hospitals.

COMMENT: Wayne General Hospital, St. Elizabeth Hospital, Holy Name Hospital, and the Healthcare Financial Management Association commented that the economic impact of the reimbursement change is greater as a result of consequential effects from Medicaid managed care. The commenters believe that any change in Medicaid rates will change the capitation rates that Medicaid pays the HMOs which in turn will automatically change what HMOs pay to hospitals.

RESPONSE: Medicaid payments to HMOs may not exceed the cost of services under a fee-for-service program, including all services, not just inpatient hospital services. Managed care is likely to rely on preventive and maintenance care, and reduce hospital and emergency room utilization. The rates paid by HMOs to hospitals are not controlled by Medicaid, and could be higher or lower than the Medicaid DRG rate. A reduction in Medicaid DRG rates would not necessarily cause a reduction in rates negotiated between hospitals and HMOs.

Data Used for the Calculation of Rates

COMMENT: Our Lady of Lourdes Medical Center; St. Joseph's Hospital; the Healthcare Financial Management Association; Besler and Company, Inc.; and Cohen and Shapiro also commented that the Medicaid program used cost data from 1988 to calculate the rates for 1995. They requested the use of more recent data for calculation of rates.

RESPONSE: Please refer to the response to comments on N.J.A.C. 10:52-5.9, below, as it relates to the continued use of 1988 as the base year.

Shifting Costs to Other Payers

COMMENT: Jersey Shore Medical Center referenced the difficulty in shifting Medicaid losses to other payers because of managed care. Passaic Beth Israel, and St. Joseph Hospital also commented on this issue.

RESPONSE: The appropriate response by a hospital to reimbursement limitations is effective cost management that will enable the hospital to reduce and contain its costs rather than shift them to other payers. Economic and efficient hospitals will not have any losses to shift to other payers. Similarly, it is incumbent upon the Department, as a prudent purchaser, to prevent costs from being shifted to the Medicaid program.

COMMENT: University Hospitals Medical Center and University Health Systems of New Jersey commented that too much emphasis has been placed on the rates paid by other payers that are the "result of predatory bargaining tactics" and the State and Federal governments should not seek to benefit from these tactics.

RESPONSE: Neither the rules, nor the Summary, nor the Economic Impact statement reference payment rates of other payers. However, the Department notes that not one commenter has stated that the Medicaid rates currently being paid or proposed to be paid in the future will be lower than the rates negotiated by the hospitals with insurance companies or managed care organizations. The Department believes this is an indication that the proposed rates will fall within the zone of reasonableness.

Federal Matching and State Medicaid Funding

COMMENT: KPMG Peat Marwick, LLP, submitted a comment concerning the Economic Impact statement. It said that any reduction in Medicaid rates would reduce Federal matching dollars received by the State. It believes that the State should reduce health care expenditures in other programs where the Federal government does not pay half the costs. Second, it believes that any reduction in Medicaid rates will likewise reduce the pricing of services provided by charity care subsidy and other State programs (unidentified) that "piggyback" on Medicaid rates.

RESPONSE: While the State seeks to maximize Federal matching funds for its Medicaid program, it does not seek to maximize the Federal match by maximizing State expenditures where they would be inap-

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propriate. The effect of the amendments on the charity care subsidy was discussed above under "Impact on Charity Care and Managed Care Payments."

Ranking of New Jersey Medicaid Expenditure in Relation to Expenditures by Other States

COMMENT: The following commenters—Hospital Alliance of New Jersey; Greenville Hospital; Holy Name Hospital; St. Joseph Hospital; St. Elizabeth Hospital; Wayne General Hospital; Jersey City Medical Center; and the Healthcare Financial Management Association commented on this topic. They expressed concern for what they perceived to be the Department's statement that New Jersey Medicaid reimbursement to hospitals for inpatient hospital services was the third highest in the nation and they commented that this ranking of the State would not be so high if the State would consider the cost of living and salary requirements of consumers that live in New Jersey. Greenville Hospital has requested the basis for the Department's statement on the relative amount of New Jersey Medicaid payments compared to other States.

RESPONSE: The basis for the statement is the most recent "Statistical Report on Medical Care: Eligibles, Recipients, and Services, HCFA-2082 (1993)", published by the Health Care Financing Administration (HCFA). The Department's statement was that its payments per recipient were the third highest in the nation, not that New Jersey pays the third highest reimbursement, as the commenters suggest.

Lead Time to Minimize the Impact of Change in Reimbursement

COMMENT: Overlook Hospital, Deborah Heart and Lung Hospital, Elizabeth General Hospital, and Jersey Shore Medical Center commented on the timing of the new rate setting methodology and requested a longer time to phase-in the changes to the rate setting methodology.

RESPONSE: Since December 1, 1992, hospitals have been on notice that there would be significant changes in hospital pricing and payments. Hospitals have had ample time to institute operational changes to improve efficiency and to operate within the proposed reimbursement limits. In addition, hospitals are aware that they are now operating in an environment in which all payers, not just New Jersey Medicaid, are encouraging efficiencies and seeking to act as prudent purchasers of hospital services. A hospital committed to effective cost management could have been taking steps that would make it possible to operate within the proposed rates. A transition adjustment was paid over a period of two years to accommodate this transition. This afforded ample time for the hospitals to make the transition to a new rate structure.

Access to Hospital Services for Medicaid Patients

COMMENT: The University Health Systems of New Jersey commented that "drastically reducing reimbursement rates" will have a negative impact on Medicaid recipients because hospitals will not be able to provide services and recipient access to inpatient hospital services will be jeopardized.

RESPONSE: Under the proposed changes, the Department estimates that, in the aggregate, hospitals will be paid in excess of 90 percent of their costs and that a large number of hospitals, including both large and small, urban and rural, will receive full reimbursement for their costs. Accordingly, the Department believes that access will not be jeopardized.

COMMENT: Two commenters stated that the proposed rules fail to take into account the impact that the reduction of Medicaid rates will have on charity care reimbursement. One commenter, an inner city hospital, believes the failure to address this issue impacts on inner city hospitals' ability to provide access to adequate care for their indigent population. This could impact on hospitals' ability to adequately provide primary care to Medicaid eligible recipients over a sustained period of time.

RESPONSE: The Medicaid program is responsible to provide payments which are adequate to meet costs which must be incurred by efficiently and economically operated hospitals in the treatment of individuals in the Medicaid program. The Department's analysis of the impact of the proposed rates shows that inner city hospitals, as well as others, will receive adequate reimbursement for their inpatient costs. The Department also believes that hospitals can be expected to continue to provide access to primary care for Medicaid recipients because the operations of such programs are integrally related to the continued viability of their inpatient operations.

Standards for Efficient and Economically Operated Hospitals

COMMENT: The University Health Systems of New Jersey commented that the proposal failed to provide detailed calculations to establish that the proposed rules result in payment rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities.

RESPONSE: University Health Systems of New Jersey is apparently referring to the Federal standard known as the Boren Amendment, 42 U.S.C. 1396a(a)(13)(A), which requires the State to make findings and provide assurances to the Secretary of the United States Department of Health and Human Services that its payment rates are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities. The rulemaking process does not require the creation or publication of written findings. However, as explained elsewhere in this rule adoption, the Department's estimate of the expected level of cost coverage under the proposed changes and the methodology itself, which utilizes reasonable benchmarks for efficiency and economy, are the primary bases for the Department's finding that rates under the proposed methodology will comply with the requirements of the Boren Amendment.

Budgetary Considerations

COMMENT: University Health Systems of New Jersey (UHS) commented that "state budgeting considerations" should not be the "conclusive factor" in the setting of rates.

RESPONSE: "State budgetary considerations" are not the basis of the Medicaid hospital reimbursement methodology. The basis of the Medicaid hospital reimbursement methodology is Federal and State law, including the Boren Amendment (42 U.S.C. 1396a(a)(13)(A)) and N.J.A.C. 10:52-5 through 9. The primary consideration of the Medicaid agency is to obtain the best health outcomes for the Medicaid eligible population by providing access to both primary and preventive care as well as hospital care in a cost efficient manner.

Disproportionate Share Hospitals

COMMENT: Elizabeth General Hospital and United Health Systems also commented that the Department failed to consider the rate setting methodology as it affects hospitals serving a disproportionate share of low income patients.

RESPONSE: Medicaid does consider the effect of the rates on disproportionate share hospitals. Medicaid bases its rates on the cost of all hospitals, including disproportionate share hospitals. The Department estimates that many disproportionate share hospitals will be paid their full costs under this proposal. Finally, Medicaid makes supplemental disproportionate share payments (DSH) to hospitals based on their service to low income and special needs patients (see N.J.A.C. 10:52-8.1 and 8.2). These payments are in addition to the payments received through the DRG reimbursement rates.

Inadequate Rates Will Affect Financial Stability and Services Will Be Reduced

COMMENT: The New Jersey Hospital Association, Holy Name Hospital, St. Elizabeth Hospital, Wayne General Hospital, and the Healthcare Financial Management Association commented that inadequate rates will affect the financial stability of hospitals and hospital inpatient services will be reduced to Medicaid recipients.

RESPONSE: The Department believes that the rates that will go into effect as a result of this proposal will be adequate because, in the aggregate, payments are expected to cover over 90 percent of hospitals' costs. The Department believes that this level of reimbursement will not adversely affect the hospitals' financial stability.

Highly Leveraged Facilities Are Disproportionately Impacted

COMMENT: Comments were received from the Healthcare Financial Management Association and St. Elizabeth Hospital that expressed concern that highly leveraged facilities were disproportionately impacted by the proposal.

RESPONSE: The Department does not believe that highly leveraged facilities are disproportionately impacted, since the rates account for Medicaid's share of depreciation and interest costs of each facility. Further, to the extent that any such facility is impacted and believes that its overall rates are inadequate, it has the opportunity to appeal its rates.

N.J.A.C. 10:52-5.1 Derivation of Preliminary Cost Base

COMMENT: Several hospitals and organizations commented on the Summary of the proposal which stated N.J.A.C. 10:52-5.1 was being amended to permit the Department to make system-wide adjustments to the acute care hospital inpatient rates during the rate year if a 30

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day notice is given to hospitals. The text of the rule did not, however, include an amendment to N.J.A.C. 10:52-5.1.

A number of commenters questioned the impact of the time frame for adjustments even in the absence of a 30-day notification period: Cathedral Hospital, Jersey City Medical Center, Greenville Hospital, Overlook Hospital, JFK Hospital-Edison, KPMG Peat Marwick, LLP, Mountainside Hospital, Christ Hospital, Deborah Heart and Lung Hospital, Elizabeth General Hospital, and United Hospitals also made comments on the time frame for the notification of rates.

The Hospital Alliance of New Jersey states that the Department, at any time before January 31, can effect changes to the current Medicaid hospital rates for that calendar year. The provision also suggests that the Department can, by this rule exempt itself from notice and comment requirements of the Administrative Procedure Act. The Hospital Alliance of New Jersey objects to this provision on both grounds, and suggests that the time for the notice of the change in the preliminary cost base be amended. One hospital suggested a 90-day comment period rather than an "on or before January 31" limit on the notification of rates.

Besler & Company, Inc. commented that the rules do not stipulate any conditions that need to be present in order for adjustments to occur and they are concerned about the lack of lead time provided to hospitals as they attempt to find ways to minimize the financial impact by adjusting staff and services on a short term basis, while developing long term plans to address the changes.

RESPONSE: The Summary of the proposal contains a misstatement. The proposal did not make any change in the time frame for rate setting. In this particular case, although rate packages were not distributed, since the proposal was made available on December 2, 1994, the industry will have had over three months to analyze and prepare for the impact of these reimbursement changes.

N.J.A.C. 10:52-5.2 Uniform reporting: current costs

COMMENTS: Besler & Company, Inc.; Mountainside Hospital; Deborah Heart and Lung Hospital; and United Hospitals Medical Center indicated that this section eliminated the 2.5 percent operating margin adjustment that was present in the Chapter 83 system to provide hospitals with funds for future capital expansion and other programs and they recommend that some form of operating margin be retained.

RESPONSE: The Department is not required by Federal law to provide an operating margin. The Department has determined not to fund future capital expansion that is speculative and may never be needed to service the Medicaid-eligible population.

N.J.A.C. 10:52-5.3 Cost per case

COMMENTS: Elizabeth General Hospital and Christ Hospital commented to the effect that the nature and purpose of the proposed change in this section, N.J.A.C. 10:52-5.3, is vague and is not understood.

RESPONSE: The change clarified existing policy, which is that costs per case are calculated only for inpatient services. Hence, the section was reworded in the proposal by eliminating references to ambulatory services and inserting references to inpatient services.

N.J.A.C. 10:52-5.4 Development of standards

COMMENTS: Christ Hospital, Community Hospital, Deborah Heart and Lung Hospital, Elizabeth General Hospital, Kimball Hospital, Mountainside Hospital, United Hospitals Medical Center, Besler & Company, Inc., Cohen and Shapiro, KPMG Peat Marwick, LLP and The Concord Group requested that the Department use the "mean" as opposed to "the median cost plus five percent" in establishing the standard cost per case.

RESPONSE: The Department believes that the median is a better measure of central tendency than the mean for rate setting purposes because it is less affected by extreme values than is the mean. The median is used by a number of states to set Medicaid rates, including states with rate setting systems that have been approved by the courts.

COMMENT: One commenter stated that the median plus five percent is not an accurate measurement of the cost of treating a patient efficiently.

RESPONSE: The Department believes that, since care can be provided within a DRG at an identified level of cost for half the Medicaid patients in the State, it is reasonable to assume that all hospitals can provide care at that cost if they operate efficiently and economically. The additional five percent provides even more assurance that any hospital that is operating efficiently will have its costs covered. The Department is authorized under Federal law to act as a prudent buyer, and to pay for inpatient hospital services in the most economical manner. The use of a median plus five percent standard for Medicaid cases, with adjustments for teaching costs and varying wage levels, is a reasonable method of setting rates consistent with those goals, although an even lower standard could be justified.

COMMENT: One commenter suggested that the use of the median standard penalizes hospitals that provide care to cases with higher severities.

RESPONSE: The Department recognizes that there are some variations in severity, but the proposed rates will be paid for all cases within a DRG, including those of lower severities. In addition, the Department's use of a median plus five percent standard allows for factors such as variations among hospitals, variation in severity, and data limitations.

COMMENT: Some commenters suggest that the Department was trying to remove a predetermined amount from the rates.

RESPONSE: This is incorrect. The Department identified some components of the rates that did not promote efficiency and then proposed appropriate adjustments to these components.

COMMENT: One commenter stated that the use of the "median plus five percent standard" is not a good indicator of the cost of treating Medicaid patients.

RESPONSE: The commenter appears not to understand that the "median plus five percent standard" was calculated from the Statewide hospital data specifically related to Medicaid patients only. Accordingly, the standards reflect the cost incurred to treat most Medicaid patients.

COMMENT: One commenter wanted the Department to "break out" the dollar impact of the use of a "median plus five percent standard" from the total impact of these proposed changes.

RESPONSE: The Department estimates that the dollar impact of the use of the "median plus five percent standard" is approximately $59 million dollars Statewide annually.

COMMENT: One commenter stated that reimbursement at the median will not permit hospitals to recoup their average costs.

RESPONSE: The Department has no obligation to pay hospitals either the "average" or actual costs that they incur, and that is not the intent behind the use of the median plus five percent standard. The Department is obligated to pay rates adequate to meet only those costs which must be incurred by efficiently and economically operated hospitals to treat Medicaid recipients.

COMMENT: One commenter stated that hospitals should not be required to file an appeal in order to receive reimbursement for costs approved through the certificate of need process.

RESPONSE: The Department replies that the standards applied for approval of a certificate of need and for the Medicaid payment standard, that is, those costs which must be incurred by efficiently and economically operated hospitals, are not the same. There is no presumption that a hospital should be paid for certificate of need approved costs. A hospital may be paid less than its costs for capital expenditures, but still receive reimbursement that is adequate overall. A hospital may need to achieve further efficiencies in its operations which, if accomplished, would enable it to have its total costs covered even without recognition of certificate of need approved costs. In short, there are numerous reasons why it is appropriate to use the appeals process to consider hospitals' claims for additional reimbursement in conjunction with new construction.

COMMENT: One commenter appears to assume that the Department is obligated to pay reasonable costs.

RESPONSE: Federal Medicaid law requires only that states reimburse costs that must be incurred by economic and efficient hospitals to treat Medicaid patients.

COMMENT: Cohen and Shapiro commented that the use of the median in the establishment of trim points is not as statistically sound as in Chapter 83.

RESPONSE: Under the proposed rules, trim points will still be calculated using the mean. The Department notes, in addition, that it is not required to establish that each component of the rate captures actual costs, but rather that overall rates in the aggregate satisfy the Boren Amendment.

N.J.A.C. 10:52-5.6 Schedule of rates

COMMENTS: Christ Hospital and The Concord Group commented that the elimination of the Capital Cash Requirements component in the CFA calculation could have significant impact on a hospital's ability to meet bond payments and to continue to invest in updating facilities. The basis for this change and its impact on the bond market should be described and the change phased in over a five to seven year period.

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RESPONSE: The Capital Cash Requirement portion of the CFA was eliminated in order to establish a CFA that represents the reasonable expenses of operating the hospital, expenses which have been audited or otherwise reviewed for accuracy. With this change, the CFA will no longer include amounts for the future replacement costs of a facility which are projected and uncertain in their value. The Department believes that the elimination of the Capital Cash Requirement component will encourage hospitals to make appropriate contributions of equity when obtaining long-term financing, investment which would not only lower the debt service payments of the facilities, but also strengthen their ability to obtain funding in the bond market. In addition, past experience has shown that few hospitals have chosen to include the Capital Cash Requirement component in their CFA calculation. Finally, hospitals may appeal to the Department for recognition of certain major capital projects.

N.J.A.C. 10:52-5.9 Current cost base

The following hospitals and organizations commented on this section: Passaic Beth Israel Hospital; Community Hospital; Deborah Heart and Lung Hospital; Holy Name Hospital; Kimball Hospital; JFK Hospital—Edison; Mountainside Hospital; Overlook Hospital; St. Elizabeth Hospital; Wayne General Hospital; Besler & Company, Inc.; KPMG Peat Marwick, LLP; and The Concord Group.

COMMENT: The commenters are requesting that the current cost base be updated.

RESPONSE: The Department is proposing no change in the base year used to set hospital rates. The Department continues to use 1988 as the base year because it is the last year for which costs submitted to the Department of Health have been completely audited. As such, data from that year are the best available for rate setting. The Department has also reviewed data which shows that there has been a decrease in the average length of stay of Medicaid patients over the period from 1988 to 1993, an indication that resource consumption per DRG may have actually declined since the 1988 base year. Using 1988 costs to set 1995 rates, therefore, would be advantageous for hospitals. Moving to a new base year could have the effect of decreasing the rates. As one commenter noted, hospitals have implemented a number of cost reduction measures and efficiencies since 1988. For this reason, too, use of the 1988 base year, in which those reductions were not reflected, may well overstate hospitals' costs and, therefore, be advantageous to the hospitals. The use of the term "current base year" with respect to 1988 refers to the fact that 1988 is the base year that the Department currently uses. The Department, therefore, believes that the term is appropriate.

COMMENT: Community Hospitals, Greenville Hospital, Kimball Hospital, Jersey City Medical Center, and The Concord Group stated that the operating margin is a necessary element to assure financial stability of hospitals.

RESPONSE: The operating margin currently paid does not correspond to costs which must be incurred to treat Medicaid patients. However, even with the elimination of a specific operating margin allowance, hospitals can earn an operating margin by containing their costs below payment rates.

Regarding one commenter's statement that its analysis showed that an operating margin was vitally important for hospitals to remain viable; the New Jersey Medicaid program has no obligation to ensure the viability of each and every hospital, especially given the excess hospital bed capacity in New Jersey. Even with some reduction in hospital capacities and consolidation of services, there will still be sufficient hospital beds in the State to assure access to care for the Medicaid population. Medicaid believes that some of these changes will stimulate efficiency and economy in hospital operations.

COMMENT: One commenter asked why the Department did not use more current labor market data to adjust the standard costs.

RESPONSE: The Department did not propose to make any change to this area because it is appropriate to use labor market data from 1988 to standardize hospitals' 1988 cost data.

COMMENT: One commenter stated that there should be both an economic and technology factor increase.

RESPONSE: The proposal does not change the way the rate system accounts for economic and technology changes. Pursuant to a previous rule amendment, the TEFRA rate of increase plus a technology factor is allowed by the rules and will be given in the future.

COMMENT: KPMG Peat Marwick suggested the use of Grouper 12 instead of Grouper 8, because they believe Grouper 12 is newer and because Medicare uses it.

RESPONSE: The proposed rules make no change in the use of a Grouper, so that the Department will continue to use AP-DRGs Version 8.0. This Grouper refined the Medicare Grouper particularly with regard to neonatal cases. The Department and the hospitals incur costs when there is a change in the Grouper since the Grouper must be refined to make it New Jersey specific. Thus, the adoption of a new Grouper for Medicaid should not be automatic every time a new Grouper is created.

N.J.A.C. 10:52-5.12 Patient care cost findings; direct costs per case, physicians and non-physicians

COMMENT: KPMG Peat Marwick, LLP, commented about what it believes was a new adjustment in the calculation of the measure of resource use which it thought needed to be explained.

RESPONSE: The adjustment is not new. Prior language, which referenced this adjustment in general, has been replaced by new language that provides a better, more detailed explanation of this adjustment, which has routinely been made in the past.

N.J.A.C. 10:52-5.13 Reasonable costs of services related to patient care

COMMENT: Besler and Company, Inc., Deborah Heart and Lung Hospital; Raritan Bay Hospital, and Mountainside Hospitals requested that guidelines be developed to ensure that minimum levels of funding are maintained to ensure access to quality care.

RESPONSE: The Department has addressed the reasonableness of the methodology for the establishment of the payment rates in the response to comments under N.J.A.C. 10:52-5.4. The Department believes that payment rates under the adoption will be sufficient for hospitals to continue to provide quality care while making reasonable steps toward economy and efficiency.

COMMENT: The Concord Group commented that the term "current" as it relates to the reference in N.J.A.C. 10:52-6.9 regarding current major movable equipment should be defined.

RESPONSE: There is no definition per se in the rule. However, the Department of Health has a form that has to be completed by the hospital provider to get reimbursed for current major movable equipment. The form takes into account present day price structures for equipment.

N.J.A.C. 10:52-5.14 Standard costs per case

COMMENT: The New Jersey Hospital Association, JFK Hospital-Edison, Overlook Hospital, The Concord Group, and Cohen and Shapiro questioned the use of a DRG reimbursement standard based on the median cost plus five percent, instead of the already established average cost per case.

RESPONSE: Please refer to the responses to comments in N.J.A.C. 10:52-5.4 for a discussion of the "median cost plus five percent standard" that is being proposed.

N.J.A.C. 10:52-5.15 Reasonable direct cost per case

The following organizations commented on this section: Besler & Company, Inc.; Deborah Heart & Lung Hospital; Mountainside Hospital; Raritan Bay Hospital; and United Hospitals Medical Center.

COMMENT: The commenters recommend that specific language be included in the calculation for the inclusion of hospital-based physician costs in the inpatient payment rate. They also recommend an extension of the comment period until the Department releases specific calculations for determining outlier rates.

RESPONSE: There is no change proposed for the calculation for the inclusion of hospital-based physician costs in the inpatient payment rate. Base year physician costs per case by hospital are converted to a percentage of non-physician costs, to obtain a physician markup factor. Physician costs are included in the hospital payment rate by multiplying the incentive standard by this physician markup factor.

The revisions to this section do not change the determination of outlier rates, but rather clarify the calculations. The inlier rate has always been multipled by the volume of high outlier cases in a DRG, as clarified by the proposed language change, prior to being subtracted from the total cost of all outlier cases.

COMMENT: The Concord Group requested explanations of the determination of the incentive standard, and the application of the unequalization factor to costs other than non-physician costs. They also questioned the removal of the phrase "determined for all hospitals."

RESPONSE: The incentive standard is the standard described in N.J.A.C. 10:52-5.14, Standard costs per case. In the methodology expressed in this rule, the unequalization factor is applied first to the incentive standard which is comprised solely of non-physician costs. The

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phrase "determined for all hospitals" is being removed to clarify that reasonable direct costs per case are only for the general hospitals receiving rates under these rules, not for other hospitals not covered by this reference (all out-of-State hospitals and in-State special hospitals, private psychiatric hospitals, and psychiatric (State and county government)—essentially including any New Jersey operated hospital that is not an acute care general hospital under the DRG system). There is no change in Medicaid practice envisioned as a result of this technical amendment.

N.J.A.C. 10:52-5.17 Update factors

COMMENTS: New Jersey Hospital Association; Besler and Company, Inc.; Cohen and Shapiro; Deborah Heart and Lung Hospital; Mountainside Hospital; and Raritan Bay Hospital recommended that a technology factor be developed using the Propsective Payment Assessment Commission (PROPAC) recommendations as a guide for 1995 and future years to recognize the increase in costs associated with changes in technology utilization.

RESPONSE: The 1995 rates will include a technology factor. Please see the response to comments on the technology factor in the discussion of N.J.A.C. 10:52-5.9, listed above.

COMMENT: The same commenters listed in the comment above also recommended that an economic factor be developed that more accurately depicts the annual rate of inflation experienced by New Jersey hospitals.

RESPONSE: The Department believes that the Medicare TEFRA factor is representative of a reasonable inflation factor. Therefore, it is appropriate to apply the TEFRA factor in addition to the technology factor to the proposed payment rates. Please see the response to the comments on the TEFRA economic factor in the discussion of N.J.A.C. 10:52-5.17 listed below.

COMMENT: Community Hospital, Greenville Hospital, Jersey City Medical Center, Kimball Hospital, Newark Beth Israel, The Concord Group, and the Hospital Alliance of New Jersey stated that the rates established for neonatal cases in the base year 1988 were inaccurate and understated, since birthweight information was not available for that year. Neonatal case rates for 1995 must be thoroughly reviewed and increased to reflect the high costs of taking care of these babies.

RESPONSE: The proposed rule makes a clarification to reflect the existing procedures for calculation of the neonatal payment rates. Patient volume from 1989, which does include birthweight information, is used with the current Grouper to address the appropriate measures of resource use in the determination of the payment rates for the neonatal DRGs. The Department believes that this method reasonably accounts for costs which must be incurred to treat these cases.

COMMENT: The New Jersey Hospital Association indicated that the Federal government never intended TEFRA amounts to apply to a prospective payment system; rather, they were intended for cost reimbursement for hospitals.

RESPONSE: This comment incorrectly states Federal government policy. Federal regulations prohibit states from making aggregate payments for inpatient hospital services that exceed the amount that would be paid under Medicare principles. The Health Care Financing Administration (HCFA) has specified that in determining what would be paid under Medicare principles, States should apply the TEFRA rate of increase limits.

COMMENT: Concerning N.J.A.C. 10:52-5.17(f), Cohen and Shapiro commented that the transition adjustment should not be eliminated. Jersey Shore Medical Center commented that any Medicaid rate reductions should be phased-in so that hospitals have an opportunity to adjust and also that their actual costs should be reimbursed.

RESPONSE: The 9.15 percent add-on to the 1993 and 1994 rates, commonly referred to as the "transition adjustment," was added to the rate to assist hospitals through the transition from a regulated system to a deregulated one with the current adoption by DMAHS of a new Medicaid-specific reimbursement methodology. Since hospital rates were deregulated in 1992, hospitals have had two years to make the transition and become familiar with the Medicaid reimbursement methodology. The Department believes that it must act like any other prudent purchaser of hospital services and discontinue the add-on, now that hospitals have had two years to adjust to the deregulated system.

As to setting reimbursement to meet "actual costs," while the Department agrees that Medicaid rates must be adequate to cover the costs which must be incurred by efficiently and economically operated hospitals to treat Medicaid patients, the Department must emphasize that Medicaid law does not require, nor does it encourage, the Medicaid program to design reimbursement based on actual costs. Medicaid encourages efficiencies and economy through rates that recognize the costs that must be incurred by efficient and econmical hospitals.

COMMENT: Besler and Company, Inc. requested specific calculation of the Medicaid portion of the mark-up factor adjustments in the proposed regulations.

RESPONSE: The calculation of the Medicaid portion of the mark-up factor adjustments (Poison Control, Pediatric Rate Adjustment) has not changed since the inception of Medicaid rates in 1993. This information has been provided to all hospitals as part of their 1993 rate packages. The Department will again incorporate the calculation of the Medicaid portion of the mark-up factor adjustments in hospitals' 1995 rate package.

COMMENT: Those commenters listed above in this section and Overlook Hospital commented that a longer period of phase-in for the rules would be desirable.

RESPONSE: As to the phase-in for the rules, the hospitals actually had over three months of prior notice of the expected changes. A press release, issued on November 22, 1994, discussed the changes; the hospitals received a pre-filing copy of the proposal on December 2, 1994; and the process of publication of the proposal and rule adoption will not be completed until March 6, 1995. The hospitals have had ample time, the equivalent of a full fiscal quarter, to prepare for the regulatory changes resulting from these rules.

N.J.A.C. 10:52-5.18 Capital facilities

COMMENT: KPMG Peat Marwick, Inc., Cathedral Hospital, Christ Hospital, Community Hospital, Deborah Heart and Lung Hospital, Mountainside Hospital, United Hospitals Medical Center, The Concord Group, The Hospital Alliance of New Jersey, Besler & Company, Inc., and Cohen and Shapiro requested the development of a brief and expeditious review process for those hospitals with approved certificates of need and any other component affecting capital facilities.

RESPONSE: The rule allows the Department to review and evaluate the impact of a significant change due to major capital projects on a hospital's capital facilities allowance. Such projects may include the replacement and renovation of older physical plants. This review process is already intended to be less complex than the operational review process referenced in N.J.A.C. 10:52-9.1.

COMMENT: Cohen and Shapiro is requesting that the capital facilities allowance should either be calculated through the use of a final projection of 1995 actual depreciation and interest, or through an adjustment after the rate year between a hospital's projected depreciation and interest and its actual depreciation and interest.

RESPONSE: The Department's proposal does not provide for any reconciliation of the components included in the rates. This is a prospective system, and not a system based on actual costs. Therefore, reconciliation is not applicable to Medicaid, unlike Chapter 83. However, should a hospital object to any component included in its rates, it has the right to appeal the entire rate, as described in N.J.A.C. 10:52-9.

COMMENT: Besler and Company, Inc., The Concord Group; Mountainside Hospital, United Hospitals, Cohen and Shapiro, and the Hospital Alliance of New Jersey recommended that the calculation for the CFA include an adjustment for the loss on advanced refunding.

RESPONSE: The Department cannot support the inclusion of losses in financing as an element in the calculation of the CFA. Refinancings are normally done to seek lower interest rates and, therefore, result in lower interest expense; consequently, many hospitals already may be benefiting from these refinancings. An individual hospital may also avail itself, if necessary, of the appeals process in N.J.A.C. 10:52-9.1.

N.J.A.C. 10:52-5.20 Derivation from preliminary cost base

COMMENT: Cohen and Shapiro requested that the 2.5 percent operating margin be retained.

RESPONSE: Please refer to the response for N.J.A.C. 10:52-5.9, on the Current Cost Base.

COMMENT: KPMG Peat Marwick, LLP, requested that the capital facilities allowance option not be deleted in the Department's proposal.

RESPONSE: Please refer to the response for N.J.A.C. 10:52-5.18, Capital facilities allowance.

N.J.A.C. 10:52-6.13 Financial elements

COMMENT: Christ Hospital states that the proposed change discriminates against hospitals with older physical plants and makes it difficult to continue to operate a modern efficient facility.

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RESPONSE: Please refer to response for N.J.A.C. 10:52-5.18, Capital Facilities. Hospitals can avail themselves of the review and appeal process for the upgrading, renovating, and/or remodeling of existing older physical plants.

N.J.A.C. 10:52-7.2 Calculation of payment rates

COMMENT: Besler & Company, Inc., Deborah Heart and Lung Hospital, Mountainside Hospital, Raritan Bay Hospital, and United Hospitals Medical Center recommended the standards for those DRGs with no base year volume be adjusted to reflect the intensity of the individual DRGs, because there is the potential of rate year volumes in many of these DRGs.

RESPONSE: The commenters reference only the potential for rate year volume in these instances. Because there is no volume in the base year for these cases, there are no assurances that there would be significant volume of these cases in the rate year. Regardless of that fact, the Department will use the Statewide average value of Medicaid cases in the base year to calculate these rates. This value may be below, but may also be above, the cost of any such cases in the rate year and the Department believes that this is a reasonable way to account for cases with no volume in the base year.

COMMENT: The commenters also recommend exclusion of neonatal, tertiary care, and other unspecified transfers from the "lower of" payment methodology.

RESPONSE: The Department is not changing the methodology for payment for transfer cases. The issue of transfers has been appropriately taken into account in the determination of the DRGs used in the calculation of the Medicaid payment rates. Any transfer situations which would have resulted in measurable differences in resource consumption have been accommodated by the Department at the time of the development of the DRG. There are already several DRGs included in the neonatal area which incorporate the word "transfer" in their description.

COMMENT: The New Jersey Hospital Association is requesting that the low volume outlier rate calculation be corrected to add a teaching adjustment.

RESPONSE: The Department's proposal eliminated low volume outliers as an individual category to clarify the existing process of calculating rates for those cases. Low volume cases are handled as part of the normal rate setting methodology and as such, have teaching cost adjustments applied to them.

N.J.A.C. 10:52-9.1 Review and appeal of rates

COMMENT: Christ Hospital, Deborah Heart and Lung Hospital, Mountainside Hospital, Raritan Bay Hospital, United Hospitals Medical Center, KPMG Peat Marwick, LLP, the New Jersey Hospital Association, and Besler & Company, Inc. recommended that the Department relax the rate review criteria in order to conserve staffing and resources. The commenters were concerned about the Division's staffing because of the time needed to review appeals that were filed. One commenter was also concerned about its own staffing.

RESPONSE: The Department believes that it has adequate staffing and resources to address appeals. Both parties have to work in concert to complete the review/appeal process.

COMMENT: Cohen and Shapiro requested a clarification as to when the time for appeal begins.

RESPONSE: The time for appeal begins on the day the hospital physically receives its rates. Rates are sent by overnight mail.

COMMENT: KPMG Peat Marwick, LLP, requested that the Department develop a streamlined appeal process for cost elements included in the mark-up factors, rather than in the standards. The New Jersey Hospital Association also requested that appeals be permitted for special services without going through the full rate review process.

RESPONSE: The purpose of the review and appeal process is to review all issues, including mark-up factor and special services issues, regarding any portion of the development of the entire rate. The Department believes that a streamlined version of the appeal process would not fulfill the purpose of the rate review process, which is to review all relevant issues; therefore, the requested changes have not been made.

Executive Order No. 27 Statement

Inpatient hospital reimbursement is subject to the provisions of 42 CFR Part 447. These Federal regulations require that payments be reasonable and adequate to meet the costs which must be incurred by efficient and economically operated hospitals, be consistent with efficiency, economy and quality of care, and remain within Medicare upper payment limits.

The rate methodology established by these rules and the adopted amendments are in keeping with these Federal requirements. Therefore, no additional analysis is applicable to this rulemaking.

Full text of the adoption follows:

SUBCHAPTER 5. PROCEDURAL AND METHODOLOGICAL REGULATIONS

10:52-5.1 Derivation of Preliminary Cost Base

(a) For general acute care hospitals, the Division of Medical Assistance and Health Services (hereafter referred to as the Division or its designee), on or before March 12, 1993 and on or before January 31 of each subsequent rate year shall implement a rate. For hospitals with a fiscal year of January 1, the rate year will be the calendar year. For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year will be the year the fiscal year begins and for hospitals on a fiscal year beginning between July 1 and December 31, the rate year will be the year the fiscal year ends.

10:52-5.3 Costs per case

Direct and indirect care costs shall be allocated to inpatient and outpatient services. Direct and indirect costs allocated to inpatient services shall be used to determine inpatient rates per case according to the patient diagnosis. This cost finding process is described in N.J.A.C. 10:52-5.9 through 5.12.

10:52-5.4 Development of standards

The Director shall develop standard reimbursement amounts for each Diagnosis Related Group based on the median cost plus five percent per case for Medicaid recipients. The standards shall be adjusted to account for significant differences in teaching responsibilities and in labor market areas. These standards are developed according to criteria set in N.J.A.C. 10:52-5.13 through 5.20. Standards so developed and issued for a rate year shall remain unaffected and no adjustments, modifications or other changes to the standards shall be made except as referenced in N.J.A.C. 10:52-5.1.

10:52-5.6 Schedule of Rates

(a) In order to determine reasonable physician costs, hospitals shall report to the Director any significant changes in the contractual basis of any and all physician compensation arrangements which have occurred after the correct Cost Base. Failure to report these changes shall result in these costs not being recognized.

(b) For each hospital, the Division shall implement a Schedule of Rates for each Diagnosis Related Group.

10:52-5.9 Current Cost Base

(a) A hospital's Current Cost Base is defined as the actual costs and revenues as identified in the Financial Elements in the base reporting period as recognized by the Division for purposes of rate setting.

(b) The Current Cost Base is used to develop the Preliminary Cost Base (PCB) and Schedule of Rates through:

1. and 2. (No change.)

Recodify existing 4.-6. as 3.-5. (No change in text.)

(c) (No change.)

10:52-5.12 Patient care cost findings; direct costs per case, physician and nonphysician

(a) (No change.)

(b) Measures of resource use are listed as follows:

1. For each patient with a Uniform Bill (UB), measures of resource use shall be calculated to distribute costs among the UB. Measures of resource use represent services provided to patients associated with each cost center. Patient days are associated with routine service cost, emergency room admissions with emergency service cost, and ancillary and therapeutic charges with ancillary and therapeutic service cost. The measures of resource use is a ratio of admissions reported on the hospital's cost report over the hospital's UB billing data. Costs are derived from the Actual Reporting Forms and are associated with admissions. Therefore, an adjustment is made to align the measures of resource use to the inpatient cost.

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The adjustment is the ratio of total admissions to total UB records. This results in a total adjusted measure of resource use. The hospitals shall make reasonable efforts to correct data unacceptable to the Division or Department of Health.

Center	Measure of Resource Use	Calculation of Inpatients

(No change in table.)

(c) Cost per case allocation:

1. The Direct Patient Care Costs of each center (after the allocation of patient care general services in N.J.A.C. 10:52-5.11 and 5.12) are separated between inpatient, outpatient, and Skilled Nursing Facility (SNF) costs. Outpatient and SNF costs are excluded from the inpatient rates based on gross revenue reported to the Division. The total inpatient costs from each cost center are then divided by the hospital's corresponding total adjusted measure of resource use. This calculation produces ratios, including cost per patient day, cost per EMR admission, or a cost ratio per ancillary or therapeutic charge for each cost center. Each ratio is then multiplied by the corresponding cost center's measure of resource use of each DRG to calculate a cost per case for the hospital's case mix.

i. (No change.)

10:52-5.13 Reasonable cost of services related to patient care

(a) The Reasonable Cost of Services related to Patient Care includes:

1.-4. (No change.)

5. Current major moveable equipment amount pursuant to N.J.A.C. 10:52-6.9.

(b) The Reasonable Cost of Services Related to Medicaid Patient Care will be adjusted by the application of economic factors pursuant to N.J.A.C. 10:52-5.17.

10:52-5.14 Standard costs per case

(a) The standard to be used in the calculation of the proposed rates for each inpatient DRG is determined as the median plus five percent non-physician patient care costs per Medicaid case in all hospitals whose costs are included in the data base, adjusted for labor market differentials, and amount and type of Graduate Medical Education. Standards shall be calculated across all hospitals for which current cost bases were derived from a common reporting period.

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

(e) Calculation of standards shall be as follows:

1. The calculation of standards shall be based on an appropriate sample of hospitals. The cost per case of each hospital's Medicaid patients with UB records categorized by inpatient DRGs is multiplied by each hospital's equalization factor and for the appropriate DRGs and hospitals, reduced by a rate expressing the amount and type of graduate medical education for the hospital pertaining to each DRG. The median plus five percent equalized cost of all such records in all hospitals calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases is the incentive standard for each DRG.

2. (No change.)

10:52-5.15 Reasonable direct cost per case

(a) Inpatient direct cost per case shall be determined as follows:

1. The Reasonable Direct Cost Per Medicaid Case for those hospitals receiving rates in accordance with this subchapter for every DRG shall include incentives and disincentives, as appropriate, which shall be termed the boundaries of payment and are calculated as follows:

i. The incentive standard multiplied by the unequalization factor, the physician mark-up, the deneutralization factor, and Residents adjustment factor.

(b) Inpatient outliers: The costs of low length of stay outliers shall be divided by the low length of stay days to arrive at a low per diem. The costs of high length of stay outliers shall be divided between both high outlier cost and the inlier rate. The high outlier cost net of the inlier rate times the high outlier cases shall be divided by the acute days of the patient's total stay (admission to discharge) to arrive at a high outlier per diem. High outlier cases shall be reimbursed the inlier rate plus the high per diem multiplied by the acute days of the stay.

10:52-5.17 Update Factors

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

(d) In addition, the following payment rates will be in effect for these special procedures:

1.-4. (No change.)

5. Neonate rates: payment for neonatal DRGs as defined by New Jersey Grouper 8.0 will be based on 1989 actual New Jersey patient volume.

(e) For determination of the payment rates, direct patient care is increased for the following components:

1. (No change.)

2. Commission and Health Planning fees;

3. (No change.)

4. (No change in text.)

Recodify existing 7.-12. as 5.-10. (No change in text.)

11. Regional perinatal adjustment;

12. Personnel health allowance;

13. Pediatric rate adjustment;

14. Sickle cell adjustment;

15. Continuous adjustments;

16. Outlier reversal adjustment; and

17. Poison Control Costs.

(f) No Statewide transition adjustment not otherwise specified in this chapter will be included in the rate.

10:52-5.18 Capital Facilities

(a) Capital Facilities, as defined in N.J.A.C. 10:52-6.18, shall be included in the rate in the following manner:

1. Building and fixed equipment:

i. Capital Cash Requirements are all current payments, excluding cash purchases, made for Capital Facilities utilized for Services Related to Patient Care during a reporting period, including reasonable interest as defined in (a)1i(1) below on long term debt, but excluding the expenditure of specific purpose grants for capital projects.

(1) (No change.)

ii. The yearly Capital Facilities Allowance is computed using information provided by the Uniform Cost Reports. For hospitals on a calendar year basis, this amount will be the 1992 depreciation and reasonable interest expense, excluding any portion associated with major moveable equipment and any interest income reported as an expense recovery. For those hospitals on a fiscal year basis, actual year's depreciation and reasonable interest applicable to rate year 1992 shall be used excluding any portion associated with major moveable equipment and any interest income reported as an expense recovery.

(1) Requests for exceptions to this methodology may be accepted and evaluated only when a major capital project has resulted in a significant change in depreciation and reasonable interest from the most current actual reporting year to the rate year.

2. (No change.)

(b) Any new capital facilities construction with a valid certificate of need from the New Jersey Department of Health will be considered for a capital facilities adjustment in rates through the review and appeal process as described in N.J.A.C. 10:52-9.

10:52-5.20 Derivation from Preliminary Cost Base

(a) Apportionment of Financial Elements based on direct costs shall be as follows:

1. (No change.)

Recodify existing 3 and 4 as 2 and 3. (No change in text.)

10:52-6.13 Financial elements (generally)

The financial elements of the rates shall include the reasonable cost of the following: direct patient care; depreciation expense and interest payments; paid taxes, excluding income taxes; education, research and training programs, not otherwise paid for by the State; preservation, replacement and improvement of facility and equipment subject to appropriate planning requirements; reasonable work-

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ing capital; and where applicable and appropriate, reasonable return on investment. All non-direct costs must be allocated based upon the proportion of Medicaid recipients serviced by the hospital.

10:52-7.2 Calculation of payment rates

(a) Outliers are patients displaying atypical characteristics relative to other patients in a DRG. The three categories of outliers are defined and the methodology for outlier payment is established as follows.

1. High length of stay: Patients assigned to a DRG, but whose Length of Stay (LOS) is longer than the high LOS trim point.

i. The rate is the inlier rate per case plus a per diem for each acute day from the date of admission to the date of discharge.

2. Low length of stay: Patients assigned to a DRG, but whose Length of Stay (LOS) is shorter than the trim point.

i. Payment is limited to either the lower of the inlier rate per case or the sum of the acute days multiplied by the low per diem.

3. (No change in text.)

4. The payment rates for DRGs with no base year experience will be calculated using Medicaid Statewide base year costs.

SUBCHAPTER 9. REVIEW AND APPEAL OF RATES

10:52-9.1 Review and Appeal of Rates

(a) (No change.)

(b) Any hospital which seeks an adjustment to its rates must agree to an operational review at the discretion of the Department of Human Services.

1. A request for a rate review must be submitted by a hospital in writing to the Department of Human Services, Division of Medical Assistance and Health Services, Office of Budget, Fiscal Affairs and Information Systems, CN 712, Mail Code #23, Trenton, New Jersey 08625-0712 within 20 calendar days after publication of the rates by the Department of Human Services (DHS).

i. A hospital shall identify its rate review issues and submit supporting documentation in writing to the Division within 80 calendar days after publication of the rates by the DHS.

2. (No change.)

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

(a)

DIVISION OF FAMILY DEVELOPMENT

Food Stamp Program

Food Stamp Applications in Pending Status

Adopted Amendment: N.J.A.C. 10:87-2.31

Proposed: November 7, 1994 at 26 N.J.R. 4298(a).

Adopted: February 8, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: February 8, 1995 as R.1995 d.135, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4B-2, Food Stamp Act of 1977 as amended (7 U.S.C. Sections 3 and 5), and 7 CFR Part 273.

Effective Date: March 6, 1995.

Expiration Date: December 21, 1998.

Summary of Public Comments and Agency Responses:

COMMENT: Legal Services of New Jersey pointed out that Food Stamp program regulations at 7 CFR 273.10(g)(1)(ii) require that the Notice of Denial to the household must contain additional information which stipulates under what conditions the household may have its case reopened without filing a new application.

RESPONSE: The Department agrees with the commenter and has added additional language to the amendment which requires that a Notice of Denial include additional information to indicate under what conditions the household may have its case reopened without filing a new application.

Executive Order No. 27 Statement

These rules do not exceed any Federal standards or requirements and a Federal exceedance analysis is not required for this rulemaking.

Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

10:87-2.31 Delays in processing

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

(e) Delays caused by the household: If, by the 30th day, the CWA cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application.

1. On the 30th day, the CWA shall send a Notice of Denial to the household. If the household takes the required action within 60 days following the date that the application was filed, the CWA shall reopen the case without requiring a new application. No further action by the CWA is required after the Notice of Denial is sent, if the household fails to take the required action within 60 days following the date the application was filed. ***The Notice of Denial shall include the following:**

i. The action that the household must take to reactivate the application;

ii. That the case will be reopened without a new application if action is taken within 30 days of the date that the Notice of Denial was mailed;

iii. That the household must resubmit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program.*

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

CORRECTIONS

(b)

THE COMMISSIONER

Inmate Liaison Committee

Adopted New Rules: N.J.A.C. 10A:12-2

Proposed: December 19, 1994 at 26 N.J.R. 4881(a).

Adopted: January 26, 1995 by William H. Fauver, Commissioner, Department of Corrections.

Filed: January 30, 1995 as R.1995 d.115, **without change**.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: March 6, 1995.

Expiration Date: March 6, 2000.

Summary of Public Comments and Agency Responses:

The Department of Corrections received several comments from Richard Young, East Jersey State Prison. The comments and the Department of Corrections responses are as follows:

COMMENT: The commenter suggests that N.J.A.C. 10A:12-2.3 or 2.4 include a process by which wing representatives can be impeached.

RESPONSE: The language at N.J.A.C. 10A:12-2.4 regarding the constitution and bylaws of the Inmate Liaison Committee requires the development of policies and procedures that govern the operations of the Committee. Impeachment procedures can be developed under these provisions. The suggestion to add this process as a regulation in the New Jersey Administrative Code is hereby denied.

COMMENT: The commenter feels that alternative committees to the Inmate Liaison Committee should be outlined at N.J.A.C. 10A:12-2.7 and not left up to the discretion of the Superintendent. The commenter states that the present rule makes it easy for a Superintendent to ban an Inmate Liaison Committee, which is actively representing the inmate population and substitute another committee.

RESPONSE: The Department of Corrections disagrees that it is easy for a Superintendent to ban an Inmate Liaison Committee at his or her discretion just because the Superintendent wants to substitute another type of committee. In instances where an alternate to the Inmate Liaison Committee is proposed by the Superintendent for establishment, the Chief of Staff, Department of Corrections, must approve the alternate

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plan and the written procedures governing the alternate plan. The approval/disapproval of alternate plans that are proposed due to varied and/or unpredictable circumstances appropriately falls within the scope of authority of the Chief of Staff whose function is to ensure the provision of custody, care, discipline, training and treatment of incarcerated offenders. Therefore, the approval/disapproval of alternate plans by the Chief of Staff (not the Superintendent) depends upon his or her functions and specific circumstances such as, but not limited to, overcrowding, facility expansion, orderly operation, and security concerns.

COMMENT: The commenter disagrees with the language proposed at N.J.A.C. 10A:12-2.2(b). The commenter states that this rule allows the Administration to notify the Inmate Liaison Committee of a rule change, or any other matter, and thus consider the inmate population notified. The commenter feels this type of notification should not replace notifying the population by memorandums placed in each housing unit or distributed to each inmate.

RESPONSE: The Department of Corrections disagrees with the interpretation of the commenter. N.J.A.C. 10A:12-2.2(b) clearly states that the administration "may" utilize the Inmate Liaison Committee to provide information to the general population. The use of the discretionary word "may" should not be interpreted to mean that the Department will only use this method of notification. It is the intent of the Department of Corrections to communicate as expeditiously as possible with the inmate population when information needs to be disseminated. The provision of information to the inmate population through the Inmate Liaison Committee is simply one means that may be used by the Department. The Department believes that the availability of this means of information dissemination appropriately falls within the scope of the functions of the Inmate Liaison Committee as proposed at N.J.A.C. 10A:12-2.2

COMMENT: The commenter suggests that a form on which the inmate population can write their complaints or suggestions to their representatives be set up in the Code. He further requests that the form be signed to serve as documentation of the complaint and for recording statistics, etcetera.

RESPONSE: The language proposed at N.J.A.C. 10A:12-2.4 regarding the constitution and bylaws of the Inmate Liaison Committee requires the development of policies and procedures. Any forms needed to accomplish the duties, documentation or recordkeeping of the Inmate Liaison Committee can be developed under these provisions. The request to develop an inmate suggestion or complaint form for the Inmate Liaison Committee as a regulation of the New Jersey Administrative Code is hereby declined.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required for the adopted new rules because the rulemaking requirements of the Department of Corrections are governed by N.J.S.A. 30:1B-6 and 30:1B-10. The adopted new rules are not subject to any Federal requirements or standards.

Full text of the adoption follows:

CHAPTER 12
INMATE GROUPS

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. INMATE LIAISON COMMITTEE

10A:12-2.1 Definition

The following term, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

"Inmate Liaison Committee" means a group of inmate representatives, authorized by the correctional facility administration to act on behalf of correctional facility inmates. An authorized inmate group may be known as something other than an Inmate Liaison Committee.

10A:12-2.2 Function of the Inmate Liaison Committee

(a) An Inmate Liaison Committee may be established within each correctional facility or subunit within the main correctional facility in order to:

1. Act as a liaison between the correctional facility administration and the inmate population;

2. Provide the opportunity for interested inmates, through their representatives, to voice their comments, or arguments concerning issues and problem matters; and

3. Provide the opportunity for inmates, through their representatives, to submit information and recommendations on issues and problem matters that affect them.

(b) The correctional facility administration may utilize the Inmate Liaison Committee meetings to provide:

1. Information to the committee and the inmate population; and

2. Responses to previous issues or problematic matters that were brought to the attention of the administration.

10A:12-2.3 Composition of the Inmate Liaison Committee

(a) An Inmate Liaison Committee shall be composed of:

1. Inmates who represent one or more housing units; and

2. Inmates who act as alternates to the inmates who represent one or more housing units.

(b) Representatives and alternate representatives on the Inmate Liaison Committee shall be voted into office by housing unit residents, through secret ballot, for the term established by the Committee's bylaws from the Committee's constitution (see N.J.A.C. 10A:12-2.4).

(c) Vacancies on the Inmate Liaison Committee occur when an inmate:

1. Resigns;

2. Moves to another housing unit;

3. Is voted out of office;

4. Is released from the correctional facility; or

5. Is removed at the discretion of the Superintendent, provided there are grounds for removal from office, which include, but are not limited to, being found guilty of a serious disciplinary charge.

10A:12-2.4 Constitution and bylaws of the Inmate Liaison Committee

(a) Each Inmate Liaison Committee shall develop a constitution and bylaws which shall state the policies and procedures that govern the Committee's operations and shall be established in accordance with the provisions and requirements of this chapter.

(b) The constitution and bylaws shall include, but are not limited to:

1. The inmate titles and their respective duties;

2. The duties of the Committee members;

3. The procedures for the election of inmate and alternative members of the Committee; and

4. The standing committees and their respective functions.

(c) A draft of the constitution and bylaws and any updates shall be submitted to the Superintendent for his or her review and written approval.

(d) Upon written approval by the Superintendent, the Inmate Liaison Committee may commence operation in accordance with the provisions of the approved constitution and bylaws.

10A:12-2.5 Meetings with the Inmate Liaison Committee

(a) The correctional facility Superintendent or his or her designee shall meet with the Inmate Liaison Committee not less than once a month, and other staff members shall be available to meet with the Committee when it is appropriate or necessary.

(b) The minutes of Inmate Liaison Committee Meetings shall be recorded and reviewed for accuracy by the correctional facility staff member who attended the meeting. Copies of the minutes shall be made available to the inmate population and the administration of the correctional facility.

10A:12-2.6 Physical facilities and equipment

(a) Dependent upon available resources and consistent with internal discipline, order, safety and security, the correctional facility may provide office space to the Inmate Liaison Committee for conducting ongoing business.

(b) Access to the office space may be scheduled at the discretion of the Superintendent or his or her designee.

10A:12-2.7 Designation of an alternative to the Inmate Liaison Committee

The Superintendent shall have the authority to designate an alternate to the Inmate Liaison Committee. In instances where a means of providing an alternate liaison between the correctional facility administration and the inmate population has been established, the

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Superintendent shall submit written procedures governing the existing alternate plan to the Office of the Chief of Staff for his or her written approval.

INSURANCE

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Optional Benefit Riders

Adopted Amendment: N.J.A.C. 11:21-3.2

Proposed: December 5, 1994 at 26 N.J.R. 4729(a).

Adopted: January 30, 1995 by the New Jersey Small Employer Health Benefits Program Board, Kevin O'Leary, Executive Director.

Filed: January 30, 1995 as R.1995 d.116, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L. 1994, c.11, and P.L. 1994, c.97.

Effective Date: March 6, 1995.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency Initiated Changes:

In N.J.A.C. 11:21-3.2(d)1, the Board has clarified the language of the rule to highlight that riders that are of decreasing actuarial value or that decrease "any one benefit" of the standard health benefits plans must be filed with the Commissioner for approval as required by N.J.S.A. 17B:27A-19i(1). Similarly, the Board has altered the certification required by N.J.A.C. 11:21-3.2(d)4vi(1), to clarify that the Board is reviewing only riders which are of increasing actuarial value and do not contain any benefit decreases not approved by the Commissioner of Insurance.

In addition, the Board has altered the required certification to include a requirement that carriers certify that the filing is in conformance with New Jersey statutes and regulations.

Executive Order No. 27 Statement

The adopted amendment is not subject to any Federal requirements or standards.

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

11:21-3.2 Optional benefit riders to standard plans and administrative functions

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

(d) In addition to the optional benefit riders listed in (c) above, members may offer riders that revise in any way the coverage offered by standard health benefit Plans A, B, C, D, and E or HMO, subject to the provisions set forth in (d)1 through 5 below.

1. Before a member may sell a rider or amendment thereof that decreases any ***one*** benefit*[s]* or decreases the actuarial value of standard health benefit Plans A, B, C, D, E or HMO, the member shall file the rider or amendment thereof for informational purposes with the Board, and for approval by the Commissioner. No rider filed with the Commissioner may be sold until approved by the Commissioner.

2. Before a member may sell a rider or amendment thereof that increases any benefits or increases the actuarial value of standard health benefit Plans A, B, C, D, E or HMO, the member shall file the rider or amendment thereof with the Board for informational purposes.

3. In addition to (d)1 and 2 above, any benefit rider or amendments thereof shall be subject to the provisions of Sections 2, 3(b), 6, 7, 8, 9 and 11 of P.L. 1992, c.162.

4. A member making an informational filing to the Board pursuant to (d) above shall:

i. Submit an original and seven copies of the filing and any related materials to the Board at the address specified at N.J.A.C. 11:21-1.3, and one copy to the Commissioner, if required by (d)1 above, at the New Jersey Department of Insurance, Office of the Life and Health Actuary, 20 West State Street, CN-325, Trenton, New Jersey, 08625, Attn: SEH Optional Benefit Rider Filing;

ii. Submit copies of the rider or riders which amend the standard group policy and certificate forms, which rider or riders shall include cross-references to the standard group policy and certificate provisions or sections and/or pages which are being modified;

iii. Specify whether the rider or amendment thereof is to be used in connection with standard health benefit Plans A, B, C, D, E or HMO and provide clear and conspicuous notice of such on the forms submitted for each rider;

iv. The standard group policy and employee certificate language shall not be altered, and the benefit modifications shall appear only on the rider or riders;

v. Submit copies of the standard group policy and certificate page or pages which are affected by the rider or riders marked to identify which provisions are affected by the rider or riders; and

vi. Submit copies of a certification signed by a duly authorized officer of the member that states clearly:

(1) *[Whether]* ***That*** the rider or amendment thereof increases ***a benefit or benefits*** *[or decreases the]* ***and does not include a decrease of any*** benefit*[s]* or ***a decrease in the*** actuarial value of standard health benefits Plan A, B, C, D, E, or HMO ***not approved by the Commissioner***;

(2) That the filing is complete and in accordance with all the requirements of this subsection ***and applicable New Jersey statutes and regulations***;

(3) That the member will offer the rider or amendment thereof to any small employer seeking to purchase the health benefits plan it modifies; and

(4) That a rate filing has been made with the Commissioner pursuant to N.J.A.C. 11:21-9.

5. The Board shall notify a member in writing of its determination of whether an informational filing is complete and in substantial compliance with this subsection, within 45 days of the Board's receipt of the member's submission of a rider or amendment thereof. If the Board does not notify a member of its determination with respect to an informational filing within 45 days of the Board's receipt of the submission, the informational filing shall be deemed complete.

i.-ii. (No change.)

iii. If the Board takes no action within 45 days of receipt by the Board of a member's submission of information requested by the Board to complete an informational filing, the filing shall be deemed to be in substantial compliance.

(e) A carrier may provide for alternative means of administering aspects of the standard forms which administration does not affect the benefits provided in the standard policy forms and riders. Administration includes, but is not limited to, administration of claims, COBRA, premium collection, and issue functions. The delegation of administrative functions shall be achieved by a separate contract between the carrier and/or the small employer, and a third party. Such arrangements shall not alter the standard group policy and certificate language.

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LABOR

(a)

DIVISION OF UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE FINANCING

Contributions, Records and Reports

Readoption with Amendments: N.J.A.C. 12:16

Proposed: January 3, 1995 at 27 N.J.R. 61(a).

Adopted: February 9, 1995 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: February 9, 1995 as R.1995 d.138, **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. 43:21-1 et seq.

Effective Date: February 9, 1995, Readoption
March 6, 1995, Amendments.

Expiration Date: February 9, 2000.

Summary Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed readoption with amendments was scheduled on January 30, 1995 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, was available to preside at the hearing and receive testimony. Although, no one appeared to give testimony on the proposed readoption with amendments, the hearing officer recommended that it be adopted with changes not in violation of N.J.A.C. 1:30-4.3 based on written comments received during the comment period. The public hearing record may be reviewed by contacting Deirdre L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, NJ 08625-0110.

Summary of Public Comments and Agency Responses:

Written comments were received from Kenneth E. Thompson, Jr., Chairman, State Taxation Committee, New Jersey Society of Certified Public Accountants.

COMMENT: With regard to N.J.A.C. 12:16-1.5, it is agreed that the worker should update any name changes or other corrections with the Social Security Administration. However, it is suggested that the New Jersey Department of Labor also update its records when the employer reports changes on the quarterly WR-30 report. It has been the experience of many employers that this is not being done.

RESPONSE: The Department currently updates its employee data for "Employer Report of Wages Paid" when the employer reports changes on the quarterly WR-30. However, the employer must submit a copy of the employee's social security card in order for such changes to be made. Submission of the employee's social security card is necessary to protect the integrity of the data.

COMMENT: N.J.A.C. 12:16-3.1(b)4 requires that a power of attorney be signed by a notary public. However, neither the IRS nor the Division of Taxation require a CPA's or attorney's signature to be notarized. Therefore, it is recommended that this requirement be eliminated. In addition, provision should be made to allow a faxed copy of an executed power of attorney.

RESPONSE: The signature of a notary public is necessary to authenticate the signature of the employer or duly authorized corporate officer and the signature of the representative receiving the power of attorney. In many cases, these individuals are not an attorney or a CPA. Also, the rule does not preclude the faxing of an executed power of attorney to the Division of UI/DI Financing provided it contains the specified requirements of a power of attorney.

COMMENT: The last sentence of N.J.A.C. 12:16-18:7-4.6(b) should be changed to add the word "reasonable" before remuneration. Officers of an S corporation may perform personal services and receive remuneration in the form of wages. In addition, officer shareholders may also receive dividend distributions. It is unreasonable to automatically consider all distributions (up to the SUI/TDI threshold) as remuneration for personal services since an officer may be working only part-time. Consideration should be given in those cases where an officer has wages from other employment. In addition, where an S corporation has more than one shareholder, the automatic reclassification of certain amounts of distributions as taxable wages may endanger the corporation's S election if such reclassification results in disproportionate distributions to the shareholders. It is recommended that Federal guidelines for unreasonably low compensation be used.

RESPONSE: The Department does not object to establishing a reasonable standard for determining the wages for benefit and contribution purposes for officers of S corporations. However, the reasonableness of such remuneration for services will be determined by facts and circumstances rather than the application of Federal guidelines.

COMMENT: N.J.A.C. 12:16-4.14 should be changed to treat section 125 cafeteria plans as nontaxable remuneration. The programs covered under Section 125 cafeteria plans are fringe benefits, which if provided by the employer with no contribution by the employee, would be nontaxable remuneration. In better economic times and particularly when health care costs were more affordable, many employers did in fact offer such fringe benefits at no cost to the employee. Some employers continue to do so. Therefore, employees receiving fringe benefits at no cost are not taxed, but those employees contributing to the cost of fringe benefits are taxed. Contributing employees are hurt twice—once when they contribute by reducing their remuneration, and second, when they are taxed on the reduction. Section 125 was enacted to eliminate the Federal income tax and social security tax on the remuneration reduction. In addition, it should be noted that if the employee ends up receiving no benefit from the remuneration reduction because he does not incur any covered costs during the year, his remuneration is not restored. Yet, under this rule, he would be taxed for a benefit he did not even receive.

RESPONSE: In cases where an employee has the option to accept cash or a fringe benefit such as a cafeteria plan, the State of New Jersey considers the benefit a form of remuneration and therefore taxable. A Section 125 plan allows an employee the option of purchasing health or some other qualified benefit. Since cafeteria plans involve a cash option, the Department believes that the employee has constructive receipt of the gross wage, and elects to direct a portion of the wages to purchase certain types of benefits. It is the Department's position that gross wages in their entirety are subject to the provisions of the law.

COMMENT: With respect to N.J.A.C. 12:16-5.2 and 13.7(a), it is recommended that the New Jersey Department of Labor support a statutory change to the quarterly due dates. It would be beneficial to employers to have the same due dates as the quarterly Federal Form 941, that is, the last day of the month following the close of the quarter.

RESPONSE: The Department would not oppose an interested party seeking such a statutory amendment.

COMMENT: The Summary explanation and N.J.A.C. 12:16-5.6(d)2 appear to contradict one another. The Summary explanation states that "the special rate does not apply if employment did not exist." The rule states that an assigned or special rate applies if during the previous three years there was at least one year with no employment. Clarification is needed to correct this apparent contradiction.

RESPONSE: The Department agrees that the Summary explanation and N.J.A.C. 12:16-5.6(d)2 appear to contradict one another. Accordingly, this rule is being revised on adoption for clarification.

COMMENT: There is no benefit to the employee to have a breakdown (as of each pay period) of all the components of his contribution for unemployment, disability, workforce development, and health care as required by N.J.A.C. 12:16-9.2(a). It would ease the recordkeeping burden of the employer to furnish the amount withheld in one sum.

RESPONSE: The Department believes that employees have the right to know what monies are being deducted from their pay. This information enables employees to compare the amounts reported on their pay stubs with their W-2 forms. It may also be used as evidence in an employee's claim for a refund of excess deductions filed with the New Jersey Department of Labor where the Division of Taxation is unable to use the information on the W-2 form to verify the employee's entitlement to a credit or refund based on an individual Gross Income Tax return.

COMMENT: It would be clearer and more appropriate to substitute the word "worker" for "his or her" throughout N.J.A.C. 12:16-10 in order to be gender neutral.

RESPONSE: The Department believes that the language in N.J.A.C. 12:16-10 is already gender-neutral, and that using the word "worker" does not make this rule clearer or more appropriate.

COMMENT: N.J.A.C. 12:16-11.1 should be N.J.A.C. 12:16-**10.1**.

RESPONSE: The Department acknowledges the typographical error at N.J.A.C. 12:16-11.1. The rule should be codified as N.J.A.C.

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12:16-10.1. Accordingly, the Department is revising the codification on adoption to correct this error.

COMMENT: N.J.A.C. 12:16-10.4 should include instances where the Division of Taxation rejects the employee's claim for excess deductions on the employee's New Jersey Gross Income Tax return.

RESPONSE: The Department acknowledges that there are instances where an employee's claim for credit or refund of excess deductions on an individual's New Jersey Gross Income Tax return is rejected by the Division of Taxation. Accordingly, the Department is revising the rule on adoption to reflect that fact.

COMMENT: N.J.A.C. 12:16-13.4(a)2 requires an affidavit from the employer. However, the IRS and the Division of Taxation will accept a letter from the employer. It is recommended that this rule be changed to require the same.

RESPONSE: The Department believes that a letter from an employer is insufficient to justify the reduction of assessed liability for unemployment and temporary disability contributions. The integrity and timeliness of the data reported by employers is essential to the accurate and timely payment of unemployment and temporary disability benefits. As a result, the Department will only accept a sworn statement from the employer providing the reasons why the report for the periods in question was not filed completely, accurately or by the due dates, and that there was no fraud or intentional disregard of the Department's reporting requirements.

COMMENT: Under N.J.A.C. 12:16-13.4(d), 15 days is not enough time for communication of the decision notification and payment to be made. It is recommended that a minimum of 30 days be allowed in all instances.

RESPONSE: To provide consistency with the time period for filing a request for reconsideration, the Department will revise the rule on adoption to provide for payment of all unabated penalty within 30 days of the date of notification of a penalty abatement decision.

COMMENT: N.J.A.C. 12:16-13.4(e) requires that a request for reconsideration be submitted within 30 days of receipt of the penalty abatement determination. It is recommended that an official United States postal service postmark be used as the receipt date.

RESPONSE: Even if a penalty abatement determination is received several days after mailing, the Department believes that 30 days from the date of the determination is still sufficient time to respond and request reconsideration.

Executive Order No. 27 Statement

The proposed readoption with amendments does not exceed standards or requirements imposed by Federal law. These rules establish requirements for employer contributions, records and reports under the New Jersey Unemployment Compensation and Temporary Disability Benefits Laws, N.J.S.A. 43:21-1 et seq. An explanation or analysis of the proposed readoption with amendments pursuant to Executive Order No. 27(1994) is, therefore, not required.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:16.

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

12:16-1.1 Ascertainment of worker's Social Security account number

Each employer shall ascertain the Social Security account number of each worker in employment subject to the Unemployment Compensation Law and list such number on the employer's records.

12:16-1.3 Evidence of application for Social Security account number

(a) If an employer has a worker engaged in employment who does not have a Social Security account number, the worker shall be requested to provide a receipt issued by an office of the Social Security Administration indicating that the worker has filed an application for an account number.

(b) (No change.)

12:16-1.4 (No change.)

12:16-1.5 Employer to inform worker in certain cases

An employer shall inform workers that they should apply at any Social Security district office or branch office with respect to replacement of a lost Social Security account number card, change of name because of marriage or otherwise, or correction of any inaccurate information given when applying for a Social Security account number.

12:16-2.1 Payroll records

(a) Every employing unit having workers in employment, regardless of whether such unit is or is not an "employer" as defined in the Unemployment Compensation Law, shall keep payroll records which shall show, for each pay period:

1. (No change.)

2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;

3.-5. (No change.)

12:16-2.2 Individual worker records

(a) Each employing unit shall maintain a record for each worker engaged in employment containing:

1. Full name, address, and Social Security account number;

2. Total remuneration paid in each pay period showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States, or the amount of remuneration actually received by the employee, whichever is the higher, and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;

3. An entry under the heading "special payments" of the amount of any special payments such as bonuses and gifts which have been paid during the pay period but which relate to employment in a prior period. The following shall be shown separately under this heading: cash payments, cash value of other remuneration, the nature of such payments, the period during which the services were performed for which special payments were payable;

4. The date hired, rehired and returned to work after temporary layoff. The date separated from employment and the reason for such separation;

5. Such information as may be necessary to determine remuneration on a calendar week basis.

6. (No change.)

12:16-2.4 Records retention

(a) All records required by these regulations shall be kept safe and readily accessible at the New Jersey place of business of the employing unit, unless it has been shown to the satisfaction of the Department that this would create an undue hardship. Such records shall at all reasonable times be open for inspection by authorized representatives of the Department and shall be retained for the current calendar year and for the four preceding calendar years.

(b) Once an employer becomes inactive, such employer shall notify the Controller or his or her designee as to the location of records necessary to determine eligibility of benefits for former employees. These records must be kept accessible for the subsequent six quarters. Thereafter, upon request of the employer, the Controller or his or her designee will grant permission for the records to be destroyed before expiration of the period for retention referred to in (a) above if all potential benefit claim issues have been finalized.

12:16-3.1 Power of attorney: requirements

(a) (No change.)

(b) The power of attorney document must contain the following:

1. (No change.)

2. The signature of the employer(s) or duly authorized corporate officers;

3. (No change.)

4. The signature of a notary public and the expiration date of commission;

5. (No change.)

(c) (No change.)

12:16-4.1 Remuneration defined

(a) (No change.)

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(b) The following remuneration issues are discussed in N.J.A.C. 12:16-4.2 through 4.14.

1.-6. (No change.)

7. Residuals, aliens;

8.-9. (No change.)

10. Temporary disability payments;

Recodify existing 10.-13. as 11.-14. (No change in text.)

12:16-4.2 Sick leave payments

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

(c) Those types of sick leave payments deemed benefits and therefore non-taxable are:

1. (No change.)

2. Benefits paid by an insurance carrier under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);

3. Benefits paid by a union under an approved Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);

4. Benefits paid by the employer under an approved self-insured Private Plan (see N.J.A.C. 12:16-4.10 for exceptions);

5.-7. (No change.)

12:16-4.3 Fringe benefit payments

(a) Fringe benefit payments which result in a direct benefit to the employee are generally taxable. Fringe benefit payments which take the form of a reimbursement or a health benefit are usually non-taxable.

(b) Taxable fringe benefits may include:

1. (No change.)

2. Separation/severance pay (if made under a contractual obligation or by custom);

3.-10. (No change.)

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

12:16-4.4 Section 401(k) Plans

Effective January 1, 1984, employer contributions to a cash or deferred arrangement under Section 401(k) of the Internal Revenue Code will be taxable to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution. In addition, employer contributions to an annuity contract covered under Section 403(b) of the Internal Revenue Code are taxable.

12:16-4.6 Officer's remuneration

(a) (No change.)

(b) An election to report under the Small Business Corporation provisions of Section 1368 of the Internal Revenue Code whereby corporate profits may be distributed as dividends to shareholders, commonly referred to as Subchapter S or 1120S corporations, shall not affect (a) above. *[Remuneration paid to officers of corporations having made such an election]* ***Reasonable remuneration as determined through facts and circumstances,*** shall be considered wages for benefit and contribution purposes ***when paid to officers of corporations having made such an election*** if the officers perform any services.

12:16-4.7 Back pay, residuals, aliens

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

12:16-4.8 Other remuneration

(a) Payments in kind for personal services such as meals, board, lodging or any other payment in kind received by a worker from an employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be remuneration paid by the employing unit for the purposes of determining eligibility for unemployment and disability benefits unless such payments represent reimbursement of travel and subsistence expenses incurred by the worker while away from home. This regulation shall have no bearing on the New Jersey Wage and Hour Laws and regulations or the U.S. Fair Labor Standards Laws and Regulations.

(b) The Controller or his or her designee shall determine or approve the cash value of such payments in kind, and such cash value shall be used in determining the wages payable or paid to such worker and in computing contributions due under the law.

(c) Money value for board and room, meals and lodging shall be treated as follows:

1. (No change.)

2. The Controller or his or her designee shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:

i. (No change.)

ii. Meals per day—20 percent of the current taxable wage base divided by 260;

(1) If less than 3 meals per day, the individual meals shall be valued as follows:

(A) Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)—30 percent of meals rate;

(B) Lunch (meals served between 11:00 A.M. and 4:00 P.M.)—30 percent of meals rate;

(C) Dinner (meals served between 4:00 P.M. and 12:00 midnight)—40 percent of meals rate; and

iii. (No change.)

(d) (No change.)

12:16-4.9 Tips and gratuities

If a worker receives gratuities and/or tips regularly in the course of employment from other than the employer, the gratuities and/or tips so received, if reported in writing to the employer, shall be considered taxable. The entire amount of charge tips are covered wages and are taxable to the maximum base even though the employee has not reported the entire amount to the employer. If the employee omits reporting tips, but the employer considers tips as part of an hourly rate for meeting the requirements of a Federal or State minimum wage law, it is considered that, in effect, tips have been reported to the employer to that extent and are therefore included as taxable wages.

12:16-4.14 Section 125 cafeteria plans

Employer contributions to a cafeteria plan arrangement pursuant to Section 125 of the Internal Revenue Code shall be taxable remuneration to the extent that the employee could have elected to receive cash in lieu of the employer's making the contribution.

12:16-5.1 Accrual as remuneration earned

(a) Employer's contributions shall accrue as remuneration is earned by workers in covered employment, but will not become due until payment or payment in kind is actually or constructively made.

(b) (No change.)

12:16-5.2 Due dates

(a) Employer's contributions shall be paid and contribution reports filed on a quarterly basis as follows:

Quarter Ending	Due Date
March 31	April 30
June 30	July 30
September 30	October 30
December 31	January 30

(b) Notwithstanding (a) above, the Controller or his or her designee is authorized to require an employer or employers to file contribution reports and pay contributions on a monthly or other basis when, in his or her discretion, it is considered necessary to do so.

12:16-5.3 Basis of contribution payments

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

12:16-5.4 First contributions of newly subject employer

(a) Except as to liability by election as provided in N.J.A.C. 12:16-14 (Election of Coverage), the first contribution payment of an employer who becomes newly liable in any calendar year shall be payable on or before the due date of the reporting period in which the subject status occurs.

(b) The first payment of such an employer becoming liable in the course of a calendar year shall include employer contributions with respect to all wages paid for employment from the first day of

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subjectivity in the calendar year. Subjectivity is defined as the employer's contribution date as determined by the Controller or his or her designee. (See N.J.A.C. 12:16-5.2 with respect to due dates.)

12:16-5.5 Installment payments

The Controller or his or her designee may permit the payment of liability in installments, but if any installment is not paid on or before the due date, the total amount of the unpaid liability shall become payable upon notice and demand by the Controller or his or her designee.

12:16-5.6 Voluntary payment of additional contributions

(a) A voluntary payment of an additional contribution must be made within 30 days after the date of mailing of the Form AC-174.1, Notice of Employer Contribution Rate, unless, for good cause, the date of payment has been extended by the Controller or his or her designee for not more than an additional 60 days or October 28, whichever is earlier. A request for an extension for good cause must be made in writing to the Controller or his or her designee within the initial 30 day period.

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

(d) The voluntary payment of additional contributions will not affect employers having one of the following:

1. (No change.)

2. *[An]* ***A specially*** assigned *[or special]* rate, determined by the employer's reserve balance and the unemployment trust fund reserve ratio, which rate is assigned *[where]* ***because*** during the past three calendar years, there has been, at least, one calendar year *[with respect to]* ***in*** which no contributions *[on wages for employment were paid.]* ***have been paid, even though there was covered employment.***

(e) (No change.)

12:16-5.7 Payment in guaranteed funds

The Controller or his or her designee may require payment in guaranteed funds of any amount required to be paid under the Unemployment Compensation Law of New Jersey, the Temporary Disability Benefits Law of New Jersey or rules or regulations promulgated thereunder, in any case in which he or she considers such type of payment necessary or desirable.

12:16-5.8 Seamen's wages

(a) (No change.)

(b) Notwithstanding any other provisions of N.J.A.C. 12:16-5.2 (Due Dates) and 12:16-5.3 Basis of contribution payments), if a work period as defined in (a) above began in one calendar quarter and ended in another calendar quarter, the total amount of wages for such work period may be reported for the calendar quarter in which such work period terminated, and contributions with respect to wages so earned paid accordingly.

12:16-5.9 Special fringe benefit agent accounts

(a) Special fringe benefit agents accounts may be approved by the Controller or his or her designee for the purpose of reporting payments such as vacation and holiday payments which have been negotiated in union-management contracts. Approval will only be given when it is shown that to do otherwise would create a hardship on the employer.

(b) (No change.)

(c) The primary employer will maintain its own individual rates based on his or her own employment experience and is responsible for:

1.-2. (No change.)

(d) Upon auditing and verifying the request, the Controller or his or her designee will make proper transfers of taxable wages and payments to the primary employer's account and issue a refund of any net credits outstanding. The refund is to be computed at the unemployment rate of the employer or the basic rate whichever is the lesser.

12:16-6.1 Application

(a) (No change.)

(b) Any non-profit organization, as described in (a) above which has been paying contributions under the Unemployment Compensation Law and wishes to make such an election may do so by filing a written notice of its intention no later than February 1 of any calendar year.

(c) (No change.)

(d) Upon an employer's written notice of its intention to elect the reimbursement option, the Controller or his or her designee shall supply the form on which the employer will request the reimbursement option, and the form shall be completed and returned to the Controller or his or her designee within 30 days from the date of mailing.

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

12:16-6.2 Financial security requirements

(a) A non-profit organization electing coverage under the reimbursement option may be required to file with the Controller or his or her designee within 30 days after the effective date of its election, a security bond or to deposit with the Controller or his or her designee monies or securities in an amount as determined by the Controller or his or her designee. This amount shall not be less than the organization's taxable wages for the preceding calendar year or the estimated taxable wages for the current calendar year, whichever is the greater, multiplied by the maximum unemployment insurance contribution rate in effect at the beginning of the calendar year.

1. If the security requirement is not met within the prescribed time limits, the previously issued conditional approval shall be withdrawn retroactively to its effective date, and the employer shall be liable for contributions as if such approval had not been issued.

2. The Controller or his or her designee may make a periodic review of the adequacy of the security furnished by the non-profit reimbursable employer to determine if any adjustment is necessary.

3. The Controller or his or her designee may deduct from any monies deposited under (a) above by a non-profit organization, or may sell the securities so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest or penalties.

4. The Controller or his or her designee may extend for good cause the applicable filing, deposit or adjustment period by not more than 90 days.

12:16-6.3 Termination

(a) If any non-profit employer fails to meet the security requirements as set forth in N.J.A.C. 12:16-6.2(a) the Controller or his or her designee may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for no less than 24 calendar months beginning with the first quarter in which such termination becomes effective.

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

12:16-6.4 Liability

(a) If a non-profit organization's election to make payments in lieu of contributions is terminated by the Controller or his or her designee, the non-profit organization shall remain liable for payments in lieu of contributions with respect to all benefits paid based on base year wages earned during the effective period of the election.

(b) (No change.)

12:16-7.1 Purpose

The purpose of this subchapter is to outline the conditions under which a governmental employer can choose the contributory option and under which a governmental entity or instrumentality using the contributory method of financing unemployment benefits may use the surplus amount remaining in an unemployment trust fund.

12:16-7.3 Application

(a) Any governmental entity or instrumentality which is or becomes subject to the Unemployment Compensation Law and wishes to elect to pay contributions rather than to reimburse the Unemployment Trust Fund for benefits paid may do so by filing a written notice of its intention not later than 120 days immediately following the date of its subjectivity (defined at N.J.A.C. 12:16-5.4(b)) or not later than 30 days from the date such entity or instrumentality is notified of its subjectivity, whichever is the later.

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(b) Any governmental entity or instrumentality which has been reimbursing the Unemployment Trust Fund and wishes to change its method of financing by electing to pay contributions as of January 1 of any year, may do so by filing a written notice of its intentions no later than February 1 of that same calendar year.

(c) The employer shall furnish the Controller or his or her designee with a copy of the ordinance, minutes, resolutions, or other substantiating document which confirms the election of the contributory option.

12:16-7.4 Finance

(a) On or before September 1 of each year, the Controller or his or her designee shall review the composite benefit cost experience of all governmental entities and instrumentalities electing to pay contributions and shall recommend a contribution rate for the following calendar year to the Commissioner.

(b) The Commissioner of Labor shall establish the contribution rate for the following calendar year after considering the recommendation.

(c) (No change.)

12:16-7.5 Use of surplus funds

(a) A governmental entity or instrumentality using the contributory method may use the surplus in its unemployment trust fund pursuant to the following conditions:

1. The governmental entity or instrumentality must request, in writing, permission to use a portion of the surplus funds. Upon written approval of the Commissioner or his or her designee, the governmental entity or instrumentality may proceed with its withdrawal of funds;

2.-3. (No change.)

(b) A governmental entity or instrumentality using the reimbursable method may not use the surplus in its unemployment fund for any purpose other than payment of benefits.

1. (No change.)

i. Surplus trust funds may be diverted only after the governmental entity or instrumentality has received written approval from the Commissioner or his or her designee.

12:16-7.6 Termination

(a) Any governmental entity or instrumentality which has been paying contributions for a minimum of two calendar years and wishes to change to making payments in lieu of contributions may do so by filing a written notice of its intention no later than February 1 of the calendar year for which the change is requested.

(b) When an election to pay contributions is terminated and the governmental entity or instrumentality resumes making payments in lieu of contributions, it may not revert to the contributory option for at least two full calendar years after such termination.

12:16-7.7 Liability

(a) (No change.)

(b) If the governmental entity or instrumentality election to pay contributions is terminated, the governmental entity or instrumentality shall remain liable for all contributions incurred during the period of its election to pay contributions.

(c) As of the effective date of the termination of an election to pay contributions, a governmental entity or instrumentality shall become liable to make payments in lieu of contributions.

12:16-8.1 Establishment

(a) (No change.)

(b) The group account will be established as of the first day of any calendar quarter and will remain in effect for not less than two calendar years unless otherwise determined by the Controller or his or her designee.

(c) The request for establishment of a group account shall be filed by the designated group agent listing the names and New Jersey registration numbers assigned by the Controller or his or her designee to the employers seeking group membership. The request shall be accompanied by consent documents executed by each applicant for membership authorizing the group agent to act in its behalf for the group account. The employers shall furnish the Controller or his or her designee with a copy of the ordinance, minutes, resolutions or other substantiating document which confirms the intent of the employer to become a member of the group.

(d) In establishing the group account, the Controller or his or her designee may modify or waive the security required of any of the group members and in lieu thereof the Controller or his or her designee may establish a security requirement of the group as a whole.

12:16-8.3 Termination

(a) (No change.)

(b) With the approval of the Controller or his or her designee, membership in the group will be terminated for any member at the request of that member or at the request of the group agent. The membership will be terminated at the end of the calendar quarter in which the request for termination is received.

12:16-8.5 Dissolution

(a) Request for disssolution of a group account will require the consent of two-thirds of its active members. The effective date of dissolution will be determined by the Controller or his or her designee.

(b) The group agent must advise the Controller or his or her designee of the ratio of each member's liability to the total liability of the group, if there is any group liability outstanding at the time of dissolution. Such liability will be due immediately from each employer in accordance with the balance of group liability remaining in its individual account as determined by the group agent.

(c) A group account may be dissolved by the Controller or his or her designee for reporting or payment delinquency, failure to post required bond or other security, or similar good cause.

(d) Except as required herein, the Controller or his or her designee is not a party to any agreement between the group, the group agent or any of its members.

12:16-9.1 Workers' contribution-trust fund

(a) (No change.)

(b) In withholding workers' contributions from their wages and in paying any contributions to the Unemployment Compensation Fund, the State Disability Benefits Fund, the Workforce Development Partnership Fund, and the Health Care Subsidy Fund, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(c) (No change.)

(d) Such account shall be kept posted up to date by the employer so as to show at all times the amount withheld from workers, the amount of each remittance to the Controller or his or her designee, and the amount of workers' contributions withheld but not remitted to the Controller or his or her designee.

12:16-9.2 Evidence of amounts withheld furnished workers

(a) Every employer, at the time of making each payment of wages, shall furnish to each of its workers a statement showing clearly the total amount deducted for contributions for the Unemployment Compensation Fund, the State Disability Benefits Fund, the Workforce Development Partnership Fund, and the Health Care Subsidy Fund.

(b) The statements shall be such as can be delivered to workers to enable them to determine whether the total amount of their contributions is correctly computed.

(c) A notation on a paycheck or a pay envelope showing the total wages and, as a separate item, the amount deducted for contribution to the Controller or his or her designee for the said funds will constitute compliance with the provisions of this section.

12:16-9.3 Reporting and paying workers' contributions

(a) Every employer shall include on its contribution report the amount of contributions due and payable on behalf of its workers.

(b) Every contribution report shall be accompanied by a remittance for the amount of both the employer contributions and the contributions payable by the employer on behalf of its workers.

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SUBCHAPTER 10. EXCESS WORKER DEDUCTIONS

12:16-*[11.1]***10.1*** Excess disability deductions

If a worker receives wages from more than one employer, and the sum of the contributions required and deducted from his or her wages and deposited in the State Disability Benefits Fund, plus the contributions, if any, required and deducted from his or her wages, toward the costs of benefits under one or more plans approved under N.J.S.A. 43:21-33, or the sum of all contributions required and deducted from his or her wages toward the costs of benefits under two or more such private plans, if covered only by said plans, exceeds an amount equal to one-half of one percent of the taxable wage base in any calendar year, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey State Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

12:16-10.2 Excess unemployment, health care and workforce deductions

(a) If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the State Unemployment Compensation Fund or in a trust fund for the purpose of repaying benefits, exceeds five-eighths of one percent of the taxable wage base for periods prior to January 1, 1993 and after December 31, 1997 or six-tenths of one percent for periods beginning January 1, 1996 and ending December 31, 1997, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey State Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

(b) If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the Health Care Subsidy Fund exceeds six-tenths of one percent for periods beginning January 1, 1993 and ending December 31, 1995, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

(c) If a worker receives wages from more than one employer and the sum of the contributions required and deducted from his or her wages and deposited in the Workforce Development Partnership Fund exceeds one-fortieth of one percent of the taxable wage base for periods beginning January 1, 1993 and ending December 31, 1997, the worker shall be entitled to a credit in the amount of the excess thereof against his or her New Jersey Gross Income Tax, if he or she makes a valid claim therefor with the Division of Taxation.

12:16-10.3 Wage deduction statements

(a) Employers shall furnish to workers the following information on Form W-2:

1. The employer registration number assigned by the Controller or his or her designee;

2. The private plan number, if any, assigned by the Bureau of Private Plans; and

*[4.]***3.*** Any amount deducted in accordance with State law.

(b) (No change.)

12:16-10.4 Refund of excess deductions

Any worker who meets the requirements of N.J.A.C. 12:16-10.1 and 10.2 but is not required to file a New Jersey Gross Income Tax return ***or whose claim has been rejected by the Division of Taxation***, may apply to the Controller or his or her designee for a refund of any excess unemployment, disability, health care and/or workforce contributions made from his or her wages if he or she makes a claim therefor within two calendar years after the end of the calendar year in which the wages were paid.

12:16-10.5 Assessment for governmental reimbursable employers

(a) All governmental entities who repay benefits in lieu of contributions shall be notified of the applicable portion to be repaid to the Controller or his or her designee from their trust funds for the amounts of any excess unemployment insurance deductions either refunded to their employees or credited to their employees' New Jersey State Gross Income Tax.

(b) Payment to the Controller or his or her designee shall be made within 30 days of the date of mailing of the notice. Payments received after the 30 day period shall be liable to the assessment of interest as specified in N.J.S.A. 43:21-14(b).

SUBCHAPTER 11. SPECIAL EMPLOYMENT SITUATIONS

12:16-11.1 Real estate managing agents

(a) An individual working for an agent of a property owner is an employee of the property owner, if the agent operates on a fee plus expenses basis. This type of arrangement gives the agent a fee plus reimbursement of all operating expenses on a dollar for dollar basis.

(b) An individual working for an agent of a property owner is an employee of the agent, if the agent operates on a flat fee basis. This type of arrangement gives the agent a flat fee rather than reimbursing expenses on a dollar for dollar basis.

12:16-13.1 Reports required

Every employer shall file such contribution and statistical reports, and reports of wages paid to individual workers as may be required by the Controller or his or her designee, and every employing unit shall file such reports as may be required by the Controller or his or her designee with respect to employment as shall be necessary to determine its status under the law.

12:16-13.3 Penalty for failure to file reports

(a) The penalty prescribed by N.J.S.A. 43:21-14(a) for delinquency in filing reports (except for such reports as may be required under N.J.S.A. 43:21-6(b)(2) of the Unemployment Compensation Law) shall be computed for each report from and including the day after such report is due through the post mark date on the envelope in which the report is received by the Controller or his or her designee.

(b) If an employer or employing unit who has been granted an extension of time fails to file its report on or before the termination of the period of extension for the filing thereof, the penalty for failure to file shall be payable from the original due date as if no extension had been granted.

12:16-13.4 Penalty abatement

(a) The Controller or his or her designee may remit or abate unpaid penalties in whole or in part for good cause if the employer fulfills the following requirements:

1. (No change.)

2. The employer submits an affidavit together with documentation providing a reason(s) why the report(s) for the period(s) in question were not filed completely, accurately or by the due date(s), and that there was no fraud or intentional disregard of the reporting requirements of the Department. All evidence and documentation in support of the employer's request must be submitted with the affidavit;

3.-4. (No change.)

(b) The Department will consider the following factors in evaluating a request for penalty abatement:

1. The reason(s) for the late, inaccurate or incomplete filing;

2. The number of quarters involved;

3. The effect the late, inaccurate or incomplete filing had on the operations of the Department;

4. The employer's history of compliance;

5. Previous request(s) for abatement; and

6. Other factors brought to the attention of the Department by the employer.

(c) Penalty abatement consideration will be based upon the written submissions of the employer and the records on file in the Department, unless it is determined that a material and controlling dispute of fact exists.

(d) When abatement is granted for only a part of the penalty, the employer must make payment of all unabated penalty within *[15]* ***30*** days of the date of notification of the decision of the Controller or his or her designee. If this condition is not met, the abatement may be rescinded.

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(e) Request for reconsideration must be submitted within 30 days of receipt of the penalty abatement determination. The request must show the following:

1. New information not presented in the original application that may change the outcome, along with reasons why the information was not previously submitted; or

2. That material previously submitted was not considered.

(f) All decisions made by the Controller or his or her designee concerning penalty abatement shall be the final administrative decision of the Department. An appeal of a final decision shall be made to the Appellate Division of the New Jersey Superior Court.

12:16-13.5 Wages paid reportedly current

(a) The Controller or his or her designee may require any employer to report wages paid to every worker employed within seven days from the date of payment thereof, if the Controller or his or her designee deems it necessary for the effective administration of the Unemployment Compensation Law and the Temporary Disability Benefits Law. Failure to comply will subject such employer or employing unit to the penalties prescribed in N.J.S.A. 43:21-16(b)(2).

(b) (No change.)

12:16-13.6 Reporting wages, remuneration and other information

(a) An employer or employing unit shall furnish the record of wages and remuneration paid to a worker, and such other information as may be required under the provisions of N.J.S.A. 43:21-6(b).

(b) (No change.)

12:16-13.7 Wage reporting

(a) For the calendar quarter commencing July 1, 1984 and each quarter thereafter, each employer shall file a report with the Controller or his or her designee within 30 days after the end of each quarter in a form and manner prescribed by the Controller or his or her designee listing the name, social security number and wages paid to each employee and the number of base weeks worked by the employee during the calendar quarter. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns.

(b) Any employer who fails, without reasonable cause, to comply with the reporting requirements of this section shall be liable for a penalty in the following amount for each employee who is not included in the report or for whom the required information is not accurately or timely reported:

1.-2. (No change.)

3. For the third failure of any quarter, in any eight consecutive quarters, and for any failure in any eight consecutive quarters which failure is subsequent to the third failure, $25.00 for each employee.

(c) The following pertains to magnetic media reporting:

1. For all calendar quarters subsequent to the quarter ending December 31, 1994 all employers who would report in excess of 250 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Controller or his or her designee.

2. For all calendar quarters subsequent to the quarter ending December 31, 1995 all employers who would report in excess of 100 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Controller or his or her designee.

3. For all calendar quarters subsequent to the quarter ending December 31, 1994, all third party payroll processors who on a quarterly basis generate and file with the New Jersey Department of Labor Form WR-30 "Employer Report of Wages Paid," and Form UC-27, "Quarterly Contribution Report," together with payment of contributions liability shall file the WR-30 reports for all such clients via magnetic media directly to the Division of Unemployment Insurance/Disability Insurance Financing in a form and manner specified by the Controller or his or her designee, if the aggregate number of employees for all clients processed and so reported by the third party exceeds 100 in any calendar quarter.

4. Employers or third-party payroll processors may have the requirements in (c)1 through 3 above waived or extended for good cause as defined in N.J.A.C. 12:19-1.2 upon written application for waiver or extension to the Controller or his or her designee.

5. (No change.)

12:16-13.8 Suspension of business

(a) Where a suspension of the business operations of any employer occurs in this State, such employer shall give advance notice thereof to the Controller or his or her designee. In the event that it is impracticable to give such advance notice, the employer shall notify the Controller or his or her designee within 48 hours after such suspension.

(b) Such notice shall be filed with the Controller or his or her designee and shall contain the following information:

1.-6. (No change.)

(c) (No change.)

12:16-13.9 Transfer of business

(a) When a transfer, in whole or in part, of the business operations of any employer occurs in this State it shall be the responsibility of the acquiring unit to notify the Controller or his or her designee of such acquisition within 30 days of the transfer.

(b) The successor shall supply the Controller or his or her designee with the name, address and, if possible, the registration number of the acquired unit.

(c) This notification, if possible, should be made on Form UC-1; otherwise, a letter will be acceptable.

12:16-13.10 Withdrawal to inactive status

(a) An employer who is not eligible for termination of coverage pursuant to N.J.S.A. 43:21-8 may have its account withdrawn to an inactive status upon written application to the Controller or his or her designee.

1. (No change.)

12:16-14.1 Application for election

(a) An employing unit desiring to elect to become subject to the Unemployment Compensation and Temporary Disability Benefits Laws may request from the Controller or his or her designee forms for voluntary election to become an employer, or to extend its coverage to individuals performing services which do not constitute employment.

(b) The forms for voluntary election to become an employer under the Unemployment Compensation and Temporary Disability Benefits Laws or to extend coverage shall be prescribed by the Controller or his or her designee.

(c) The employing unit making application for voluntary election of subject status must, at the time of making such application, be exempt and have at least one individual, not a member of his or her immediate family, in employment who would be affected by the voluntary election.

12:16-14.2 Date of filing

The date of filing a voluntary election shall be deemed to be the date on which the written election, signed by a legally authorized individual, is received by the Controller or his or her designee.

12:16-14.4 Election subject to approval

(a) Any written election for a period prior to the date of filing shall become binding upon approval by the Controller or his or her designee, and notification of the approval shall be forwarded to the employer.

(b) If for any reason the Controller or his or her designee does not approve such voluntary election, the employing unit shall be notified of the reasons why such approval was withheld.

12:16-15.1 Application for a voluntary joint account

(a) Two or more employers desiring to have their accounts joined for the purpose of N.J.S.A. 43:21-7 of the Unemployment Compensation Law may request from the Controller or his or her designee forms for making application therefor.

(b) (No change.)

(c) The form of application for the establishment of a joint account shall be prescribed by the Controller or his or her designee.

(d) (No change.)

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12:16-15.2 Eligibility for a voluntary joint account

(a) A joint account shall be established only after it has been shown to the satisfaction of the Controller or his or her designee that the conditions of eligibility have been met as indicated below:

1. The employers desiring to have their accounts joined shall have filed with the Controller or his or her designee Form UC-38 Application for Establishment of a Joint Account not later than May 31 of such calendar year;

2. (No change.)

3. None of such employers or their predecessors, if any, were participating in another joint account throughout the preceding calendar year;

4. (No change.)

5. Such employers intend to maintain the common ownership or control for at least three calendar years and will notify the Controller or his or her designee promptly of any change in such ownership or control; and

6. (No change.)

12:16-15.3 Effective date: duration of a voluntary joint account

(a) A voluntary joint account shall be established only as of the first day of any calendar year and shall become effective after approval by the Controller or his or her designee.

(b) The voluntary joint account so established shall remain in force for not less than three full calendar years, subject to the provisions of N.J.A.C. 12:16-15.5 (Modifications) and 12:16-15.6 (Dissolution).

(c) Contribution rates based on such voluntary joint accounts shall become effective for the fiscal year which begins on the first day of July of each calendar year following the approval of the application.

12:16-15.4 Maintenance of a voluntary joint account

(a) Separate accounts shall be maintained for each employer participating in a voluntary joint account.

(b) (No change.)

(c) Such joint rate shall be the contribution rate for each employer participating in the voluntary joint account.

12:16-15.5 Modification of a voluntary joint account

(a) Another employer may be added to an existing voluntary joint account if all the employers involved jointly make application for a new voluntary joint account and comply with the requirements of this subchapter.

(b) If during any calendar year an employing unit participating in a voluntary joint account ceases to be an employer under the New Jersey Unemployment Compensation Law, or ceases to be owned or controlled by the same interests, such employing unit shall be separated from the voluntary joint accounts as of the first day of such calendar year, but shall continue for the current fiscal year with the contribution rate computed under the voluntary joint account.

12:16-15.6 Dissolution of a voluntary joint account

(a) Voluntary joint accounts may be dissolved as of January 1 of any calendar year under any one of the conditions set forth below:

1. If at any time the Controller or his or her designee finds that with respect to such calendar year any one of the eligibility conditions set forth in N.J.A.C. 12:16-15.2 (Eligibility) with respect to employment, contributions, interest, penalties and assessments, and ownership or control, no longer exists and that it would not be in the best interest of the State to continue the voluntary joint account; or

2. Upon written application of one or more of the employers whose accounts have been joined, if such application is filed with the Controller or his or her designee on or before January 31 of such calendar year and the Controller or his or her designee finds that the voluntary joint account has been in existence for at least three calendar years. The form of application for dissolution of a voluntary joint account shall be prescribed by the Controller or his or her designee.

12:16-16.1 Unemployment compensation coverage

(a) Every employer subject to the provisions of the Unemployment Compensation Law of New Jersey (including every employer who has elected to become subject pursuant to N.J.S.A. 43:21-8) shall post and maintain printed notices to its employees informing them that they are covered by the Unemployment Compensation Law of New Jersey, and that the employer has been so registered by the Controller or his or her designee.

(b) Such notices shall be displayed in prominent and conspicuous places at each worksite.

(c) No such notice shall be posted by any person, employing unit or employer who has not complied with the provisions of the Unemployment Compensation Law and to whom an unemployment compensation registration number has not been assigned by the Controller or his or her designee, or who, in accordance with the provisions of the law, has ceased to be an employer as defined in the law.

12:16-16.2 Termination of subject status

Every employing unit which has ceased to be a subject employer, pursuant to the provisions of N.J.S.A. 43:21-8 of the Unemployment Compensation Law, shall post and maintain notice of such fact on forms supplied by the Controller or his or her designee, in order to inform its workers that they are not in covered employment and are not liable for contributions.

SUBCHAPTER 17. (RESERVED)

12:16-18.1 Transfer of predecessor's whole experience

(a) Upon receipt of notification that a predecessor employer has transferred its organization, trade or business, or substantially all its assets to a successor in interest, the Controller or his or her designee shall transfer the employment experience of the predecessor employer to the successor in interest if the employment experience of the predecessor with respect to the organization, trade or business, or assets may be considered indicative of the anticipated employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller or his or her designee.

(b) Unless the predecessor employer was owned or controlled, directly or indirectly, by the successor in interest, or the predecessor employer and the successor in interest were owned or controlled directly or indirectly, by the same interest or interests, the transfer of the employment experience of the predecessor shall not be effective if such successor in interest, within four months of the date of such transfer of the organization, trade or business, or assets, or thereafter upon good cause shown, files a written notice protesting the transfer of employment experience of the predecessor employer.

12:16-18.2 Rate following transfer of predecessor's whole experience

(a) Any employer who acquires the organization, trade or business, or assets of another employer, shall continue to pay contributions at the rate currently assigned, for the period from the date of acquisition to the following July 1.

(b) Any employer who acquires the organization, trade or business, or assets of another employer, and the employment experience of the predecessor employer represents substantially all of the employment experience of the successor in interest and may be considered indicative of the future employment experience of the successor in interest, shall have its contribution rate determined by combining the employment experience of the predecessor employer and successor in interest as they appear on the records of the Controller or his or her designee. Such rate shall be in effect for the period from the date of acquisition to the following July 1.

(c) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade or business, or assets of an employer shall be assigned the contribution rate of the predecessor employer for the period from the date of acquisition to the following July 1.

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(d) Any employing unit which becomes a subject employer by virtue of acquiring the organization, trade or business, or assets of two or more employers shall be assigned the rate of the predecessors, if they have the same rate. If the predecessors do not have the same rate, the successor employer shall be assigned a contribution rate based upon the combined employment experience of the predecessors as of the date of acquisition to the following July 1.

12:16-18.3 Transfer of predecessor's experience in part

(a) A predecessor employer and successor in interest may jointly make application, on Form UC-47 (Joint Application for Transfer of Employment Experience), for transfer of that portion of the employment experience relating to that part of the organization, trade or business, or assets acquired by the successor in interest. The employment experience will be transferred if the following conditions are met:

1. Either the predecessor or successor in interest shall report the transfer and acquisition and its intention to apply for a partial transfer of the employment experience within four calendar months after the date of transfer and acquisition.

2. Both the predecessor and successor in interest complete and file form UC-47 within 30 days from the date of mailing thereof.

3. The employment experience of the predecessor employer with respect to the portion of the organization, trade or business, or assets to be transferred may be considered indicative of the future employment experience of the successor in interest. The basis for this determination shall be the examination of the files and records in the Department's possession, unless the successor provides evidence to the contrary, which would be subject to confirmation by the Controller or his or her designee.

(b) The predecessor and successor in interest may choose to have the employment experience transferred either on an actual or percentage basis.

1. Under the first option, the actual portion of the organization, trade or business, or assets which have been transferred is both distinguishable and identifiable and can be supported through the furnishing by the predecessor and successor in interest of all of the information covering contributions, annual payrolls, benefit charges and other data necessary to make the transfer.

2. Under the second option, the portion of employment experience to be transferred, which is both distinguishable and identifiable from the predecessor to the successor in interest, is determined by taking a percentage of the number of employees transferred from the predecessor to the successor in interest as of the date of acquisition.

3. Only one of the options may be selected to transfer contributions, benefit charges, three and five year taxable wage average and final experience rate from the predecessor to the successor in interest.

12:16-18.4 Rate following transfer of predecessor's experience in part

(a) A predecessor employer who continues to operate after the transfer of a portion of employment experience to a successor shall continue to use the rate assigned for the period from the date of transfer to the following July 1.

(b) The transfer of a portion of employment experience from a predecessor to a successor in interest will become effective on the date of acquisition, provided that the successor in interest is not a subject employer on its own. If the successor in interest is a subject employer on its own, the transfer will become effective the following July 1.

12:16-19.1 Employer's account charged; notice

Benefits paid shall be entered and charged against the account of the employer to whom such determination relates, and when the benefit payment is made, the Department shall send notification to the employer against whose account the benefits are to be charged on a quarterly basis.

12:16-19.2 Annual summary statement

All employers shall be furnished an annual summary statement of benefits charged to their accounts.

12:16-22.2 Application

(a) (No change.)

(b) The form to be used for application for hearing is entitled "Request for Hearing" and is normally supplied with the written confirmation letter sent by the Chief Auditor at the conclusion of the Audit. If the purpose for requesting the hearing did not start from an investigation conducted by a representative of the Chief Auditor, the "Request for Hearing" form may be secured by making a written request for the form to the Chief Auditor.

(c) (No change.)

12:16-22.5 Witness fees and mileage allowances subpoena ad testificandum

(a) There shall be allowed witness fees for each day of attendance at a hearing in response to a subpoena ad testificandum and mileage from the residence of the witness to the place of hearing and return.

(b) The fees and mileage shall be determined by the Controller or his or her designee.

Recodify existing 12:16-22.5 as 12:16-22.6 (No change in text.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service
Overweight Oceanborne Containers
Adopted Amendments: N.J.A.C. 13:18-1.5 through 1.9, 1.12 and 1.15

Proposed: June 20, 1994 at 26 N.J.R. 2521(a).

Adopted: February 3, 1995 by Richard Kamin, Director, Division of Motor Vehicles.

Filed: February 9, 1995 as R.1995 d.139, **without change**.

Authority: N.J.S.A. 39:2-3 and 39:3-84.

Effective Date: March 6, 1995.

Expiration Date: March 30, 1995.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the previously cited edition of the New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles regarding the proposal.

Six interested parties submitted comments to the Division of Motor Vehicles regarding the proposal: Steamship Operators Intermodal Committee; Port Authority of New York and New Jersey (separate comments received from the Director of the Port Department and the manager of the Intermodal Development Division of the Port Department); Cho Yang (America) Inc.; Zim-American Israeli Shipping Co., Inc.; Richmond Transportation International, Inc.; New Jersey Motor Truck Association (Bi-State Harbor Carriers Conference). The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 225 E. State Street, 9th Floor, Trenton, N.J. 08666.

The comments touched upon numerous points dealing primarily with N.J.A.C. 13:18-1.8, which are summarized below, together with the Division's responses.

COMMENT: Several commenters requested that in lieu of permitting only containers bearing the seal of the United States Custom Service, the change be made to allow containers to bear the "original import shipper's seal whose number is listed on the original import documentation." One commenter indicated that the proposal is a practical response to interport competition, given the lack of uniform national legislation that would limit the weight of all trucks, including marine container units, using public roadways. The commenter said that other states, including Maryland, Pennsylvania and Virginia, are "capitalizing on the overweight issue by using their tolerance for overweight units, currently allowed under federal law, as an effective marketing service to foreign shippers." The commenter also noted that permitting all shipper-sealed containers or carrier-sealed containers, as well as customs-sealed containers, "would eliminate unequal treatment between Customs sealed loads and other

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sealed loads—and would be especially beneficial to New Jersey receivers whose loads will have cleared customs at our port prior to their final receipt."

RESPONSE: The Division recognizes the economic impact on the industry and recognizes that other states treat containers with shipper's seals differently than New Jersey does, but changing the regulation to include shipper's seals, not just customs seals, would be a material change to the regulation, requiring a formal amendment. Accordingly, extending the regulation to grant permits to overweight containers bearing shipper's seals is not now granted but will be taken under consideration in future rulemaking.

COMMENT: One commenter recommended a "blanket permit program for a limited number of highways that provide primary access for New Jersey's northeastern public and privately owned port facilities," and included a map of the roads sought to be utilized on a pre-approved, "blanket" basis as a means to protect the regional trucking community and individual truckers from being unfairly penalized for overweight or unbalanced loads.

RESPONSE: The State cannot allow overweight loads to travel on a section of the highway system without restriction. By granting or denying permits to these loads, the State maintains its discretionary control in view of changing roadway and traffic conditions.

COMMENT: One commenter also indicated that, "since export containers are loaded in the United States they should not be included within this proposal."

RESPONSE: Such containers are not included in the proposal.

COMMENT: Another commenter "strongly recommend[ed] that the Division consider the inclusion of export container shipments in the permit program."

RESPONSE: The Division does not wish to extend the permit process to overweight containers which originate in New Jersey. The weight of containers packed in the New Jersey is governed by and complies with Federal regulations.

Executive Order No. 27 Statement

23 U.S.C. §127 establishes the Federal overall gross maximum weight limitation of 80,000 pounds for vehicles using the system of interstate and defense highways. The Federal legislation sets forth certain exceptions:

... Provided, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws ...

Section 127, therefore, authorizes exceptions to the maximum gross weight limitations for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws. N.J.S.A. 39:3-84(d) which establishes an overall gross maximum weight limitation of 80,000 pounds consistent with 23 U.S.C. §127 provides in part:

The Director of the Division of Motor Vehicles may promulgate rules and regulations, including the establishment of fees, for the issuance, at his discretion and if good cause appears, of a special written permit authorizing the applicant:

(1) To operate or move a vehicle or combination of vehicles or special mobile equipment, transporting one piece loads that cannot be dismembered, dismantled or divided in order to comply with the weight limitations set forth in this act ...

In order for the Director to exercise discretion to issue a special written permit under N.J.A.C. 13:18-1 authorizing an exception to the 80,000 pound maximum weight limitation, "good cause" and "one piece loads that cannot be dismembered, dismantled or divided in order to comply with the weight limitation" are required. These amendments pertaining to permits for overweight vehicles are therefore consistent with Federal law and do not impose requirements which exceed Federal standards.

Full text of the adoption follows:

13:18-1.5 Fees

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

(d) No fee shall be imposed for a permit issued to a vehicle owned or operated by the United States, the State, any government or local government subdivision, agency or instrumentality thereof.

13:18-1.6 Liability for damage; application requirements; insurance

(a) Any person driving any vehicle, object or contrivance subject to and in excess of statutory weight limitations and permit requirements upon any highway or highway structure, whether temporary or permanent, shall be liable for all damage which the highway or highway structure may sustain as a result of any such operation, driving or moving of such vehicle, object or contrivance.

1. Such damage may be recovered in a civil action brought by the authorities in control of such highway or highway structure.

2. The fact that the vehicle, object, or contrivance causing the damage was being operated, driven or moved within the authorized size and weight limitations or permitted by a special permit as provided by law, shall not be accepted as a defense to any action brought as provided in this subsection if damage is caused to highways or structures posted for weight limits less than those set forth by statute.

3. Whenever the driver is not the owner of such vehicle, object or contrivance, but is so operating, driving or moving with the express or implied permission of the owner, then the owner and the driver shall be jointly and severally liable for any damage.

Recodify exising (a) and (b) as (b) and (c) (No change in text.)

13:18-1.7 Exceptions; insurance certificate requirement

The filing of an insurance certificate shall not be required in the case of an oversize permit issued for the operation of a private utility trailer, house-type trailer, or semitrailer. In such cases the provisions of the Security-Responsibility Law will apply.

13:18-1.8 Permits generally

(a) No permit shall be valid:

1. For the operation of a vehicle or combination of vehicles transporting a load which can be dismantled, reduced in quantity or feasibly loaded in such a manner so that the weight and dimensional limitations prescribed in Title 39 of the Revised Statutes are not exceeded, except for sealed containers of the type commonly used for the conveyance of freight transport in international ocean-going commerce, bearing the seal of the United States Customs Service, where the per-axle weight limitation does not exceed 38,000 pounds for one tandem axle unit only in a tractor/semi-trailer combination;

2. On any toll road;

3. Unless there is compliance with all applicable requirements of this subchapter and pertinent statutory provisions.

13:18-1.9 Overweight permits

(a) An overweight permit shall not be valid:

1. For the operation of a vehicle registered or required to be registered in New Jersey unless the vehicle is registered in this State at the maximum registration weight permitted under N.J.S.A. 39:3-20.

2. (No change.)

(b) (No change.)

13:18-1.12 Warning signs

(a) (No change.)

(b) The term "WIDE LOAD" or "OVERSIZE LOAD" shall be displayed on the sign in black letters of 10 inches minimum height on a yellow background.

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

13:18-1.15 Oversize private utility or house-type trailer or semitrailer

(a) A permit shall not be valid for the operation of any private utility or house-type trailer or semitrailer, on its own wheels, with a width of more than 14 feet.

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

(d) If the trailer or semitrailer is not more than 10 feet wide, the towing vehicle shall have a capacity of ¾ ton or more, and if the trailer or semitrailer is more than 10 feet wide, the towing vehicle capacity shall be 1½ tons or more.

(e) A private utility or house-type trailer or semitrailer in excess of 12 feet in width, or its towing vehicle, shall be equipped with and have in operation two sway control devices between the towing vehicle and the towed vehicle.

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(a)

DIVISION OF CONSUMER AFFAIRS OFFICE OF WEIGHTS AND MEASURES

Type Approval; Fees for the Registration, Inspection and Testing of Weighing and Measuring Devices

Adopted Amendment: N.J.A.C. 13:47B-1.5
Adopted New Rules: N.J.A.C. 13:47F

Proposed: December 19, 1994 at 26 N.J.R. 4966(a).
Adopted: February 3, 1995 by William J. Wolfe, State Superintendent, Office of Weights and Measures.
Filed: February 9, 1995 as R.1995 d.140, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 51:1-61, 51:1-124; P.L. 1994, c.60, Sections 6 through 13.
Effective Date: March 6, 1995.
Expiration Date: February 10, 1999, N.J.A.C. 13:47B; March 6, 2000, N.J.A.C. 13:47F.

Summary of Public Comments and Agency Responses:
Written comments received during the comment period, which ended on January 18, 1995, are summarized and responded to hereinafter. Comments were received from:

1. Jerry Heater, Superintendent, Sussex County Dept. of Weights and Measures
2. John Wassberg, Superintendent, Bergen County Dept. of Weights and Measures
3. Sgt. Thomas Centofanti, Florence Township Police Dept., Traffic Safety Unit
4. Justin Georgetti, Chief of Police, Township of Washington Police Dept.
5. Charles W. Walker, Jr., Chief of Police, Pitman Police Dept.
6. Sgt. Anthony S. Cook, Traffic Safety Officer, Township of Monroe Police Dept.
7. Richard O. Mattoon II, Chief of Police, Borough of Peapack and Gladstone Police Dept.
8. Armando T. DiMuzio, Chief of Police, Ringwood Borough Police Dept.
9. Sgt. Brian Bistromowitz, Traffic Officer, Borough of Butler Police Dept.
10. Anthony J. Scutti, Chief of Police, Westfield Police Dept.
11. Andrew F. Parker, Superintendent, Camden County Dept. of Weights and Measures
12. William J. Ostrander, Chief of Police, Haddonfield Boro Police Dept.
13. Fred J. Sacco, Executive Vice President, Fuel Merchants Association of New Jersey
14. Vincent A. Kulik, #158, Traffic Safety Officer, Township of Essex Fells Police Dept.
15. Major Michael E. Reich, Sussex County Sheriff's Office, Bureau of Law Enforcement
16. Edward Weber, Traffic Officer, Waldwick Police Dept.
17. Douglas R. Marvin, Lieutenant, Operations Commander, New Providence Police Dept.
18. Harry E. Johnson, Traffic Sergeant, Moorestown Twp. Police Dept.
19. Thomas Karamus, Superintendent, Union County Dept. of Weights and Measures
20. Sgt. Richard J. Halasek, Vice President—Region 6, New Jersey Police Traffic Officers' Association
21. Lieutenant William R. Smith, Operations/Traffic Officer, Pompton Lakes Borough Police Dept.
22. John F. Daley, Deputy Chief of Police, Rockaway Twp. Police Dept.
23. John F. Daley, Vice President, Region 3, New Jersey Traffic Safety Officers
24. Lt. Raymond J. Burgess, Jr., A/Director of Public Safety, Mount Laurel Twp. Police Dept.
25. Nicholas L. Matteo, Chief of Police, Evesham Twp. Police Dept.
26. Officer Andrei Bobev, Traffic Safety Bureau, Somerville Police Dept.
27. C. J. Fortenbacher, Chief of Police, Bernards Twp. Police Dept.
28. Ms. Patricia Halbe, Municipal Manager, Mount Laurel Township
29. Donato J. Nieman, Administrator, Branchburg Twp. Police Dept.
30. Captain Richard A. Pearson, Area Representative, N.J.P.T.O.A., Bergen County Police Traffic Officers Association
31. Sgt. W. Habermann, Traffic Bureau, River Vale Twp. Police Dept.
32. Lieutenant James Mentzer, Traffic Division Commander, Monroe Twp. Police Dept.
33. Chief Anthony J. Parenti, President, New Jersey Police Traffic Officers' Association
34. Charles K. Zisa, Assemblyman, 37th District, New Jersey General Assembly
35. Robert Chickelero, Chief of Police, Monroe Twp. Police Dept.
36. Ptl. Howard Black, Supervisor—Traffic Bureau, Medford Twp. Police Dept.
37. Daniel H. Colucci, Chief of Police, Kinnelon Borough Police Dept.
38. Mark J. Wilson, Sergeant, Traffic Division, Voorhees Police Dept.
39. Timothy P. O'Hara
40. Gary Angulot, Sergeant, Berlin Twp. Police Dept., Member N.J.P.T.O.A.
41. Benjamin Peluso, Richard Kelsey, Monmouth County Dept. of Weights and Measures
42. Carl A. Bergmann, Assistant County Counsel, Atlantic County Dept. of Law
43. Walter Motchnik, Superintendent, City of Trenton Dept. of Weights and Measures
44. Renee L. Borstad, Special Superintendent, Burlington County Board of Chosen Freeholders
45. Robert L. Herndon, Chief of Police, Allendale Police Dept.
46. Theodore S. Taylor, Acting Chief of Police, Haddon Heights Police Dept.
47. Richard F. Smith, Jr., New Jersey Society of Professional Land Surveyors
48. Arthur R. Brown, Secretary, New Jersey Dept. of Agriculture

COMMENT: Most of the commenters objected to the proposal to charge a $10.00 fee for the testing of tuning forks used by local and county police agencies in enforcing the State's motor vehicle speeding laws. Included with the comments were some questions and recommendations for eliminating or transferring the cost of the testing service based on existing law enforcement needs.

There was a suggestion that since the State has mandated the testing of tuning forks, it should provide the service. Others commented that government agencies should be exempt from these type charges, and that the costs in this instance should be assessed to speeding violations.

There was some concern regarding the amount of time and effort involved in testing the tuning forks, and the accompanying $10.00 fee per fork.

RESPONSE: The practice of testing these instruments as noted by the commenters was provided by the State OWM before the New Jersey Appellate Court's ruling in *State vs. Woitkowiak,* specifically because the State Superintendent is the custodian of all standards of Weights and Measures pursuant to the provisions of N.J.S.A. 51:1-55. The costs for providing this service had in former years been appropriated in the Division of Consumer Affair's annual budget.

The State OWM appreciates the benefits received by the general public of active enforcement of the State's speeding laws by law enforcement agencies throughout the State. The OWM appreciates and understands the competing intergovernmental interests involved in the imposition of a charge to counties and municipalities from another governmental agency.

As stated in the proposed new rules, P.L. 1994, c.60 specifically requires the charging and collecting of fees for the testing of a weight or measure. Government agencies are not exempted from this provision of the law. Of greater importance to our mutual concern is the fact that the OWM, Division of Consumer Affairs, did not receive an appropriation to fund the testing of tuning forks or other weighing and measuring devices. As a result, it was necessary to establish, as proposed in N.J.A.C. 13:47F-1.7, Fee schedule, reasonable fees to allow for the continuation of this service by the OWM.

The fees per device as enumerated in the new rule needed to include not only the testing costs but also the operating costs for the required equipment, the maintaining of traceability of standards, issuance of certificates, and recordkeeping. In consideration of this effort, the State OWM believes all of the established fees are reasonable.

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The OWM recognizes that the proposed fee of $10.00 per tuning fork for municipal and county police agencies, although a minimum one, will present some budget concerns. Accordingly, the OWM will delay implementation until July 1, 1995 and reduce the proposed tuning fork fee to $5.00.

COMMENT: Two comments noted that the regulations do not exempt county and municipal governments from paying fees set in the regulations. The regulations unfairly place a cap of $200.00 on fees charged to the commercial establishments which operate as many as 30 to 40 scales or as many as 67 fuel dispenser hoses. The cap creates an imbalance between the fees paid per device by large, medium and small establishments. Further, this situation could be used by the operators of fuel oil delivery meters to ask for the same cap of $200.00.

RESPONSE: Government agencies requesting tests of weighing and measuring devices have to pay the fees incurred by the Weights and Measures offices. P.L. 1994, c.60, section 11, specifically requires the charging and collecting of a fee for the testing of a weight or measure, to defray all expenses incurred in providing the testing service. The legislation sets maximum limitations on the fees to be charged for each scale, which measures weights of less than 1,000 pounds, and those charged for fuel pump dispensers. It further sets a maximum charge for each commercial location where the scales or fuel pump dispensers are located. The legislation does not provide for a cap for a commercial establishment which operates trucks, equipped with retail vehicle-tank meters, to sell and deliver heating oils to consumers heating-oil storage tanks.

COMMENT: There were some procedural questions regarding inspections for a new business as follows:

(1) Will the OWM supply registration forms and still inspect the device or will the owner be notified that they are using an unsealed device, and that before inspection, it needs to be registered?

(2) What if a business does not renew their registration, will OWM inspect the device or wait until they renew?

(3) N.J.A.C. 13:47F-1.3(g) provides that an applicant should notify the State Superintendent in writing. Will the device still have to be reported to local jurisdiction per N.J.S.A. 51:1-123 and 124?

(4) Do municipal and State devices have to be registered (State hospitals, post offices, etc.)?

(5) Do local jurisdictions need to continue initial investigations for weighmasters?

RESPONSE: (1) The State Superintendent will send out the application for registration to all owners or operators of commercial weighing and measuring devices, and to the county and municipal superintendents of weights and measures to register new devices or devices which have not been registered with the State OWM.

(2) Weights and Measures officials will continue to inspect and test weights and measures until the businesses which are using unregistered devices are identified. At that time, follow-up investigations will be conducted to correct non-compliance.

(3) N.J.S.A. 51:1-123 and 124 pertain to the repairing or installing of used weighing and measuring devices and do not affect N.J.A.C. 13:47F-1.3(g).

(4) Only devices used for commercial purposes must be registered. Any entity which does not use a device for commercial purposes is not subject to the mandatory annual inspection and test. Such an entity may make an application for testing, if desired, and pay the testing fee.

(5) The local jurisdictions will no longer have to conduct initial investigations with respect to the appointment of weighmasters.

COMMENT: Three questions were raised relating to retail vehicle tanks:

(1) Can the $200.00 cap per commercial facilty on retail vehicle tank meters be established in these regulations?

(2) The fee of $200.00 per wholesale vehicle tank meter is excessive and is inconsistent with the intent of the Legislature when P.L. 1994, chapter 60, was adopted. The Fuel Merchants Association of New Jersey hopes that the fee for registration of wholesale vehicle tank meters is brought into conformance with the retail tank meter fee.

(3) Will the applications for registration be automatically mailed to those who are currently under the jurisdiction of weights and measures or will affected companies have to initiate contact with them?

RESPONSE: The annual fee for the registration of retail vehicle tank meters is $40.00. The retail vehicle tank meter is defined as a meter with a maximum flow rate of 100 gallons per minute which is used to deliver liquid fuel. Although there is no cap in the legislation or these regulations, small business that have fewer than five trucks will be paying less than $200.00.

It takes more time and more expensive equipment to inspect and test wholesale devices which dispense more than 100 gallons per minute. As a result the imposition of a $200.00 registration fee is not an onerous burden on businesses using these devices for commercial deliveries. The registration fee also includes fees for testing the device and defrays the cost of regulating the device as provided in the law.

Applications for registration will be mailed to businesses who are currently under the jurisdiction of weights and measures offices and are known to use commercial weighing and measuring devices through previous inspections. In addition, applications will be available at the local offices of weights and measures or from the State OWM.

COMMENT: N.J.A.C. 13:47F-1.5(c) will burn up the entire fee with expenses and bottlenecks of paperwork. It will require the State Office to figure disbursements while every single county and municipal division is going through the same maze to verify payment.

RESPONSE: The registration fees collected for the registration of commercial weighing and measuring devices are going to be deposited into a "Weights and Measures Fund" pursuant to the law. County and municipal departments of weights and measures shall be eligible to receive 70 percent of the registration fees collected for the commercial weighing and measuring devices they inspect and test in accordance with New Jersey Laws and regulations/directives issued by the State Superintendent. The State Superintendent plans to establish a data-processing system to ensure that the county and municipal weights and measures departments will have a readily verifiable record of disbursements and payments.

COMMENT: Five commenters noted their disapproval of the proposal to charge a fee for testing measuring devices used by municipal land surveyors, steel tapes used by police departments, and vehicle scales used by law enforcement agencies.

RESPONSE: The law specifically requires the charging and collecting of a fee for the testing of a weight or measure. The State OWM does not have funds appropriated to cover the expenses incurred for operation of the equipment needed for testing the steel tapes and vehicle scales used by law enforcement agencies, maintaining the traceability of standards, issuance of the certificate of correctness and maintenance of related records.

COMMENT: In addition to their disapproval of the proposal to charge governmental agencies for testing weighing and measuring devices, two commenters asked the following questions:

(1) Will the county departments of weights and measures receive a portion of the fees collected when the State OWM conducts inspections and tests of the weighing and measuring devices?

(2) Will the fee schedule to test volumetric devices under 10 gallons of capacity apply to pharmacy graduates?

(3) N.J.A.C. 13:47F-1.5, relating to the reimbursement of fees to the county and municipal departments of weights and measures, should be modified so as to substitute "will receive" instead of "shall be eligible to receive" as proposed in that the substituted language will promote closer partnership with the counties to obtain our goals and fulfill our duties with regards to weights and measures laws.

RESPONSE: Government agencies using weighing and measuring devices for commercial purposes or requesting tests of weighing and measuring devices must pay the fees incurred by the Weights and Measures offices for this testing. The fee includes not only the actual testing, which the State OWM recognizes is minimal in most cases, but staff time, maintenance of traceability of standards and all recordkeeping.

County and municipal departments of weights and measures will not receive a portion of the fees collected when the State OWM conducts inspections and tests of the weighing and measuring devices in any jurisdiction. The State OWM generally conducts inspections and tests of large-capacity weighing and measuring devices. They are not tested by the local departments because of a lack of equipment and trained personnel needed to perform these tests.

Since pharmacy graduates are not tested in the field, there will be no fee charged for an examination in the field.

The language "shall be eligible to receive" is in agreement with Section 8c of P.L. 1994, c.60. County and municipal departments of weights and measures will be eligible to receive reimbursement of fees if they meet the provisions of the regulations and law.

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COMMENT: One commenter questioned if the fees received for the inspection and testing of weights and measures could be used to pay in whole or in part the salaries of county weights and measures personnel.

RESPONSE: The law provides for this type of expenditure.

COMMENT: One commenter made the following recommendations:

(1) N.J.A.C. 13:47F-1.5 should be amended to provide for county and municipal weights and measures departments to receive 70 percent of fees collected for the registration, testing and sealing of commercial devices and devices not used for commercial purposes.

(2) Registration for different types of commercial weighing and measuring devices should expire on different fixed dates so that the local weights and measures departments can efficiently track compliance with the registration law in conjunction with the scheduled inspection and testing of the weighing and measuring devices.

(3) County and municipal superintendents of weights and measures should be authorized to issue registration certificates and collect appropriate fees from the owner or user of the devices.

RESPONSE: County and municipal departments of weights and measures are eligible to receive 70 percent of the registration fees, which include the testing and sealing of registered devices, as provided in N.J.A.C. 13:47F-1.4(a). They will also be eligible to receive 70 percent of the fees collected for testing of weights and measures when such tests are assigned to the county and municipal departments of weights and measures under the provisions of N.J.A.C. 13:47F-1.4(c).

Registration cycles similar to the ones the commenter has proposed are being considered.

The law provides for the registration of the weighing and measuring devices used for commercial purposes to be performed by the State Superintendent. The State Superintendent plans to have procedures in place in order to permit registration of devices on an emergency basis in compliance with applicable laws and regulations.

COMMENT: One commenter had questions regarding definitions, noting there is no definition of non-commercial weighing and measuring devices, and asked if a yard stick is a length-measure.

RESPONSE: Any weighing or measuring device which is not used for commercial purposes is not required to be registered under the law.

A yard stick is not a "length measure" as defined under N.J.A.C. 13:47F-1.2.

COMMENT: One commenter noted that proposed new rules N.J.A.C. 13:47F should specifically exempt farm milk tanks for the following reasons:

(1) The farm milk tank is primarily a storage and refrigeration unit rather than a weighing device.

(2) The measurement device used in a farm milk tank is simply a removable gage rod or a surface gage and would not classify as a wholesale vehicle tank meter as defined in your rules for which such fees may be imposed. An added fee would only add to the regulatory burden of dairy farms.

RESPONSE: The farm milk tank is defined as follows in the National Institute of Standards and Technology Handbook 44, Section 4.42, and as adopted in the provisions of N.J.S.A. 51:1-6, N.J.A.C. 13:47B-1.20:

A unit for measuring milk or other fluid dairy product, comprising a combination of (1) a stationary or portable tank, whether or not equipped with means for cooling its contents, (2) means for reading the level of liquid in the tank, such as a removable gauge rod or a surface gauge and (3) a chart for converting level-of-liquid reading to volume; or such a unit in which readings are made on gauge rod or surface gauge directly in terms of volume.

As such, if used for commercial purposes, the farm milk tank is subject to the registration requirement of the law and these regulations.

COMMENT: One commenter requested clarification on two rule changes:

(1) The proposed new rules allow for two tests, one for tolerance and one for calibration. N.J.S.A. 51:1-6 requires our tapes to be compared to the national standard at least once in five years. The State OWM needs to clarify which, or both, of these tests are necessary to meet statutory requirements.

(2) The OWM's proposed rule change lists under "type of device miscellaneous, any other device not listed above," a $25.00 fee per device. Clarification is requested as to whether the office's receipt of certain electronic distance measuring test results will trigger this $25.00 fee.

RESPONSE: The State OWM currently follows the guidelines of the National Institute of Standards and Technology's Handbook 145, Handbook for the Quality Assurance of Meterological Measurements, SOP No. 12. Reports are issued showing calibration results for every foot from zero to 10 and every 10-foot interval thereafter. AE values (cross sectional area times Young's modulas of elasticity), are also computed upon request. The performance of calibration test will meet the requirements of N.J.S.A. 51:1-6.

The OMW will only be charging for devices which are submitted for testing. There is no fee for submitting electronic distance measuring test results.

Executive Order No. 27 Analysis

The adopted new rules, N.J.A.C. 13:47F-1.1 to 1.7, establish registration fees and procedures for the registration of commercial weighing and measuring devices. The rules also set fees for the testing of weighing and measuring devices which are not used for commercial purposes. The proposed amendment of N.J.A.C. 13:47B-1.5(c) is to distinguish between the inspection and type-approval requirement imposed upon the sellers and lessors of weighing and measuring devices from the inspection, testing and sealing requirements of N.J.A.C. 13:47F-1.4.

The rules incorporate the definitions contained in the National Institute of Standards and Technology Handbook 44 and N.J.S.A. 51:1-1 et seq. The rules specify that the inspections and testing of weighing and measuring devices are to be performed in conformity with the requirements of the said Handbook 44. The rules also provide that weights, measures and testing equipment, used by licensed repair persons, must be compared with the State's standards in accordance with the requirements of the National Institute of Standards and Technology, Handbook 145.

The above-mentioned Handbooks are published by the National Institute of Standards and Technology as a partial fulfillment of its statutory authority under 15 U.S.C. 271 et seq. to secure uniformity of weights and measures laws and methods of inspections. The handbooks are developed by the National Conference on Weights and Measures, an organization composed of representatives from State and Federal regulatory agencies, and commercial businesses involved in weighing and measuring activities.

Except as cited above, Congress has left the development of laws and regulations, and enforcement of the same, with the States. In a few instances, such as the U.S. Department of Agriculture, Federal Grain Inspection Services and Packers and Stockyards Administration, Congress has granted the Federal agencies preemptive authority over State Weights and Measures laws. Even in those cases, the Federal agencies have adopted many of the relevant provisions of the above-mentioned Handbook 44 for weighing and measuring devices and rely upon the State regulation of weighing and measuring devices. Handbook 44 has been adopted in all 50 states.

In view of the above facts, the standards for the inspection and testing of weighing and measuring devices contained in these rules are the same as those sponsored by the National Institute of Standards and Technology under the provisions of 15 U.S.C. 271 et seq.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

13:47B-1.5 Type approval

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

(c) No weighing or measuring device as indicated shall be permitted to be sold or leased for use in the State of New Jersey unless submitted for inspection and approved by said State Superintendent of Weights and Measures as specified in (a), above and any equipment distributed or installed contrary to the provisions of this section shall be subject to condemnation.

CHAPTER 47F
FEES FOR THE REGISTRATION, INSPECTION AND TESTING OF WEIGHING AND MEASURING DEVICES

SUBCHAPTER 1. GENERAL

13:47F-1.1 Purpose and scope

(a) These rules implement the provisions of P.L. 1994, c.60, §§6 through 13, entitled "An Act establishing and increasing certain fees imposed by and on behalf of the State and providing for the use of certain fees, amending and supplementing various parts of the statutory law" (the "Act").

(b) These rules shall apply to:

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1. Any person who operates or uses for commercial purposes a weight and measure, as defined in N.J.S.A. 51:1-2, located within the State;

2. Any person who sells, trades in, receives or engages in the repair of condemned, rebuilt or used weights and measures, pursuant to the provisions of N.J.S.A. 51:1-113 et seq.; and

3. Any person who requests a weight and measure not used for commercial purposes be compared with the standards of weights and measures in the custody of the State Superintendent of Weights and Measures.

13:47F-1.2 Definitions

For the purposes of this chapter, all definitions and terms describing weights and measures contained in N.J.S.A. 51:1-1 et seq. and in the National Institute of Standards and Technology Handbook 44, as adopted pursuant to N.J.A.C. 13:47B-1.20, are incorporated herein by reference. In addition, the following words and terms shall have the following meanings:

"Act" means P.L. 1994, c.60.

"Applicant" means a person who is an owner or user of a weight and measure.

"Commercial location" means the premises where weights and measures are installed or employed in the purchase or sale of commodities.

"Commercial purposes" means the purchase or sale of commodities.

"Fuel pump dispenser" means a device used for the measurement and sale of liquid fuels including, but not limited to, gasoline, diesel and kerosene, but not including liquefied petroleum gas and compressed natural gas.

"Length measure" means a device which automatically indicates (with or without value-computing capabilities) the length of commodities passing through the measuring elements.

"Natural gas meter" means a meter which is installed to measure compressed natural gas.

"Person" shall include any natural person or his or her legal representative, partnership, corporation, trust, business entity or association and any agent, employee, partner, office or director thereof.

"Pharmacy weight kits" means the set of weights required by N.J.A.C. 13:39-7.7.

"Propane meter" means a meter which is mounted on a liquefied petroleum gas delivery vehicle or installed at a fixed location to measure liquefied petroleum gas.

"Rack meter" means a meter used to load bulk delivery vehicles as in those primarily installed at wholesale petroleum terminals.

"Retail vehicle tank meter" means a meter mounted on a tank truck and used to deliver liquid fuel including, but not limited to, gasoline, diesel and kerosene with a maximum flow rate of 100 gallons per minute, but does not include meters used to sell or sell and deliver liquefied petroleum gas or compressed natural gas.

"State Superintendent" means the State Superintendent of the Office of Weights and Measures.

"Used in trade" means used for commercial purposes.

"Wholesale vehicle tank meter" means a meter mounted on a tank truck and used to deliver liquid fuels including, but not limtied to, gasoline, diesel and kerosene with a maximum flow rate of more than 100 gallons per minute, but does not include meters used to sell or sell and deliver liquefied petroleum gas or compressed natural gas.

13:47F-1.3 Registration of weights and measures

(a) No person shall operate or use a weight and measure for commercial purposes within the State of New Jersey unless the weight and measure is registered with the State Superintendent pursuant to the provisions of this chapter and the Act.

(b) An applicant for registration of a weight or measure shall submit an application on a form provided by the State Superintendent and shall pay the fee as set forth in N.J.A.C. 13:47F-1.7. The application form will request information including the legal name of the business, trade name and address and information about the type(s) of device(s), manufacturer's name, model number, capacity and serial number of the device(s). A late fee as set forth in N.J.A.C. 13:47F-1.7 for each weight and measure shall be incurred by an applicant if the application form and fee are not received by the State Superintendent within 30 days of the applicant's receipt of the application form.

(c) Upon the receipt of a completed application and the fee, the State Superintendent shall issue a Registration Certificate and registration seals for each weight and measure registered. The Registration Certificate and registration seals shall expire one year from the date of issuance.

(d) The applicant shall affix the registration seal to each registered weight and measure in a conspicuous location, without obscuring the official Approval Seal, and shall retain the Registration Certificate at the commercial location. If the weight and measure is located on a vehicle used for commercial purposes, the Registration Certificate shall be carried in the vehicle. The Registration Certificate shall be readily available for inspection by any Weights and Measures official.

(e) An applicant shall renew the Registration Certificate for one year by submitting a renewal registration application on a form provided by the State Superintendent and shall pay the appropriate renewal fees as set forth in N.J.A.C. 13:47F-1.7. The renewal application form will request the same information as required by (b) above. A late fee as set forth in N.J.A.C. 13:47F-1.7 for each weight and measure shall be incurred by an applicant if a renewal application and appropriate fees are not received by the State Superintendent within 30 days of the expiration date of the Registration Certificate.

(f) The late fee shall not be deemed an exclusive remedy for failure to register a weight and measure in a timely manner. Any unregistered weight and measure shall be deemed a violation of the Act.

(g) An applicant shall notify the State Superintendent in writing upon the purchase, sale or transfer of a weight and measure to a different commercial location within 10 days of the purchase, sale or transfer. The fee for the addition of a new weight and measure added to an existing registration shall be pro-rated for each quarter of the one year remaining of the renewal date on the initial Registration Certificate.

(h) Any violation of or noncompliance with any of the provisions of this chapter, for which a specific penalty has not been provided in Title 51 of the Revised Statutes, shall subject the violator to a penalty as prescribed by the provisions of N.J.S.A. 51:1-89.

13:47F-1.4 Testing and sealing of weights and measures

(a) All weights and measures used in trade shall be tested and sealed at least once in each year and shall be issued a Certificate of Inspection and Testing as described in N.J.A.C. 13:47B-1.16. All fees for testing and sealing of registered weights and measures shall be included within the fees for registration.

(b) Any applicant who requests a test of a weight and measure, not used for commercial purposes, tested by a Weights and Measures officer shall complete an application form provided by the State Superintendent and submit the same with appropriate fees as set forth in N.J.A.C. 13:47F-1.7. Fees shall reflect those costs associated with causing the test to be made. The application form will request information about the applicant including name and address and information about the type(s) of device(s), manufacturer's name, model number, capacity, and serial number of the device(s), if any.

(c) The State Superintendent may at his or her discretion assign requests for a test of a weight and measure which is not used for commercial purposes to a county or municipal weights and measures officer.

13:47F-1.5 County and municipal weights and measures authority

(a) County and municipal weights and measures departments established pursuant to N.J.S.A. 51:1-42 et seq., under the supervision of the State Superintendent pursuant to the provisions of N.J.S.A. 51:1-54 et seq., shall be eligible to receive 70 percent of the fees collected for the registration, testing and sealing of the commercial weights and measures within their jurisdiction which are inspected and tested, providing that:

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1. The inspection and testing of the registered weight and measure is performed by the county and municipal weights and measures department at least once a year;

2. The inspection and testing of weights and measures are conducted in conformity with the requirements and procedures specified in the most recent edition of the National Institute of Standards and Technology Handbook 44, together with all amendments and supplements thereto, adopted by the National Conference on Weights and Measures incorporated herein by reference; except that if the State Superintendent has amended or supplemented, in accordance with the provisions of N.J.S.A. 52:14B-1 et seq., any Handbook 44 requirements and procedures to conform to the needs of any situation affecting the interests of the State and its people, the county or municipal weights and measures department shall inspect and test the device(s) in accordance with the requirements and procedures as amended by the State Superintendent.

3. The weights and measures standards used by the county or municipality for testing the weights and measures have been compared to the State Standards in the custody of the State Superintendent and corrected and approved by the State Superintendent at least once in five years;

4. All certificates of inspections and tests of weights and measures shall be complete and correct in all respects;

5. Copies of certificates of inspections and tests of weights and measures, performed during the month, are submitted with a monthly report by the fifth day of the following month to the State Superintendent;

6. The weights and measures departments conduct their operations in compliance with State law and directives issued by the State Superintendent;

7. The governing bodies of the county and municipal weights and measures departments establish a "Weights and Measures Fund" as a non-lapsing, revolving, dedicated fund into which shall be deposited all reimbursement of fees received for inspection and testing of the weights and measures from the State Superintendent which shall be used to defray all or part of the expenses incurred in regulating weights and measures; and

8. The administrator or the finance officer of the governing bodies of the county and municipal weights and measures department shall submit a certification of the funds appropriated in their budget for weights and measures departments to the State Superintendent during the first quarter of the governing body's fiscal year. If there is any change in the amount of funds appropriated or supplemental appropriations are approved by the governing bodies, the administrator or the finance officer shall submit a supplementary certification to the State Superintendent within 30 days of the approval or the change.

(b) Copies of the National Institute of Standards and Technology Handbook 44 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(c) The State Superintendent shall disburse funds to county and municipal weights and measures departments by the end of the State fiscal quarter following the one in which the Certificates of Inspections and Tests for those weights and measures are received and approved by the State Superintendent.

(d) The State Superintendent shall have no obligation to a county and municipal weights and measures department for those fees due, but not collected, in any given quarter.

13:47F-1.6 Licensure requirements; dealers and repairers

(a) All persons engaged in the business of selling, trading in, receiving, or repairing of condemned, rebuilt, or used weights and measures, as described in N.J.S.A. 51:1-128, shall apply on a form provided by the State Superintendent for a Dealer's License and shall pay the fee as set forth in N.J.A.C. 13:47F-1.7. The application form will request information including the legal name of the dealer's business, trade name and address and information about the type(s) of device(s), manufacturer's name, model number, capacity, and serial number of the device(s) or testing equipment. All applications shall include a copy of the current Certificate of Inspections and Tests.

(b) All persons engaged only in the business of repairing of weights and measures, as described in N.J.S.A. 51:1-128, shall apply, on a form provided by the State Superintendent, for a Repairer's License and shall pay the fee as set forth in N.J.A.C. 13:47F-1.7. The application form will request information including the legal name of the repairer's business, trade name and address and information about the type(s) of device(s), manufacturer's name, model number, capacity, and serial number of the device(s) or testing equipment. All applications shall include a copy of the current Certificate of Inspections and Tests.

(c) All persons engaged in the business of selling, trading in, receiving, or repairing of condemned, rebuilt, or used weights and measures shall renew their license for a period of one year, by applying on a form provided by the State Superintendent and shall pay the renewal fee as set forth in N.J.A.C. 13:47F-1.7. The renewal application form will request the same information as required by (a) above. All renewal applications shall include a copy of the current Certificate of Inspection and Tests.

(d) All persons engaged only in the business of repairing of weights and measures shall renew their license for a period of one year, by applying on a form provided by the State Superintendent and shall pay the renewal fee as set forth in N.J.A.C. 13:47F-1.7. The renewal application form will request the same information as required by (b) above. All renewal applications shall include a copy of the current Certificate of Inspections and Tests.

(e) In addition to filing an application and submitting the same with a fee as set forth in N.J.A.C. 13:47F-1.7, all persons engaged in the business of repairing weights and measures, pursuant to the provisions of N.J.S.A. 51:1-113 et seq., shall have their weights and measures, including their testing equipment, compared with the State Standards in accordance with the requirements of the National Institute of Standards and Technology, formerly known as the National Bureau of Standards, Handbook 145, at least once a year.

(f) The State Superintendent shall issue a Certificate of Inspections and Tests upon compliance.

(g) Any violation of or noncompliance with any of the provisions of this section, for which a specific penalty has not been provided in Title 51 of the Revised Statutes, shall subject the violator to a penalty as prescribed by the provisions of N.J.S.A. 51:1-131.

13:47F-1.7 Fee schedule

(a) The State Superintendent shall charge the following Schedule of Fees for the Annual Registration, Inspection and Testing of Weights and Measures Used for Commercial Purposes and for the Inspection and Testing of Weights and Measures Not Used for Commercial Purposes:

Type of Device: Scales	Fee Per Device
Up to and including 1,000 pound capacity (other than hopper and vehicle scales	$20.00 per scale but not more than $200.00 per commercial location
More than 1,000 pound capacity (other than hopper and vehicle scales)	$100.00
Hopper scale	$200.00
Vehicle scale	$200.00
Wheel Load Weigher	$100.00
Belt Conveyor Scale System	$200.00
Automatic Bulk Weighing System	$200.00

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Type of Device: Volumetric Meters	Fee Per Device
Fuel Pump Dispenser	$20.00 per dispenser hose but not more than $200.00 per commercial location
Retail Vehicle Tank Meter with a maximum flow rate of 100 gallons/minute	$40.00
Wholesale Vehicle Tank Meter	$200.00
Rack Meter	$200.00
Natural Gas and Propane Meter	$150.00
Mass Flow Meter	$200.00
Farm Milk Tank and Milk Meter	$200.00
Water Meter	$40.00

Type of Device: Miscellaneous	Fee Per Device
Length Measures	$20.00
Timing Devices	$10.00
Pharmacy Weight Kits	$20.00 per kit
Tuning Fork ***(operative July 1, 1995)***	*[$10.00]* ***$5.00***
Volumetric Measure of less than or equal to 10 gallon capacity	$20.00
Volumetric Measure of more than 10 gallon capacity	$150.00
Timing Device	$10.00
Test Weights: less than 50 pounds	$10.00
Test Weights: equal to or more than 50 pounds	$30.00
Steel Tapes: less than or equal to 100 feet	
Tolerance Test	$20.00
Calibration Test	$100.00
Steel Tapes: longer than 100 feet	
Tolerance Test	$40.00
Calibration Test	$200.00
Any other device not listed above	$25.00
Late Fee	$10.00

NOTE: In addition to the above fees, hourly charges will be assessed at the rate of $50.00 per hour for testing of non-commercial devices not delivered to the State Superintendent.

(b) The State Superintendent shall charge the following Schedule of Fees for Licensure of Dealers and Repairers of Weights and Measures:

Dealer's license	$150.00
Repairer's license	$20.00
Dealer's license renewal	$150.00
Repairer's license renewal	$20.00

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Lane Usage

Route I-80

Adopted Amendment: N.J.A.C. 16:30-3.9

Proposed: October 17, 1994 at 26 N.J.R. 4162(a).

Adopted: January 25, 1995 by W. Dennis Keck, Acting Assistant Commissioner for Planning.

Filed: February 8, 1995 as R.1995 d.136, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:21, 39:4-6, 39:4-81, 39:4-88 and 39:4-197.

Effective Date: March 6, 1995.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received from Mr. Eugene Lucente, Denville, New Jersey. Mr. Lucente communicated his support for the restriction of trucks in the left-most non-HOV lane.

RESPONSE: The Department appreciates the support of Mr. Lucente with regard to this proposal.

COMMENT: Comments were received from Samuel Cunninghame, Executive Director of the New Jersey Motor Truck Association. Mr. Cunninghame expressed concern that this proposal would unfairly restrict use of the Interstate highway without any rational reason or precedent. The Association believes that this proposal would cause long, uninterrupted and nearly impenetrable lines of commercial vehicles in the two right lanes and the bumper-to-bumper rush hour traffic could block many cars and trucks entering the highway in the seven-mile area of the HOV. Mr. Cunninghame also advised that there is no accident experience or other adverse safety concern present that could justify compressing all commercial vehicles to the two right lanes of I-80 through the seven-mile HOV area.

RESPONSE: Until the opening of the I-80 HOV lane in March, only three lanes existed between mileposts 36.40 and 43.30 eastbound, and between mileposts 35.30 to 43.00 westbound. According to State law, trucks were restricted from the far left lane, and had two lanes in which to travel. There is no evidence that returning to this previous two-lane restriction would cause the potential problems Mr. Cunninghame refers to. However, the Department is conducting an ongoing monitoring and evaluation program for the I-80 HOV lane. Any problems caused by these restrictions will be detected and the Department will take appropriate remedial action.

Trucks are currently permitted to use any of the three lanes to the right. When the HOV lane is in operation (6:00-9:00 A.M. eastbound and 3:00-7:00 P.M. westbound), the fourth lane is restricted to passenger vehicles with two or more occupants. When trucks are travelling side-by-side across all three general purpose lanes, single occupant passenger vehicles have no opportunity to pass. This amendment would correct this problem during HOV lane operations.

In addition, there are concerns with the safety of the State Police since enforcement activities associated with HOV operations are conducted on the left shoulder. The width of the shoulder does not always allow for trooper and motorist safety during a routine vehicle stop. This condition is aggravated by motorists intimidated by tractor trailers traveling in an adjacent lane. Because of this fear, many motorists will utilize the far left portion of the lane in which they are traveling. If motorists in the HOV lane use the left portion of the lane, the safety for troopers stopping people on the left shoulder may be compromised.

Since the opening of the HOV lane, the Department has operated a toll-free number for I-80 motorists. The presence of trucks in the third lane—immediately adjacent to the HOV lane—has been one of the most common complaints received. This amendment would assist the Department's efforts to be responsive to the concerns of our customers.

It should be noted that the hours of HOV operation encompass only 15 percent of the total hours of daily eastbound-westbound travel. During non-HOV periods, trucks are free to use the third lane.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of this rulemaking are dictated by State statutes and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

16:30-3.9 Route I-80

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

(c) In the event the HOV lane is in operation, the drivers of all trucks with a gross vehicle weight rating (GVWR) as defined in N.J.S.A. 39:3-10.11 of 10,000 pounds or more shall not drive the truck in the left-most non-HOV lane, except when reasonably necessary in response to emergency conditions. This restriction applies to Route 80 between milepost 36.40 to milepost 43.30 eastbound and between milepost 35.30 to milepost 43.00 westbound during HOV lane operations.

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TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Organization of the Division of Taxation Office of Criminal Investigation Education and Training Requirements

Adopted New Rule: N.J.A.C. 18:1-1.9

Proposed: January 3, 1995 at 27 N.J.R. 56(a).
Adopted: February 7, 1995 by Richard D. Gardiner, Director, Division of Taxation.
Filed: February 8, 1995 as R.1995 d.131, **without change**.
Authority: N.J.S.A. 54:40A-22.
Effective Date: March 6, 1995.
Expiration Date: October 3, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

The adopted new rule does not pertain to any program established under Federal law or under a State law that incorporates Federal law, regulation or requirement. The rule pertains to training requirements within the Office of Criminal Investigation. An Executive Order No. 27 analysis is not required.

Full text of the adoption follows:

18:1-1.9 Training for special agents

(a) The Office of Criminal Investigation shall require the successful completion of certain educational and training programs for those persons appointed by the Director as special agents. The requirements shall be designed to insure the health, safety and welfare of the citizens of New Jersey by maintaining high standards of proficiency in law enforcement. The requirements shall include:

1. The completion of the "Basic Training Course for State Investigators" of the State of New Jersey, Department of Law and Public Safety, Division of Criminal Justice, as established by the New Jersey Police Training Commission, pursuant to N.J.S.A. 52:17B-66 et seq.;

2. Completion of the twice annual firearms qualification program as established by the State of New Jersey, Department of Law and Public Safety, Office of the Attorney General and administered by the Division of Taxation certified supervising firearms instructor/range master; and

3. Completion of criminal tax fraud investigation training, as is required for special agents of the U.S. Treasury, Internal Revenue Service, Criminal Investigation Division, as offered at the Federal Law Enforcement Training Center, Glynco, Georgia.

(b) The Director will grant exemptions from the training requirements to any person who has successfully completed a training course of another law enforcement agency, provided that the requirements are equivalent to the training requirements established pursuant to (a)1 and 3 above.

(b)

DIVISION OF TAXATION

Organization of the Division of Taxation; Warrants

Adopted New Rule: N.J.A.C. 18:1-2.4

Proposed: December 19, 1994 at 26 N.J.R. 4975(a).
Adopted: February 7, 1995 by Richard D. Gardiner, Director, Division of Taxation.
Filed: February 8, 1995 as R.1995 d.132, **without change**.
Authority: N.J.S.A. 54:50-1 and 54:49-13a.
Effective Date: March 6, 1995.
Expiration Date: October 3, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

The adopted new rule does not pertain to any program established under Federal law or under a State law that incorporates Federal law, regulation or requirement. The rule pertains to the execution of warrants to levy and sell real and personal property. An explanation or analysis of the rule, pursuant to Executive Order No. 27, is not required.

Full text of the adoption follows:

18:1-2.4 Warrant to levy and sell real and personal property

(a) The Director is authorized by N.J.S.A. 54:49-13a to issue a warrant, directed to the sheriff of any county, commanding him to levy upon and sell the real and personal property of any person liable for any State tax.

(b) In the discretion of the Director, a warrant may be issued and directed to any officer or employee of the Division of Taxation, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs to levy upon assets of any person liable for any State tax and to seize and sell property of the debtor at public auction. The warrant may be issued and executed in person or by mail.

(c) See N.J.S.A. 54:49-13a for information on collection procedures.

(c)

DIVISION OF TAXATION

Corporation Business Tax; corporation tax rates

Adopted Amendment: N.J.A.C. 18:7-3.6

Proposed: January 3, 1995 at 27 N.J.R. 57(a).
Adopted: February 7, 1995 by Richard D. Gardiner, Director, Division of Taxation.
Filed: February 8, 1995 as R.1995 d.134, **without change**.
Authority: N.J.A.C. 18:7-3.6.
Effective Date: March 6, 1995.
Expiration Date: March 14, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

The adopted amendments do not pertain to any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. The amendments pertain to New Jersey corporation tax rates, which are governed by New Jersey statutes. An explanation or analysis of the amendments pursuant to Executive Order No. 27, is not required.

Full text of the adoption follows:

18:7-3.6 Tax rates—corporations, S corporations and surtax

(a) For all fiscal periods beginning on or after January 1, 1980, the net income tax rate is nine percent, for a corporation that is not a New Jersey S corporation.

(b) For a foreign corporation acquiring a taxable status in New Jersey on or after January 1, 1980 and filing its New Jersey return Form CBT-100 on a short period basis, the tax rate is nine percent on adjusted entire net income after proper proration.

(c) For a New Jersey S corporation with a fiscal year beginning after July 7, 1993 but before January 1, 1994 the tax rate for a New Jersey S corporation is two percent.

(d) For a New Jersey S corporation whose taxable year begins on or after January 1, 1994 but before January 1, 1995 the tax rate for a New Jersey S corporation is 2.350 percent.

(e) For a New Jersey S corporation whose taxable year begins on or after January 1, 1995 the tax rate for a New Jersey S corporation is 2.42 percent.

(f) In addition, a surtax calculated pursuant to N.J.S.A. 54:10A-5.1 and 5.2 shall be computed and added to the applicable tax, provided

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that on and after January 1, 1994 there shall be no surtax imposed. The adjusted surtax rate for accounting periods ending between January 1 and June 30, 1994 is determined by multiplying the surtax rate for the period (.00375) by a quotient, the numerator of which is the number of complete calendar months in the taxpayer's accounting period ending before January 1, 1994, and the denominator of which is the total number of complete calendar months in the accounting period. This calculation ensures that the surtax rate is reduced proportionally for those taxpayers with a tax year ending after January 1, 1994. The surtax is then completely eliminated for fiscal year 1995 and thereafter.

$$.00375 \times \frac{\text{Months ending before January 1, 1994}}{\text{Total months in accounting period}} = \text{Adjusted Surtax Rate}$$

Example 1. A taxpayer whose tax year covers a 12-month period ending on January 31, 1994 determines the adjusted surtax rate as follows: $.0035 \times 11/12 = .00344$. Note: For ease of computation, the calculation is rounded to the fifth decimal place.

Example 2. The adjusted surtax rates for taxpayer with accounting periods covering 12 months are listed below. Taxpayers with accounting periods covering less than 12 months must compute the appropriate rate using the formula indicated above.

Fiscal Year Ended	Adjusted Surtax Rate
1/31/94	0.00344
2/28/94	0.00313
3/31/94	0.00281
4/30/94	0.0025
5/31/94	0.00219
6/30/94	0.00188

(a)

DIVISION OF TAXATION

Sales and Use Tax
Student Organization Purchases
Adopted New Rule: N.J.A.C. 18:24-9.13

Proposed: December 19, 1994 at 26 N.J.R. 4977(a).
Adopted: February 7, 1995 by Richard D. Gardiner, Director, Division of Taxation.
Filed: February 8, 1995 as R.1995 d.133, **without change**.
Authority: N.J.S.A. 54:50-1.
Effective Date: March 6, 1995.
Expiration Date: June 4, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Executive Order No. 27 Statement

The adopted new rule does not pertain to any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. The rule pertains to New Jersey sales and use tax in regard to student organization purchases. An explanation or analysis of the rule, pursuant to Executive Order No. 27, is not required.

Full text of the adoption follows:

18:24-9.13 Student organization purchases

(a) Student organizations within a school exempt from tax under N.J.S.A. 54:32B-9(a) or (b) may be considered integral components of the school and may make tax exempt purchases for educational purposes, including school sponsored fundraising activities and functions, and events such as proms and similar activities, provided:

1. The event or activity is sanctioned and supervised by the board of education, school district, or school administration;

2. Payment in the form of a check or voucher is made from a school, school district, or board of education account, including a student activities account maintained under the auspices of the school and/or the board of education; and

3. Documentation is provided to the vendor to properly evidence the tax exempt purchase. The only acceptable documentation for private schools is a copy of a valid ST-5 Exempt Organization Certificate. New Jersey public schools are New Jersey government entities and as such are not issued exemption certificates or exempt organization numbers. A school contract, letterhead, or purchase order signed by a school official is sufficient to document the exemption.

(b) School affiliated teacher organizations and parent organizations that do not qualify as specifically exempted parent-teacher associations and organizations, student organizations not sponsored by the school, and other school support groups such as booster clubs and class alumni associations are not considered integral components of the school. They are deemed to be separate legal entities and may not use the school's tax exempt documentation to make tax exempt purchases. Such organizations may apply for and receive exempt organization permits, if qualified for exemption under N.J.S.A. 54:32B-9(b)(1) of the Sales and Use Tax Act.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Craps
Supplemental Wagers
Adopted Amendment: N.J.A.C. 19:47-1.6

Proposed: December 19, 1994 at 26 N.J.R. 4978(b).
Adopted: February 8, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.
Filed: February 9, 1995 as R.1995 d.137, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 5:12-5, 63c, 69, 70f, 99b(16) and 100a, e, f and g.
Effective Date: March 6, 1995.
Expiration Date: April 15, 1996.

Summary of Agency-Initiated Change:

The heading of N.J.A.C. 19:47-1.6 refers to "making" odds, whereas the terminology used throughout the casino industry is "taking" odds as a supplemental wager on Pass or Come Bets. Consequently, the Commission, without the need for further public notice or comment, is correcting that typographical error upon adoption.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division), Bally's Park Place, Inc. (Park Place), GNOC, Corp. (GNOC), Adamar of New Jersey, Inc. (Adamar) and Trump Taj Mahal Associates (Taj Mahal).

COMMENT: Park Place, GNOC, Adamar and Taj Mahal each support the adoption of the proposal, and the Division does not oppose its adoption.

RESPONSE: Accepted.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this adoption are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

19:47-1.6 Supplemental wagers made after come out roll in support of pass, don't pass, come and don't come bets (*[making]* ***taking*** and laying odds)

(a) Whenever a player makes a Pass Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the come out roll, the player shall have

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the right to make a supplemental wager in support of the Pass Bet which may be limited by the casino licensee to an amount that is equal to the amount of the original Pass Bet. If, in such circumstances, the Pass Bet wins, the original Pass Bet shall be paid at odds of 1 to 1 and the supplemental wager shall be paid at odds of 2 to 1 if the come out point was 4 or 10, 3 to 2 if the come out point was 5 or 9, and 6 to 5 if the come out point was 6 or 8.

(b) Whenever a player makes a Don't Pass Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the come out roll, the player shall have the right to make a supplemental wager in support of the Don't Pass Bet which may be limited by the casino licensee to an amount so calculated as to provide winnings not in excess of the amount originally wagered on the Don't Pass Bet. If, in such circumstances, the Don't Pass Bet wins, the original Don't Pass Bet shall be paid at odds of 1 to 1 and the supplemental wager shall be paid at odds of 1 to 2 if the come out point was 4 or 10, 2 to 3 if the come out point was 5 or 9, and 5 to 6 if the come out point was 6 or 8.

(c) Whenever a player makes a Come Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the roll immediately following placement of such bet, the player shall have the right to make a supplemental wager in support of the Come Bet which may be limited by the casino licensee to an amount that is equal to the amount of the original Come Bet. If, in such circumstances, the Come Bet wins, the original Come Bet shall be paid at odds of 1 to 1 and the supplemental wager shall be paid at odds of 2 to 1 if the come point was 4 or 10, 3 to 2 if the come point was 5 or 9, and 6 to 5 if the come point was 6 or 8.

(d) Whenever a player makes a Don't Come Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the roll immediately following placement of such bet, the player shall have the right to make a supplemental wager in support of the Don't Come Bet which may be limited by the casino licensee to an amount so calculated as to provide winnings not in excess of the amount originally wagered on the Don't Come Bet. If, in such circumstances, the Don't Come Bet wins, the original Don't Come Bet shall be paid at odds of 1 to 1 and the supplemental wager shall be paid at odds of 1 to 2 if the come point was a 4 or 10, 2 to 3 if the come point was 5 or 9, and 5 to 6 if the come point was 6 or 8.

(e) A casino licensee may allow a supplemental wager in support of a Pass or Come Bet in an amount up to 10 times the amount of the original Pass or Come Bet. A casino licensee may allow a supplemental wager in support of a Don't Pass or Don't Come Bet in an amount so calculated as to provide a winning player with winnings not in excess of up to 10 times the amount originally wagered on the Don't Pass or Don't Come Bet. The original Pass, Don't Pass, Come or Don't Come Bet and any supplemental wager allowed pursuant to this subsection shall be paid at the same odds as the original and supplemental wagers are paid under (a) through (d) above.

(f) Notwithstanding (e) above, a casino licensee may accept a supplemental wager that exceeds an amount that is otherwise authorized by this section or posted as the maximum wager permitted pursuant to N.J.A.C. 19:47-8.2 and 8.3 provided that the excess amount of the supplemental wager is necessary to facilitate the payouts permitted by this section.

(a)

CASINO CONTROL COMMISSION

Temporary Adoption of New Rules and Amendments Accounting and Internal Controls; Gaming Equipment; Rules of the Games

Keno

Authority: N.J.S.A. 5:12-69(e), 70(f) and 100(e).

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an additional experiment for the purpose of determining whether various temporary amendments and new rules concerning the game of keno should be adopted on a permanent basis. The experiment shall be conducted in accordance with temporary rules which will be posted in each casino participating in the experiment and will also be available from the Commission upon request.

Specifically, the test would allow any casino licensee which wishes to participate in the experiment, and which meets all terms and conditions established by the Commission, to offer the game of keno to the public on March 13, 1995. The experiment would continue for the maximum period of time authorized by N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission pursuant to the terms of the experiment.

Should the temporary amendments and new rules prove successful, the Commission will take the steps necessary to permanently adopt them in accordance with the Administrative Procedure Act and N.J.A.C. 1:30.

HEALTH

(b)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Long-Term Care Facilities Adopted New Rules: N.J.A.C. 8:39-2.2 and 2.12

Proposed: May 2, 1994 at 26 N.J.R. 1772(c).

Adopted: February 1, 1995 by Len Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: February 7, 1995 as R.1995 d.127, **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. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: March 6, 1995.

Expiration Date: November 21, 1999.

Summary

N.J.A.C. 8:39-2.2(e) through (h) and N.J.A.C. 8:39-2.12(c) has been included as part of the proposed repeal and new rules of the N.J.A.C. 8:39, Standards for Licensure of Long Term Care Facilities, and were published on May 2, 1994 at 26 N.J.R. 1772(c).

The new rules were adopted as R.1994 d.582, with the above portions still pending. (See 26 N.J.R. 4641(a).)

The Department of Health received one letter addressing N.J.A.C. 8:39-2.2 and 2.12 during the public comment period, from the New Jersey Association of Health Care Facilities (NJAHCF). At the Commissioner's request, the Department reserved this section, concerning track record reviews, pending further consideration of the surety bond mechanism. Following further discussion and internal review, the reserved sections have been revised, approved by the Commissioner, and are now being adopted. Comments which were received and the Department's responses are summarized below.

COMMENT: NJAHCF suggested that N.J.A.C. 8:39-2.2(e), concerning track records of licensure applicants, be changed by adding the following to the last sentence: . . . "except that limited partners and non-officer/non-directors owning less than 10% are exempt."

RESPONSE: The Department generally concurs with the suggested change by the commenter, as it is consistent with Certificate of Need requirements and current practices for track record review of applicants. However, the Department believes that the percentage of ownership should be set at five percent. Applicants with less than a five percent interest as limited partners who are not officers in the facility's corporate structure have only a minimal level of control over the operations of a facility. A record of non-compliance at another facility fully or partially-owned by the applicant should have little bearing on quality of care at the facility which is the subject of the application. The rule has therefore been amended to permit the exception, if ownership is five percent or less.

COMMENT: NJAHCF requested a change to proposed N.J.A.C. 8:39-2.2(h), which would permit facilities which are applying for a certificate of need and have experienced a serious violation of Federal regulations or regulations of any state to be exempt from denial under certain conditions specified in the rule. As written, the rule applies only to health care facilities licensed in any state outside New Jersey. The commenter requested that the rule be rewritten to include New Jersey

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facilities also, since "quality New Jersey facilities would be discriminated against if they are eliminated in this section and precluded from having the same rights as out-of-State ownerships."

RESPONSE: Under certain conditions, a track record problem within a facility in New Jersey could be treated similarly to those occurring out-of-State, since Federal OBRA requirements are consistent throughout the country. The rule is intended, however, to provide an avenue for relief for multi-facility ownerships, and the minimum threshold to qualify for the exception has been proposed at ownership of three facilities. The minimum was proposed in recognition that the applicant would likely have one or two New Jersey sites at the conclusion of the CN process. In accordance with suggestions made by the Commissioner, the Department is concurrently increasing the threshold in this rule for ownership interests from three facilities to five facilities, while permitting in-State facilities to qualify for the exception.

The rule is also modified to eliminate the proposed requirement at paragraphs (h)4 and (h)9, which would require the trust fund or letter of credit to accrue to the benefit of residents of the facility. Pursuant to N.J.S.A. 26:2H-16, penalty funds collected by the Department are to be deposited in the Health Care Facilities Improvement Fund. On further consideration, it was felt that this approach would lead to numerous disputes and litigation and arrangements to benefit residents could be negotiated within settlements.

Applicants whose project costs are less than $400,000 will be asked to post a bond or trust account in the amount of $100,000 or 50 percent of total project costs, whichever is greater. The Department has made this change on adoption to provide a basic amount which would preserve resident safety.

"Irrevocable letter of credit" has been added at paragraph (h)5 to clarify that the funds may remain in this form for the time period specified, and a schedule has been added indicating that the funds will remain in a letter of credit or a trust fund for 15 months from the date the Department approves occupancy and operation of the facility, or that the letter of credit or trust fund will expire if the applicant does not obtain a certificate of need approval. References to a "surety bond" or "bond" have been removed from N.J.A.C. 8:39-2.2(h)1 through 7, since Department research has shown that such bonds are not available in the market.

N.J.A.C. 8:39-2.12(c) lists criteria for evaluating track records of facilities which have filed an application to increase total licensed beds. No comments were received regarding this text and subsection (c) is adopted without change.

Executive Order No. 27 Statement

Adoption of pending sections of Standards for Licensure of Long-Term Care Facilities, N.J.A.C. 8:39-2.2(e) through (h) and 2.12(c), do not impose standards on long-term care facilities in New Jersey that exceed those contained in any Federal regulations which may be applicable to these facilities. There are no Federal regulations which are analogous to these licensure rules, which specify criteria to be used when evaluating track records of applicants for licensure to operate a long-term care facility in New Jersey.

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

8:39-2.2 Application for licensure

(a) Following acquisition of a Certificate of Need, or a determination that a Certificate of Need is not required, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department which include information regarding facility ownership, corporate officers and stockholders, and approval forms from local building, fire, health and zoning departments. Such forms may be obtained from:

Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

(b) The Department shall charge a nonrefundable fee of $500.00 plus $3.00 per bed for the filing of an application for licensure of a long-term care facility. The Department shall also charge a nonrefundable fee of $500.00 plus $3.00 per bed for the annual renewal of the license.

(c) If chronic dialysis services are provided in the long-term care facility, the Department shall charge an initial licensure application fee of $500.00 and an additional $150.00 annually for licensure of the service. (The initial application shall be accompanied by a $650.00 fee; thereafter, $150.00 will be added to the facility's annual licensure renewal fee.)

(d) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

(e) The Department shall examine and evaluate the licensing track record of each applicant for the period beginning 12 months preceding submission of the application for licensure and extending to the date the Commissioner issues a final decision, for the purpose of determining the capacity of an applicant to operate a health care facility in a safe and effective manner in accordance with State and Federal requirements. A license may be denied where an applicant has not demonstrated such capacity, as evidenced by continuing or serious violations of State licensure standards or Federal certification standards or by existence of a criminal conviction or a plea of guilty to a charge of fraud, resident abuse or neglect, or crime of violence or moral turpitude. An applicant, for purposes of this rule, includes any person who was or is an owner or principal of a licensed health care facility, or who has managed, operated, or owned in whole or in part any health care facility***, excluding individuals or entities who are limited partners with no managerial control or authority over the operation of the facility and who have an ownership interest of five percent or less in a corporation which is the applicant and who also do not serve as officers or directors of the applicant corporation***.

(f) A application for licensure submitted by an applicant who was cited for state licensing or Federal certification deficiencies during the period identified in (e) above, which presented a serious risk to the life, safety, or quality of care of the facility's residents shall be denied. A serious risk to life, safety, or quality of care of residents includes, but is not limited to, deficiencies in state licensure or Federal certification requirements in the areas of nursing, resident rights, resident assessment or care plan, dietary services, infection control and sanitation, or pharmacy, resulting in:

1. An action by a state or Federal agency to curtail or temporarily suspend admissions to the facility;

2. Issuance of two or more Federal level A deficiencies in the areas identified above; or

3. Issuance of one or more Federal level A deficiencies in the same area on two or more consecutive visits.

(g) In evaluating track records in (e) or (f) above, the Department may consider any evidence of non-compliance with applicable licensure requirements provided by an official state licensing agency in any state other than New Jersey, or any official records from any agency of the State of New Jersey indicating the applicant's non-compliance with the agency's licensure or certification requirements in a facility the applicant owned, operated, or managed in whole or in part.

(h) An applicant who owns, operates, or manages in whole or in part *[three]* ***five*** or more health care facilities licensed or certified to operate in any state *[outside of]***, including*** New Jersey***,*** may be exempt from mandatory CN denial provisions of N.J.A.C. 8:33H-l.14(d), or (e) and (f) above under the following conditions:

1. No more than one out-of-State facility has the violations enumerated in (f)1, 2, and 3 above. In no case shall the applicant's New Jersey facility have such violations;

2. The applicant *[posts a surety bond or]* establishes a trust account or ***an*** irrevocable letter of credit in the favor of the Department in the amount of two percent of project costs or $200,000, whichever is greater, except that applicants whose project

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costs are less than $400,000 shall be permitted to post a bond or trust account equal to 50 percent of total project costs ***or $100,000, whichever is greater***;

3. The *[bond or]* trust account ***or irrevocable letter of credit*** shall be established through an entity approved by the Department and be written in a form that is approved by the Department;

4. The *[bond or]* trust fund ***or irrevocable letter of credit*** shall have named as *[beneficiaries all residents of the nursing facility (upon the date of the finding of any violations of the type enumerated above) which is the subject of the Certificate of Need or licensing application]* ***beneficiary The Health Care Facilities Improvement Fund, as administered by the Department***;

5. The funds shall remain in the *[bond,]* ***irrevocable letter of credit,*** or trust fund ***pursuant to the following schedule:***

i. For a period of 15 months from the date the Department approves initial occupancy and operation of the facility ***in the event the certificate of need is approved***;

ii. If the applicant does not obtain certificate of need approval for the project, the irrevocable letter of credit or trust fund shall expire after all avenues of relief pursuant to certificate of need denial appeal rights are exhausted or waived.

6. If none of the conditions enumerated in (f)1, 2 or 3 above are found during any survey occurring during the initial one year period, the funds and any accrued interest shall be returned to the applicant;

7. If during the one year period from initial approved occupancy, a violation of the type enumerated in (f)1, 2 or 3 above is found in the subject facility, then all funds in the *[surety bond,]* line of credit*[,]* or trust fund shall accrue *[in equal proportion]* to the benefit of *[those individuals who are residents of the facility on the last day of the survey conducted by the Department, leading to these violations, inclusive of residents temporarily admitted to another health care facility under a bed-hold arrangement]* ***the Health Care Facilities Improvement Fund***;

8. The one year period in (a)7 above may be extended by the Department for an additional three months if a single level A violation is found in the areas identified in (d) during the initial 12 months of operation*[; and]***.*

*[9. Funds shall be credited to residents as follows:

i. If the resident is under private pay arrangements, the funds shall be credited towards the daily rate assessed by the facility;

ii. If the resident's care is being paid through Medicaid (Title XIX), the funds shall be credited to this program as an offset to anticipated revenue;

iii. If the resident has been discharged or is deceased since the time of the survey, funds shall be paid to the individual, to the executor of the estate, or to Medicare, Medicaid, or other public funding source, as applicable. Such payment or credit shall be made within 30 days of adjudication of the violations enumerated in (d)1, 2, and 3 above.]*

(i) Any applicant denied a license to operate a facility shall have the right to a fair hearing in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

8:39-2.12 Add-a-bed

(a) Pursuant to N.J.S.A. 26:2H-7.2, a facility may request approval from the Department to increase total licensed beds by no more than 10 beds or 10 percent of its licensed bed capacity, whichever is less, without Certificate of Need approval. No more than one such request for approval shall be submitted every five years.

(b) The application shall be filed, with an application fee of $250.00, using application forms provided by the Licensing, Certification and Standards program, and shall include: name, address, ownership, and any other facilities owned, licensed capacity, any existing waivers, number of beds requested, proposed location of beds, any construction/renovation needed, a description of the project, number of single-bed rooms and square footage of dining/recreation area after increase, and additional staffing required.

(c) The Department shall deny an application for add-a-beds based on the facility track record, if any of the following criteria:

1. Within the last 12 months preceding the date of application, the applicant was cited for a violation of the licensing rules in this chapter or of Federal certification requirements for Medicaid or Medicare participation which presented a serious risk to the life, safety, or quality of care of the facility's residents. A serious risk to life, safety, or quality of care of residents includes, but is not limited to, deficiencies in State licensure or Federal certification requirements in the areas of nursing, resident rights, resident assessment and care plans, dietary services, infection control and sanitation, or pharmacy, resulting in:

i. An action by a State or Federal agency to curtail or temporarily suspend admissions to a facility; or

ii. Issuance of two or more Federal Level A deficiencies in the areas identified above; or

iii. Issuance of one or more Federal Level A deficiencies in the same area on two or more consecutive visits; or

2. The applicant fails to demonstrate that the facility has sufficient space to implement the new licensed bed capacity in a manner meeting Federal construction standards contained in the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1992-1993), as published by the American Institute of Architects and approved by the U.S. Department of Health and Human Services. (Available from the American Institute of Architects Press, 1735 New York Ave., NW, Washington, D.C. 20006); or

3. The applicant fails to demonstrate that the facility has provided sufficient nurse staffing hours, in accordance with this chapter, to meet the needs of the current resident census; or

4. The addition of beds will result in a unit size in excess of 64 beds; or

5. The addition of beds will result in a violation of State licensure or Federal certification requirements.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Adult Day Health Care Facilities
Standards for Licensure
Readoption with Amendments: N.J.A.C. 8:43F

Proposed: November 21, 1994 at 26 N.J.R. 4532(a).

Adopted: February 1, 1995, by Len Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: February 7, 1995 as R.1995 d.128, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: February 7, 1995, Readoption.
March 6, 1995, Amendments.
Expiration Date: February 7, 2000.

Summary of Public Comments and Agency Responses:

COMMENT: Three letters of comment were received concerning the rules to be readopted at N.J.A.C. 8:43F-10. Letters from Cherrywood Adult Day Care Program, Community Medical Center, and The New Jersey Adult Day Care Association each indicated that the Summary of the proposed readoption stated that "a unit dose drug distribution system must be implemented," although the rule at N.J.A.C. 8:43F-10.5(f) specifies procedures to be followed only if a unit dose drug distribution system is used by the facility. Commenters requested that the Summary be clarified to indicate that unit dose is an option for adult day care facilities, but is not required by the rules.

RESPONSE: The Department appreciates the comment letters which correctly point out the discrepancy between the Summary and the actual readopted rule, and regrets any confusion which resulted from the incorrect statement in the Summary. Although a unit dose distribution system is not required, some facilities may determine that it is a safe and cost effective option and these facilities should implement the system in accordance with the rules at N.J.A.C. 8:43F-10.5(f). No change has been made to the rules as a result of these comments.

Executive Order No. 27 Statement

The readoption with amendments of N.J.A.C. 8:43F does not impose standards on Adult Day Health Care Facilities in New Jersey that exceed

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those contained in any Federal regulations which may be applicable to these facilities. There is no Federal law which is analogous to these State licensure rules for adult day health care facilities.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43F.

Full text of the adopted amendments follows:

8:43F-1.13 Qualifications of patient activities director

(a) The patient activities director shall:

1. (No change.)

2. Be certified or eligible for certification as a certified therapeutic recreation specialist (CTRS) by the National Council for Therapeutic Recreation (National Council for Therapeutic Recreation, Inc., P.O. Box 479, Thiells, NY 10984-0479); or

3.-5. (No change.)

8:43F-1.18 Qualifications of social workers

Each social worker shall be certified or licensed by the New Jersey State Board of Social Work Examiners.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:43F-2.1 Application for licensure

(a) Any person, organization, or corporation desiring to operate an adult day health care facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625

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

8:43F-2.2 Newly constructed or expanded facilities

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

(c) Any adult day health care facility with a construction program shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

8:43F-2.3 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Division of Health Facilities Evaluation and Licensing of the Department shall be conducted at the Department's discretion to determine if the facility adheres to the rules in this chapter.

1. (No change.)

2. The facility shall notify the Division of Health Facilities Evaluation and Licensing of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:43F-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq. and the rules pursuant thereto;

2.-5. (No change.)

(c)-(g) (No change.)

Recodify existing 8:43F-2.5 through 2.9 as 8:43F-2.4 through 2.9. (No change in text.)

8:43F-3.9 Information reportable to State Board of Medical Examiners

(a) In accordance with the Professional Medical Conduct Reform Act, P.L. 1989, c.300, the facility shall notify the Medical Practitioner Review Panel established by the New Jersey State Board of Medical Examiners if a practitioner who is employed by, is under contract to render professional services to, or who has privileges at the facility:

1. Voluntarily resigns from the staff if the facility is reviewing the practitioner's conduct or patient care or has expressed, through any member of the medical or administrative staff, an intention to do so;

2. Voluntarily relinquishes any partial privileges to perform a specific procedure if the facility is reviewing the practitioner's conduct or patient care or has expressed, through any member of the medical or administrative staff, an intention to do so;

3. Has full or partial privileges summarily or temporarily revoked or suspended, permanently reduced, suspended or revoked, has been discharged from the staff or has had a contract to render professional services terminated or rescinded for reasons relating to the practitioner's incompetency, misconduct, or impairment;

4. Agrees to the placement of conditions or limitations on the exercise of clinical privileges or practice within the health care facility including, but not limited to, second opinion requirements, nonroutine concurrent or retrospective review of admissions or care, nonroutine supervision by one or more members of the staff, or the completion of remedial education or training;

5. Is granted a leave of absence pursuant to which the practitioner may not exercise clinical privileges or practice within the facility and if the reasons provided in support of the leave relate to any physical, mental, or emotional condition or drug or alcohol use, which might impair the practitioner's ability to practice with reasonable skill and safety; or

6. Is a party to a medical malpractice liability suit in which the facility is also a party and in which there is a settlement, judgment, or arbitration award.

(b) For the purposes of (a) above, "practitioner" means physician, medical resident or intern, or podiatrist.

(c) Notifications required by (a) above shall be provided within seven days of the date of the action, settlement, judgment or award and shall be submitted, with supporting documentation, on forms approved by the Department of Health for that purpose. The facility shall submit a completed supplemental form to the New Jersey State Board of Medical Examiners, if so requested by the Board, and to the Department's Health Facilities Evaluation and Licensing Program.

8:43F-10.1 Provision of pharmaceutical services

Pharmaceutical services shall be provided to patients, directly in the facility. If the facility has an institutional pharmacy, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the New Jersey State Department of Law and Public Safety.

8:43F-15.2 Provision of laboratory and radiological services

(a) Facilities providing laboratory services shall be licensed or approved by the Department, in accordance with N.J.A.C. 8:44 and 8:45.

(b) Facilities providing radiological services shall be licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of Radiological Health, in accordance with N.J.A.C. 7:28.

8:43F-20.3 Infection prevention measures

(a) The facility shall follow all recommendations in the current editions of the following Centers for Disease Control publications, incorporated herein by reference, unless the infection control committee makes a documented exception for a specific guideline:

1.-5. (No change.)

8:43F-20.6 Regulated medical waste

(a) (No change.)

(b) The facility shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to the aforementioned Act.

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(a)

DIVISION OF PUBLIC HEALTH AND ENVIRONMENTAL LABORATORIES
DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Clinical Laboratory Services

Readoption with Amendments: N.J.A.C. 8:45

Proposed: January 3, 1995 at 27 N.J.R. 32(a).
Adopted: February 6, 1995 by Len Fishman, Commissioner, Department of Health.
Filed: February 6, 1995 as R.1995 d.126, **without change.**
Authority: N.J.S.A. 45:9-42.30 and 26:1A-33.
Effective Date: February 6, 1995, Readoption;
March 6, 1995, Amendments.
Expiration Date: February 6, 2000.

Summary of Public Comments and Agency Responses:

COMMENT: Dr. F.J. DeMaio, of Vineland, New Jersey, commented on a fee he was subject to as a result of the use of syringes in his office.

RESPONSE: The comment does not appear to be relevant to the proposed rules and may be more related to a medical waste issue. No changes were made to the rule as a result of this comment.

COMMENT: Dr. Mark Kroll, of Freehold, New Jersey, commented that fees imposed on clinical labs are too onerous for solo practitioners.

RESPONSE: General fees on solo practitioners with office laboratories are imposed under Federal Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) rules and not the New Jersey State Department of Health. Under CLIA '88 rules all laboratories performing moderate or high complexity testing must enroll and successfully participate in a HCFA-approved proficiency testing (PT) program. While fees for the Department-sponsored proficiency testing program are often equal to or less than other providers there is no state licensure mandate for solo practitioners and therefore no requirement to participate in the program. The Department-sponsored PT program is a HCFA-approved program and one of many available to solo practitioners for compliance with CLIA '88 rules.

Executive Order No. 27 Statement

The subject of this chapter, clinical laboratory services, as readopted here at N.J.A.C. 8:45, is not addressed under any current Federal regulations. As discussed previously, Federal CLIA '88 rules mandate registration and certification of all clinical laboratories, regardless of site, and require enrollment and successful participation in a HCFA-approved proficiency testing program. CLIA '88 does not regulate PT program fees.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:45.

Full text of the adopted amendments follows:

8:45-1.3 Licensure fees

(a) Initial and annual renewal licensure fees shall be identical and are prescribed by the following table. Fees noted are per each specialty.

Specialty	Total Number of Employees of Entire Laboratory[1]								
	1-4	5-9	10-19	20-29	30-39	40-49	50-69	70-89	90 or More
Urinalysis	$35	$40	$45	$50	$55	$60	$65	$70	$75
Bacteriology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Mycobacteriology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Parasitology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Mycology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Virology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Serology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Hematology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Immunohematology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Routine Chemistry	$35	$40	$45	$50	$55	$60	$65	$70	$75
Special Chemistry	$35	$40	$45	$50	$55	$60	$65	$70	$75
Toxicology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Cytology	$35	$40	$45	$50	$55	$60	$65	$70	$75
Cytogenetics and/or Tissue Typing	$35	$40	$45	$50	$55	$60	$65	$70	$75
Collection Station only	$35	$40	$45	$50	$55	$60	$65	$70	$75

8:45-1.4 Proficiency testing fees

(a) Those laboratories enrolled in the State's Clinical Laboratory Improvement Service analytical proficiency testing program will be assessed an annual fee by specialty/subspecialty/procedure according to the following table:

Bacteriology	$250.00
Throat Culture only	150.00
Gram Stain Only	150.00
Throat Screen (DAT)	100.00
Pinworms	25.00
Dermatophyte Screen	75.00
KOH Prep	25.00
Vaginal Wet Prep	25.00
Sperm	25.00
Urine Culture Screen	75.00
Urine Microscopy	25.00
Syphilis	150.00
Diagnostic Immunology	340.00
Rubella and/or Rheumatoid Factor	280.00
ASO and/or IM and/or hCG	280.00
Antinuclear Antibody	285.00
Endocrinology	190.00
Routine Chemistry	275.00
Lipids/Glucose Only	175.00
Blood Gases	200.00
Erythrocyte Protoporphyrin	225.00
Drugs of Abuse in Urine	250.00
CBC with Blood Cell ID	225.00
Hemoglobin or Hematocrit only	125.00
Blood Cell ID only	100.00
Coagulation	225.00
Comprehensive Blood Banking and Immunohematology	350.00
Limited Immunohematology	210.00
Monitoring Other PT Surveys	50.00

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EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Home Energy Assistance Handbook
Eligibility Requirements; Income Eligibility Guidelines

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:89-2.3 and 3.1

Emergency Amendments Adopted and Concurrent Proposed Amendments Authorized: December 28, 1994 by William Waldman, Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): February 16, 1995.

Emergency Amendment Filed: February 16, 1995 as R.1995, d.145.

Authority: N.J.S.A. 30:4B-2.

Concurrent Proposal Number: PRN 1995-173.

Emergency Amendments Effective Date: February 16, 1995.

Emergency Amendments Expiration Date: April 17, 1995.

Submit comments by April 5, 1995 to:
Karen Highsmith, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)) if filed on or before the emergency amendment's expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary

The Home Energy Assistance (HEA) program is a Federal block grant program authorized by the Low Income Home Energy Assistance Act of 1981, Title XXVI of P.L. 97-35. The purpose of the program is to assist low income households to meet the costs of home heating and medically necessary cooling.

Based on the Federal Grant Appropriation level, $50.1 million has been approved for the FY 95 HEA program. Additionally, $3.1 million in leveraging incentive funds has been granted to New Jersey for use in FY 95, and $6 million in available oil overcharge funds. This amount will allow New Jersey to maintain the current benefit levels for all households.

Due to delays experienced in the receipt of Federal funding over the last several years, the Department will be again issuing the first HEA benefit payments (automatic and special energy assistance) in December instead of November. This schedule change was first implemented in FY 91. Applications for special assistance are being accepted as of November 1, and emergency energy assistance (EEA) will be made available beginning two weeks after the first heating assistance benefits are issued in December 1994. Additionally, all benefits will be issued as full entitlements in FY 95.

The Department is proposing to continue utilizing the allowable 150 percent of the current Federal Poverty Level as the income eligibility guideline, and, thus, continue to make assistance available to the maximum number of households throughout the entire winter heating season.

Since the Federal Poverty Level was updated in February, 1994, to account for last year's increase in prices as measured by the Consumer Price Index, the Department is proposing to adjust the income eligibility guidelines for New Jersey's HEA program to coincide with the updated Federal Poverty Level.

The proposed amendments include the following:

N.J.A.C. 10:89-2.3(e)6v provides that payments from the Child Care and Development Block Grant program are excluded from eligibility determination under the Low Income Home Energy Assistance Program (LIHEAP).

N.J.A.C. 10:89-2.3(e)6vi provides that payments made to individuals because of their status as victims of Nazi persecution shall be excluded when determining eligibility under LIHEAP.

N.J.A.C. 10:89-2.3(e)6vii specifies that payments under the Green Thumb Program are to be excluded when evaluating eligibility under LIHEAP.

N.J.A.C. 10:89-2.3(f)6 states that households placed in rental assistance slots utilizing temporary emergency funding made available through the State's emergency assistance initiatives will not be excluded from eligibility for Home Energy Assistance as a tenant whose heat is included in rent.

N.J.A.C. 10:89-2.3(g) adjusts the monthly allowable gross income limits to continue to be based on 150 percent of the current Federal Poverty Level.

N.J.A.C. 10:89-3.1(a)1i provides that all HEA benefits will be issued as full entitlements.

N.J.A.C. 10:89-3.1(a)1ii clarifies that all automatic payment benefits will be issued as full entitlements.

Social Impact

The proposed amendments are in keeping with an ongoing effort on the part of the Department's Division of Family Development to provide expeditious and appropriate disbursement of HEA benefits to New Jersey's low income population. The proposed amendments are in response to Federal compliance requirements and will serve to maintain uniformity with regulations. Additionally, the upward adjustment in the monthly allowable gross income limit for HEA program eligibility is expected to increase the number of households served.

Economic Impact

There will be no direct impact upon New Jersey taxpayers since the entire cost of the assistance and administration of the HEA program is Federally funded. There will be an indirect benefit to the public as a whole since there will be an influx of Federal dollars into the State's economy. The direct beneficiaries of the program will be those households eligible to receive HEA benefits in FFY 1995.

Executive Order No. 27 Statement

The proposed amendments contain standards which are the same as those imposed by Federal law.

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 amended rules govern a public assistance program designed to certify eligibility for the Home Energy Assistance program to a low-income population by a governmental agency rather than a private business establishment.

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

10:89-2.3 Income eligibility

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

(e) Income exclusions: The following income is not considered in the determination of gross income for this program:

1.-5. (No change.)

6. Income excluded by law:

i.-iv. (No change.)

v. Payments from the Child Care and Development Block Grant (CCDBG) program: Payments received by eligible parents under CCDBG shall not be counted as income when determining eligibility or benefit levels under LIHEAP.

vi. Payments made to individuals because of their status as victims of Nazi persecution shall not be counted as income when determining eligibility under LIHEAP.

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vii. Wages and or salaries, including any training allowances under the Green Thumb Program, are to be excluded when determining eligibility under LIHEAP.

7. (No change.)

(f) Income computation: Countable gross monthly earned and unearned income, as defined in (c) and (d) above, and verified in accordance with N.J.A.C. 10:89-4.1(d), shall be added to determine the household's total gross monthly income. Cents shall be rounded to the nearest dollar. If the household's total gross monthly income is equal to or less than the gross income limit for the household size, the household is income eligible for Home Energy Assistance.

1.-5. (No change.)

6. Households placed in rental assistance slots utilizing temporary emergency funding made available through the State's emergency assistance initiatives will not be excluded from eligibility for Home Energy Assistance as a tenant whose heat is included in rent.

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limits	
1	$[871]	**920**
2	[1179]	**1230**
3	[1486]	**1540**
4	[1794]	**1850**
5	[2101]	**2160**
6	[2409]	**2470**
7	[2716]	**2780**
8	[3024]	**3090**
9	[3331]	**3400**
10	[3639]	**3710**
Each Additional Member	+[298]	**310**

10:89-3.1 Automatic payments to certain households

(a) Recipient households:

1. Certain households eligible for and receiving AFDC or non-public assistance (NPA) Food Stamps (FS) will receive automatic payments based on the information regarding income, household size, heating arrangement and fuel type contained in computer records maintained by the Division of Family Development. Where the household receives FS as a public assistance (PA) household and the PA FS household is greater than the AFDC eligible unit, the automatic payment shall be based on the PA FS household size. This information will be collected from the head of the household at each application, reapplication or recertification for AFDC or FS and will be updated whenever the household reports a change. However, once a household becomes eligible for automatic payments, the entitlement cannot be adjusted.

i. Automatic payments will only be made during the heating season. [The entitlement] **Entitlements** will be paid in [two installments] **one installment.** Households which do not receive automatic payments must submit an application to receive HEA.

ii. The entitlement will be paid [in two installments] **as a full benefit** to **all** households [found eligible for automatic payments prior to December 31. New cases found eligible after December 31 shall receive the entitlement in a single payment through March].

iii. (No change.)

2.-3. (No change.)

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Adoption of New Jersey's Voluntary Plan for Siting a Low-Level Radioactive Waste Disposal Facility

Take notice that, pursuant to N.J.S.A. 13:1E-177 et seq., on February 2, 1995, the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board adopted the voluntary process for siting a low-level radioactive waste disposal facility in New Jersey. The Board adopted the Voluntary Plan after holding a series of public meetings and hearings, and soliciting written comments on the Proposed Plan. The Board reviewed the public comments it received and revised the Proposed Plan. Copies of New Jersey's Voluntary Plan for Siting a Low-Level Radioactive Waste Disposal Facility and of a separate document summarizing public comments on the Proposed Plan and the Board's response to those comments are available from the Siting Board office, CN-410, Trenton, NJ 08625-0410, or by calling (609) 777-4247.

(b)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF MARINE FISHERIES

Notice of Receipt of Petition for Rulemaking: Placement and Marking of Pots and Trot Lines

N.J.A.C. 7:25-14.6(c); Size of Crabs Taken N.J.A.C. 7:10

Petitioner: Lance Naylor.

Take notice that on February 3, 1995, the Department of Environmental Protection (Department) received a petition for rulemaking concerning an amendment of the Department's regulations governing the placement of crab pots and the size of crabs taken from any tidal waters of this State.

The petitioner, a New Jersey commercial crabber, requests that the Department amend N.J.A.C. 7:25-14.6(c) to allow crab pots to be placed in a creek, ditch or tributary that are not less than 25 feet in width in order to allow crabbers a larger and more diversified area to crab. N.J.A.C. 7:25-14.6(c) currently prohibits a crab pot to be placed in a creek, ditch or tributary that is less than 50 feet wide at mean or low water.

In addition, the petitioner requests the Department amendment N.J.A.C. 7:14-10 to allow all mature female crabs and a small percentage of undersized crabs to be taken from any tidal waters of this State. N.J.A.C. 7:14-10(a) currently prohibits a person from taking or possessing any peeler or shredder crab measuring less than three inches across the back from the tip of the longest lateral spine to the other, or hard crab measuring less than four and one-half inches across the back from tip to tip of spike. Subsection (b) prohibits a person from selling or exposing for sale any hard crab measuring less than four and three-quarter inches across the back from tip to tip of spike.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department will subsequently mail to petitioner and file with the Office of Administrative Law a notice of action on the petition.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Atlantic County Water Quality Management (WQM) Plan. This amendment proposal, modifying the Egg Harbor Township Wastewater Management Plan, was submitted on behalf of Greentree Ministries located on Schoolhouse Lane (Block 50E, Lot 9). The proposed amendment would allow the Greentree Ministries facility to increase the existing discharge to ground water from 1,560 gallons per day (gpd) to a maximum of 9,000 gpd to serve a proposed multi-phased expansion. The total proposed wastewater flow projection is based on a sanctuary capacity of 3,000 seats. There are three existing individual subsurface sewage disposal systems on the site which will be abandoned once the New Jersey Pollutant Discharge Elimination System permitted wastewater facility is functional. The property is in a Limited Growth Region of the Coastal Area Facility Review Act zone. Also, undevelopable wetlands are on the site.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the Office of Policy, Planning, and Economic Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. These documents are available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Atlantic County Office of Policy, Planning, and Economic Development at (609) 345-6700 or the Office of Land and Water Planning at (609) 633-1179.

The Atlantic County Office of Policy, Planning, and Economic Development will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, April 19, 1995 at 11:00 A.M. in the Fourth Floor Conference Room J of the County Office Building in Atlantic City. **Interested persons** may submit written comments on the proposed amendment to Mr. Lauren Moore at the County Office Building address cited above with a copy sent to Dr. Daniel J. Van Abs, at the NJDEP address cited above. All comments must be delivered within 15 days after the close of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered with respect to the amendment request. Atlantic County and the NJDEP thereafter may approve and adopt this amendment without further notice. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan amendment to the County Executive and the Chairman of the Board of Chosen Freeholders. An amendment adoption shall be incorporated into the Atlantic County WQM Plan only upon adoption of an ordinance by the Atlantic County Board of Chosen Freeholders, and adoption of the amendment by the NJDEP.

(d)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Atlantic County Water Quality Management (WQM) Plan submitted on behalf of Dr. George Groch. This proposed amendment would modify the Egg Harbor Township Wastewater Management Plan by adding a subdivision of 12 proposed four-bedroom single family homes, located on Lot 60 of Block 54E (Steelmanville Road) in Egg Harbor Township, to the sewer service area of the Egg Harbor Township Municipal Utilities

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Authority (EHTMUA). The estimated wastewater flow to be generated from the project site is 3,600 gallons per day. The EHTMUA sends their wastewater flow for treatment to the Atlantic County Utilities Authority-City Island Sewage Treatment Plant, located in Atlantic City, which discharges into the Atlantic Ocean. The subdivision proposed for inclusion in the sewer service area contains 17.759 acres and lies within the Limited Growth Region of the Coastal Area Facility Review Act zone. All 12 single family homes will be located on Lot 60 of Block 54E. Lot 70 of Block 54E, which is also a part of this property, has been classified as an exceptional value resource. A required 150 foot buffer associated with wetland conditions makes access to most of Lot 70 infeasible. Therefore, no homes shall be constructed on Lot 70 of Block 54E, to avoid freshwater wetland impacts.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the Office of Policy, Planning, and Economic Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. These documents are available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Atlantic County Office of Policy, Planning, and Economic Development at (609) 345-6700 or the Office of Land and Water Planning at (609) 633-1179.

The Atlantic County Office of Policy, Planning, and Economic Development will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, April 19, 1995 at 11:00 A.M. in the Fourth Floor Conference Room J of the County Office Building in Atlantic City. **Interested persons** may submit written comments on the proposed amendment to Mr. Lauren Moore at the County Office Building address cited above with a copy sent to Dr. Daniel J. Van Abs, at the NJDEP address cited above. All comments must be delivered within 15 days after the close of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered with respect to the amendment request. Atlantic County and the NJDEP thereafter may approve and adopt this amendment without further notice. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan amendment to the County Executive and the Chairman of the Board of Chosen Freeholders. An amendment adoption shall be incorporated into the Atlantic County WQM Plan only upon adoption of an ordinance by the Atlantic County Board of Chosen Freeholders, and adoption of the amendment by the NJDEP.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comment on a proposed amendment to the Upper Raritan Water Quality Management (WQM) Plan. This amendment was submitted on behalf of Mount Olive Township and Richard and Robbins Associates. This proposal would amend the Mount Olive Township Wastewater Management Plan (WMP) regarding the proposed Hidden Meadows development and wastewater treatment facility. The WMP presently identifies a future year 2013 population of 565 persons and wasteflow of 0.037 million gallons per day (mgd). This proposal would increase the projected population to 764 persons (191 single family units) and wastewater flow of 0.0573 mgd. There is no expansion to the sewer service area. Additionally, this proposal allows for the future possibility of expansion of the proposed Golden Hills Wastewater Treatment Plant to also treat wastewater from the Hidden Meadows development. The treated effluent from Hidden Meadows would be discharged via disposal fields located at Hidden Meadows.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Raritan WQM Plan. All information relating to the WQM Plan, and the proposed amendment is located at the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, 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 NJDEP address cited above with a copy sent to Mr. Eugene F. Buczynski, P.E., Township Engineer, Canger & Cassera, Inc., 550 Marshall Street, Phillipsburg, New Jersey 08865-2659. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the NJDEP 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.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on January 31, 1995, 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 Northeast Water Quality Management Plan was adopted by the Department. The amendment updates the Pequannock, Lincoln Park and Fairfield Sewerage Authority (Authority) Wastewater Management Plan (WMP) to include Block 110, Lot 21 in Montville Township, Morris County, within the sewer service area of the Authority's sewage treatment plant (discharge to the Pompton River). This property will be subdivided into two lots for construction of two single family homes (with a total wastewater flow of 600 gallons per day). Each home will require individual pumping facilities to tie into the Authority's sewer system in Lincoln Park Borough. As part of this amendment, the Authority's WMP area will be expanded to include this additional service area.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

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CORRECTIONS

(a)

THE COMMISSIONER

Notice of Action on Petition for Rulemaking

N.J.A.C. 10A

Petitioner: Larry J. Pyatt, New Jersey State Prison.

Take notice that on January 5, 1995, the New Jersey Department of Corrections received a petition for rulemaking concerning the establishment of a unit for incarcerated veterans. Public notice of this petition was published in the February 6, 1995, New Jersey Register at 27 N.J.R. 592(a).

In accordance with N.J.A.C. 1:30-3.6 and after review of the petition, the Department has determined that the matter will receive further deliberations.

Upon the conclusion of the Department's deliberations by March 24, 1995, the decision will be mailed to the petitioner and published in a future New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

INSURANCE

(b)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Notice of Final Action on Petition for Rulemaking

N.J.A.C. 11:20 Appendix Exhibits A through F

Petitioner: New Jersey Acupuncture Association.

Take notice that the New Jersey Individual Health Coverage Program ("IHC") Board received a petition for rulemaking on November 3, 1994 concerning N.J.A.C. 11:20, Appendix Exhibits A through F, the individual health benefits policy forms. The petition requests that the IHC Board amend the standard policy forms to include acupuncture therapy to the list of covered services.

Notice of Final Action on Petition for Rulemaking

The petition was originally considered by the Board which referred the petition to its Legal Committee for further deliberations. The Board instructed the Legal Committee to report to the Board with its recommendations within 90 days. At its January 20, 1995 meeting, the Legal Committee reported that it had reviewed the petition, consulted with the IHC Policy Forms Committee, and recommend that the petition be denied. The Legal Committee noted that the Board had just undertaken a thorough review of its policy forms, and had determined that the plans as amended provide an appropriate level of coverage. The Legal Committee noted that in its review it had balanced the desirability of the proposed additional coverage with the cost of such additional coverage, and determined that a change was not warranted at this time. After considering the recommendations of the Legal Committee, the Board voted unanimously to deny the petition for rulemaking.

A copy of this notice has been mailed to the Petitioner.

(c)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Notice of Final Action on Petition for Rulemaking

N.J.A.C. 11:21 Appendix Exhibits A through G

Petitioner: New Jersey Acupuncture Association.

Take notice that the New Jersey Small Employer Health Benefits Program ("SEH") Board received a petition for rulemaking on November 3, 1994 concerning N.J.A.C. 11:21 Appendix Exhibits A through G, the small employer health benefits policy forms. The petition requests that the SEH Board amend the standard policy forms to include acupuncture therapy to the list of covered services.

Notice of Final Action on Petition for Rulemaking

The petition was originally considered by the Board which then referred the petition to its Policy Forms Committee for further deliberations and a recommendation in accordance with N.J.A.C. 11:21-18.3(c). At the Board's January 18, 1995 meeting, the Policy Forms Committee recommended that the Board deny the petition. The Policy Forms Committee noted that, to its knowledge, no small employers had written to the Board recommending coverage for acupuncture therapy. Further, the Policy Forms Committee noted that pursuant to N.J.S.A. 17B:27A-19(i) and N.J.A.C. 11:21-3.2(d), carriers are permitted to offer optional benefit riders which revise the coverage offered in the standard plans. Thus, there currently exists a market mechanism which would permit coverage for acupuncture therapy. The Policy Forms Committee noted that the plans, as currently crafted, offer a broad range of coverages, and strike an appropriate balance between coverage and affordability. After considering the recommendations of the Policy Forms Committee, the Board voted unanimously to deny the petition for rulemaking.

A copy of this notice has been mailed to the Petitioner, as required by N.J.A.C. 11:21-18.3(b).

(d)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM

Notice of Receipt of Petition for Rulemaking

N.J.A.C. 11:20, Exhibit F of the Appendix

Petitioner: New Jersey Optometric Association.

Take notice that on January 6, 1995, the New Jersey Individual Health Coverage Program ("IHC") Board received a petition for rulemaking concerning N.J.A.C. 11:20, Exhibit F of the Appendix, the individual health benefits HMO policy form, Section V(b), "Specialist Doctor Benefits." The petition was dated October 7, 1994; however, due to an undetermined delivery problem, the IHC Board's staff did not receive the petition until January 6, 1995.

The petitioner requests that the IHC Board amend the list of "Specialist Doctor benefits" by excluding "ophthalmology" from that list or by substituting the term "licensed eye care practitioner." The petitioner requests the rule amendment to clarify that Optometrists are covered under the HMO policy form.

The Board will consider the petition for rulemaking and will make a determination by March 15, 1995.

A copy of this notice has been mailed to the petitioner.

PUBLIC UTILITIES

(e)

BOARD OF PUBLIC UTILITIES DIVISION OF ENERGY PLANNING AND CONSERVATION

Notice of Generic Proceeding to Consider Proposed Supply Side Procurement Process

BPU Docket Number: EX94120578.

Take notice that the Draft New Jersey Energy Master Plan Phase I Report (Draft Plan) released on November 16, 1994, recommends that the Board of Public Utilities (Board) develop a Supply Side Procurement Model which guides the purchase or construction of electric generation by electric utilities. Subsequent to the release of the Draft Plan, the Staff of the Board (Staff) prepared a draft Supply Side Procurement Model for consideration by the Board which is consistent with the recommendations included in the Draft Plan. At its open public meeting held on December 24, 1994, the Board initiated a generic proceeding to consider the draft Supply Side Procurement Model prepared by its Staff.

Persons wishing to participate in the generic proceeding to consider the proposed Supply Side Procurement process should file a Notice of

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Intent to Participate with the Secretary, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102, by April 5, 1995. Such notice shall include the above referenced docket number.

The Board will also accept **written comments** on the draft proposal until April 5, 1994. Upon review of the comments, the Board will provide notice of further proceedings, if any, to persons who have filed a Notice of Intent to Participate.

Copies of the draft Supply Side Procurement Model may be obtained from the Board of Public Utilities' Division of Energy Planning and Conservation by calling (201) 648-2129.

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EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	4/21/97
1:5	9/13/96
1:6	4/21/97
1:6A	3/19/95
1:7	4/21/97
1:10	4/21/97
1:10B	9/13/96
1:11	4/21/97
1:12	8/1/99
1:12A	8/1/99
1:13	4/21/97
1:13A	2/3/99
1:14	7/15/96
1:20	4/21/97
1:21	4/21/97
1:30	1/25/96
1:31	4/21/97

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:1-4	Exempt (28 C.F.R. Part 35)
2:2	3/7/99
2:3	7/7/99
2:5	EXPIRED RULES
2:6	2/6/00
2:9	8/19/96
2:16	1/22/96
2:17	5/31/96
2:18	8/5/96
2:19	10/1/95
2:20	10/1/95
2:21	8/5/96
2:22	6/26/97
2:23	5/28/98
2:24	4/2/95
2:32	5/13/97
2:33	EXPIRED RULES
2:34	12/5/99
2:48	10/25/95
2:50	5/1/97
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq., 7 C.F.R. 1004)
2:68	10/29/98
2:69	12/20/98
2:70	8/20/95
2:71	7/2/98
2:72	7/2/98
2:74	7/2/98
2:76	6/28/99
2:90	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	3/6/00
3:4	8/17/97
3:6	3/1/96
3:7	9/12/95
3:11	7/18/99
3:12	6/15/97
3:13	1/21/97
3:14	3/7/99
3:16	6/18/95
3:17	6/13/96
3:18	12/24/97
3:19	3/15/96
3:21	1/24/97
3:22	11/7/99
3:23	7/6/97
3:24	8/18/94
3:25	7/23/97
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:29	8/5/96
3:32	11/1/98
3:33	11/7/99
3:38	9/11/97
3:40	11/21/99
3:41	10/11/95
3:42	3/10/98

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	9/22/97
4A:1-5	Exempt (28 C.F.R. Part 35)
4A:2	9/22/97
4A:3	8/5/98
4A:4	5/12/98
4A:5	9/22/97
4A:6	12/22/97
4A:7	9/22/97
4A:8	5/20/95
4A:9	9/22/97
4A:10	9/22/97

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/3/00
5:2	EXPIRED RULES
5:3	7/30/98
5:4	9/1/97
5:5	Exempt (28 C.F.R. Part 35)
5:10	8/26/98
5:11	3/9/99
5:12	2/6/00
5:13	6/22/97
5:14	11/9/95
5:15	7/5/99
5:18	1/4/00

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N.J.A.C.	Expiration Date
5:18A	1/3/00
5:18B	1/3/00
5:18C	1/3/00
5:19	1/15/98
5:20	9/3/96
5:22	2/5/95
5:23	2/3/98
5:24	7/10/95
5:25	2/19/96
5:25A	4/20/97
5:26	2/7/96
5:27	5/2/95
5:28	12/13/95
5:29	2/19/96
5:30	5/27/98
5:31	1/3/00
5:33	8/6/95
5:34	12/3/95
5:37	11/21/99
5:50	9/17/98
5:51	8/11/98
5:52	1/2/95
5:60	6/20/99
5:70	4/22/97
5:71	6/4/95
5:80	4/20/95
5:91	12/7/97
5:92	2/7/96
5:93	6/6/99
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97
5A:5	9/21/97
5A:6	6/20/99
5A:7	Exempt (28 C.F.R. Part 35)

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	7/11/97
6:2	6/8/00
6:3	12/7/99
6:5	4/22/97
6:7	11/18/99
6:8	6/11/98
6:9	11/3/99
6:11	3/21/97
6:12	9/8/97
6:20	1/16/97
6:21	1/11/01
6:22	1/16/97
6:22A	4/8/00
6:24	7/11/97
6:26	2/1/01
6:28	8/10/00
6:29	8/8/96
6:30	12/6/00
6:31	5/16/96
6:39	12/9/00
6:43	2/10/97
6:46	10/10/98
6:51	2/5/98
6:53	10/10/98
6:64	3/14/99
6:68	8/26/96
6:70	2/5/01
6:78	4/8/00

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	5/22/97
7:1C	6/15/95
7:1D	9/13/98
7:1E	9/3/96
7:1F	4/16/97
7:1G	6/16/99
7:1H	7/13/95
7:1I	2/22/99
7:1J	1/4/98
7:1K	3/1/98
7:2	10/7/96
7:3	6/21/98
7:4	8/17/97
7:4A	9/16/99
7:4B	12/6/98
7:4C	11/7/99
7:5	11/19/95
7:5A	6/17/98
7:5B	6/24/98
7:5C	12/22/99
7:7	6/24/99
7:7A	3/16/97
7:7E	7/24/95
7:8	2/5/98
7:9	1/18/96
7:9A	8/19/99
7:9B	1/18/96
7:10	12/31/95
7:11	5/3/98
7:12	11/24/97
7:13	6/10/99
7:14	4/27/99
7:14A	6/2/95
7:14B	11/18/97
7:15	9/22/99
7:18	7/3/96
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/8/98
7:22	12/27/96
7:22A	12/22/99
7:23	5/27/99
7:24	4/22/96
7:24A	3/6/00
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	11/18/97
7:26C	5/17/98
7:26E	6/7/98
7:27	Exempt
7:27A	12/2/99
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:30	11/24/97
7:31	6/18/98
7:32	7/6/98
7:36	10/29/98
7:38	9/18/95
7:45	1/28/99
7:50	Exempt
7:60	3/2/97
7:61	5/17/98

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:2	8/16/98
8:2A	12/20/98

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N.J.A.C.	Expiration Date
8:7	9/14/95
8:8	4/12/99
8:9	2/14/96
8:13	9/8/97
8:18	10/21/99
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
8:21A	8/3/97
8:22	7/11/96
8:23	12/13/99
8:23A	12/13/99
8:24	4/14/98
8:25	5/11/98
8:26	4/12/96
8:31	12/22/99
8:31A	2/20/95
8:31B	8/17/95
8:31C	4/20/97
8:33	7/27/95
8:33A	11/25/97
8:33B	7/27/95
8:33C	9/8/97
8:33E	12/20/95
8:33F	EXPIRED RULES
8:33H	9/8/97
8:33I	2/16/95
8:33J	EXPIRED RULES
8:33L	6/6/96
8:33M	EXPIRED RULES
8:33P	3/19/95
8:33Q	11/19/95
8:33R	12/11/94
8:33S	10/4/98
8:34	11/1/98
8:35A	9/8/97
8:36	12/20/98
8:38	7/18/97
8:39	11/21/99
8:40	12/6/96
8:41	6/21/98
8:41A	2/18/97
8:42	8/17/97
8:42A	6/17/99
8:42B	6/14/98
8:43	10/4/98
8:43A	8/16/98
8:43F	2/7/00
8:43G	2/5/95
8:43H	6/17/99
8:44	4/20/95
8:45	2/6/00
8:51	9/17/95
8:52	12/11/96
8:57	4/20/95
8:57A	4/20/95
8:59	9/28/99
8:60	5/3/95
8:61	10/4/96
8:62	2/21/00
8:65	6/17/96
8:66	3/5/95
8:66A	3/5/95
8:70	6/14/98
8:71	5/16/99
8:80	4/6/97
8:91	9/19/99
8:100	7/20/97

HIGHER EDUCATION—TITLE 9/9A

N.J.A.C.	Expiration Date
9:1	9/30/98
9:2	5/4/95
9:4	9/26/96
9:5	4/1/96
9:6	4/30/95
9:6A	3/15/98
9:7	11/6/97
9:8	10/15/95
9:9	8/16/98
9:11	4/11/99
9:12	4/11/99
9:14	4/11/95
9:15	EXPIRED RULES
9A:14	2/22/99
9A:15	6/20/99
9:16	1/19/98

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1A	5/12/98
10:2	12/11/96
10:3	10/22/98
10:4	Exempt (28 C.F.R. Part 35)
10:6	1/7/96
10:7	1/21/97
10:8	1/3/99
10:11	1/13/00
10:12	12/23/96
10:14	5/7/98
10:15	11/23/99
10:15A	11/23/99
10:15B	11/23/99
10:15C	11/23/99
10:16	12/21/97
10:18	7/18/99
10:31	5/13/99
10:35	9/21/97
10:36	12/29/97
10:37	11/2/95
10:37A	6/6/99
10:37B	5/2/99
10:37C	7/18/99
10:37D	9/6/99
10:38	4/29/96
10:38A	7/19/98
10:40	4/25/99
10:41	4/18/99
10:42	8/19/96
10:43	12/19/99
10:44A	11/8/98
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:46A	1/3/00
10:46B	1/17/96
10:47	11/2/95
10:48	12/19/95
10:49	8/17/97
10:50	2/27/96
10:51	9/7/98
10:52	2/3/00
10:53	4/27/95
10:53A	11/2/97
10:54	2/15/96
10:55	3/8/95
10:56	8/21/96
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	1/3/99
10:63	1/3/00
10:64	2/22/96
10:65	2/19/96
10:66	12/6/98
10:67	2/19/96
10:68	6/28/96
10:69	5/14/98

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N.J.A.C.	Expiration Date
10:69A	3/26/98
10:69B	10/21/98
10:70	6/7/96
10:71	12/24/95
10:72	8/24/97
10:73	7/15/96
10:80	9/27/98
10:81	7/25/99
10:82	7/25/99
10:83	11/2/97
10:84	1/18/99
10:85	11/4/99
10:86	9/21/97
10:87	12/21/98
10:89	5/24/95
10:91	9/4/95
10:95	11/7/99
10:97	4/15/99
10:99	6/4/95
10:109	2/4/96
10:120	7/9/96
10:121	7/16/95
10:121A	11/25/97
10:122	5/16/99
10:122A	Exempt
10:122B	1/4/98
10:122C	1/4/98
10:122D	1/4/98
10:122E	1/4/98
10:123	7/13/95
10:123A	8/17/97
10:124	11/4/97
10:125	6/4/95
10:126	10/6/98
10:126A	5/7/95
10:127	8/16/98
10:128	2/19/96
10:129	7/13/95
10:130	7/2/95
10:131	10/7/97
10:132	10/25/96
10:133	1/4/98
10:133A	1/4/98
10:133B	1/4/98
10:133C	1/4/98
10:133D	11/1/98
10:133H	10/17/99
10:150	10/22/97

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	6/1/97
10A:1-3	Exempt (28 C.F.R. Part 35)
10A:2	12/9/99
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	10/27/97
10A:8	8/19/97
10A:9	2/18/97
10A:10	7/9/97
10A:12	3/6/00
10A:16	7/6/97
10A:17	2/3/97
10A:18	5/27/97
10A:19	4/25/99
10A:20	2/18/97
10A:21	2/4/96
10A:22	3/7/99
10A:23	7/6/97
10A:26	2/6/00
10A:31	3/5/95
10A:32	4/16/95
10A:34	4/6/97
10A:35	4/15/96
10A:70	Exempt
10A:71	1/27/00

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:1-3	Exempt (28 C.F.R. Part 35)
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/15/98
11:6	7/6/98
11:7	9/25/97
11:10	7/12/95
11:12	9/27/96
11:13	11/10/97
11:15	10/17/99
11:16	1/31/96
11:17	4/15/98
11:17A	12/30/99
11:17B	12/30/99
11:17C	12/30/99
11:17D	12/30/99
11:18	12/13/99
11:19	2/1/98
11:20	8/13/98
11:21	10/15/98

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	11/24/98
12:5	10/18/98
12:6	9/24/98
12:7	Exempt (28 C.F.R. Part 35)
12:15	7/30/95
12:16	2/9/00
12:17	1/4/96
12:18	3/5/98
12:19	7/2/95
12:20	7/18/99
12:23	4/4/99
12:35	7/16/95
12:40	12/22/99
12:41	1/14/99
12:45	12/29/98
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/19/98
12:61	12/16/96
12:90	11/9/99
12:100	8/26/99
12:102	5/21/95
12:105	1/11/96
12:110	1/8/98
12:112	8/27/98
12:120	5/3/95
12:175	11/10/98
12:190	2/1/98
12:195	6/14/98
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

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COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:1	Exempt (28 C.F.R. Part 35)
12A:9	5/28/98
12A:10	3/31/95
12A:10A	3/31/95
12A:11	4/30/98
12A:31	7/16/95
12A:80	7/2/95
12A:100	7/17/96
12A:120	7/27/98
12A:121	11/15/98

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	6/9/98
13:1C	Exempt (28 C.F.R. Part 35)
13:1D	4/18/99
13:2	7/24/95
13:3	5/17/98
13:4	1/17/96
13:10	3/25/99
13:13	7/16/95
13:14	9/16/96
13:18	3/30/95
13:19	8/17/99 (except 13:19-10, 12 and 13, for which expiration was waived)
13:20	12/13/95
13:21	12/13/95
13:23	5/19/99
13:24	9/26/99
13:25	3/16/95
13:26	7/29/98
13:27	2/21/00
13:28	5/14/98
13:29	5/23/95
13:30	3/12/95
13:31	11/20/96
13:32	10/21/97
13:33	3/12/95
13:34	10/22/98
13:35	9/19/99
13:36	9/19/99
13:37	1/19/00
13:38	8/27/95
13:39	6/16/99
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	11/1/98
13:43	8/26/98
13:44	8/4/99
13:44B	11/2/97
13:44C	7/8/98
13:44D	6/30/99
13:44E	7/1/96
13:44F	6/15/97
13:44G	1/4/98
13:45A	11/9/95
13:45B	9/21/97
13:46	9/4/95
13:47	1/27/97
13:47A	10/2/97
13:47B	2/10/99
13:47C	6/6/99
13:47F	3/6/00
13:47K	9/17/95
13:48	9/19/99
13:49	12/16/98
13:51	9/16/96
13:54	11/18/96
13:57	5/16/99
13:59	7/30/95
13:60	1/16/97
13:61	3/5/95
13:62	3/19/95
13:63	8/19/96
13:70	1/25/00
13:71	1/25/00
13:72	1/19/98
13:75	7/5/99
13:76	4/16/98
13:77	1/22/98
13:78	11/24/98
13:79	10/22/98
13:80	9/17/95
13:81	8/6/95
13:82	4/18/99

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	6/1/97
14:3	5/6/96
14:5	12/2/96
14:5A	1/4/98
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	3/1/98
14:12	11/4/96
14:17	3/21/99
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:31	1/12/00
14:32	1/22/96
14:33	1/12/00
14:34	1/12/00
14:38	4/1/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:14	1/28/99

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:1	Exempt (28 C.F.R. Part 35)
15:2	4/12/98
15:3	8/19/96
15:5	7/6/97
15:10	4/15/96

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	10/1/95
16:1A	6/13/99
16:1B	Exempt (28 C.F.R. Part 35)
16:4	9/16/96
16:5	EXPIRED RULES
16:6	7/8/99
16:20A	1/12/98
16:20B	1/12/00
16:21	8/6/95
16:21A	10/14/99
16:21B	12/3/95

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N.J.A.C.	Expiration Date
16:22	12/18/95
16:24	12/8/99
16:25	8/9/98
16:25A	5/13/98
16:26	7/8/99
16:27	4/8/96
16:28	5/7/98
16:28A	5/7/98
16:29	5/7/98
16:30	5/7/98
16:31	5/7/98
16:31A	5/7/98
16:32	1/12/00
16:38	10/15/95
16:41	9/8/97
16:41B	7/2/95
16:41C	5/4/97
16:41D	3/21/99
16:43	5/10/95
16:44	3/24/99
16:45	8/12/99
16:46	3/24/99
16:47	4/20/97
16:49	1/12/00
16:50	12/6/98
16:51	2/14/97
16:53	2/14/97
16:53B	4/15/99
16:53C	5/13/98
16:53D	4/8/99
16:54	7/6/98
16:55	5/13/98
16:56	6/22/99
16:60	5/13/98
16:61	5/13/98
16:62	1/12/00
16:72	3/20/96
16:73	5/18/97
16:74	12/16/96
16:77	1/27/00
16:78	12/17/95
16:79	9/12/96
16:80	10/5/98
16:81	10/5/98
16:82	10/17/99
16:83	1/19/98
16:84	11/1/98
16:85	11/1/98

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/1/98
17:2	2/21/00
17:3	12/20/98
17:4	6/8/95
17:5	11/30/95
17:6	12/20/98
17:8	10/15/95
17:9	8/23/98
17:10	5/1/98
17:12	12/9/99
17:13	3/31/95
17:14	3/31/95
17:16	5/2/96
17:19	2/21/00
17:20	6/1/98
17:27	10/6/98
17:28	8/17/95
17:29	9/26/95
17:30	3/11/97
17:32	3/19/98
17:40	11/19/95
17:41	4/1/96
17:42	9/8/97

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	10/3/99
18:2	11/1/98
18:3	3/14/99
18:5	3/14/99
18:6	3/14/99
18:7	3/14/99
18:8	2/24/99
18:9	6/4/98
18:12	10/4/98
18:12A	10/4/98
18:14	10/4/98
18:15	10/4/98
18:16	10/4/98
18:17	10/4/98
18:18	3/14/99
18:18A	2/3/97
18:19	3/14/99
18:21	2/19/96
18:22	2/24/99
18:23	2/24/99
18:23A	9/4/95
18:24	6/4/98
18:25	2/19/96
18:26	6/4/98
18:35	6/4/98
18:36	3/19/95
18:37	7/23/95
18:38	2/1/98

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:2	8/15/99
19:3	3/29/98
19:3A	11/4/96
19:3A-3	Exempt (28 C.F.R. Part 35)
19:3B	3/29/98
19:4	3/29/98
19:4A	3/29/98
19:5	11/7/99
19:6	5/6/96
19:8	5/17/98
19:9	9/13/98
19:10	7/28/99
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/7/98
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:30-7	Exempt (28 C.F.R. Part 35)
19:31	8/20/95
19:40	8/15/99
19:40-6	Exempt (28 C.F.R. Part 35)
19:41	4/15/95
19:42	8/15/95
19:43	12/21/97
19:44	12/15/96
19:45	8/15/97
19:46	4/15/98
19:47	4/15/96
19:48	8/15/98
19:49	9/18/97
19:50	12/15/98
19:51	8/15/96
19:53	12/15/95
19:54	12/15/99
19:55	1/19/98
19:61	3/2/97
19:65	10/5/97
19:75	1/11/99

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the January 3, 1995 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.1995 d.1 means the first rule filed for 1995.

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 DECEMBER 19, 1994

NEXT UPDATE: SUPPLEMENT JANUARY 17, 1995

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

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26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
26 N.J.R. 1179 and 1272	March 7, 1994	26 N.J.R. 3781 and 3916	September 19, 1994
26 N.J.R. 1273 and 1416	March 21, 1994	26 N.J.R. 3917 and 4120	October 3, 1994
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26 N.J.R. 3231 and 3504	August 15, 1994	27 N.J.R. 791 and 966	March 6, 1995

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10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
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10:37G	Division of Mental Health and Hospitals: client liaison services	27 N.J.R. 429(a)		
10:46A	Family Support Service System	26 N.J.R. 3341(b)	R.1995 d.1	27 N.J.R. 147(a)
10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
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10:46B-5.1	Division of Developmental Disabilities: administrative correction regarding placement appeals	———	———	27 N.J.R. 499(b)
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
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10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:51-1.6, 1.23, 2.6, 2.21, 4.6, 4.22, App. E	Medicaid and Pharmaceutical Assistance to the Aged and Disabled programs: EMC billing	26 N.J.R. 4136(a)	R.1995 d.104	27 N.J.R. 684(a)
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52	Hospital Services Manual	26 N.J.R. 4551(a)		
10:52-5.1, 5.3, 5.4, 5.6, 5.9, 5.12–5.15, 5.17, 5.18, 5.20, 6.13, 7.2, 9.1	Hospital Services Manual: inpatient reimbursement methodology	27 N.J.R. 34(a)	R.1995 d.141	27 N.J.R. 908(a)
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component	26 N.J.R. 2239(a)	R.1995 d.13	27 N.J.R. 152(a)
10:52-10	Manual for Hospital Services: charity care eligibility	27 N.J.R. 656(a)		
10:55	Medicaid program: Prosthetic and Orthotic Services Manual	26 N.J.R. 4979(a)		
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
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10:63-3, 4	Long-Term Care Services: nursing facility reimbursement	27 N.J.R. 281(a)		
10:64-1.3	Hearing Aid Services: optional audiological examinations	27 N.J.R. 287(a)		
10:69A-5.3, 5.6, 6.2, 6.12	Pharmaceutical Assistance to the Aged and Disabled: eligibility and income criteria	26 N.J.R. 3142(a)	R.1995 d.10	27 N.J.R. 242(a)
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10:87-2.31	Food Stamp Program: applications in pending status	26 N.J.R. 4298(a)	R.1995 d.135	27 N.J.R. 916(a)
10:89	Home Energy Assistance Handbook	26 N.J.R. 4726(a)		
10:89-2.3, 3.1	Home Energy Assistance program: income eligibility; automatic payments	Emergency (expires 4-17-95)	R.1995 d.145	27 N.J.R. 942(a)
10:121A-1.5, 1.6, 1.7, 1.8, 3.3, 3.5, 3.6, 4.2, 4.4, 5.3, 5.4, 5.6, 5.8, 5.9	Division of Youth and Family Services: Manual of Requirements for Adoption Agencies	27 N.J.R. 661(a)		
10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1–9.5	Manual of Requirements for Child Care Centers	26 N.J.R. 4139(a)	R.1995 d.87	27 N.J.R. 499(c)
10:125	Division of Youth and Family Services: capital funding program for community-based facilities	27 N.J.R. 431(a)		
10:126A	Division of Youth and Family Services: utilization of family day care providers	27 N.J.R. 432(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:133A-1.7, 1.9, 1.10, 1.11, 1.12	Division of Youth and Family Services: initial reponse	26 N.J.R. 3355(a)		

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10:133G	Division of Youth and Family Services: client information	27 N.J.R. 38(a)		
10:133I	Division of Youth and Family Services: reasonable efforts; reasonable and diligent efforts; necessary activities to achieve a case goal	27 N.J.R. 433(a)		

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10A:4-4.1	Inmate prohibited acts: refusal to register as sex offender	27 N.J.R. 436(a)		
10A:12-2	Inmate liaison committees	26 N.J.R. 4881(a)	R.1995 d.115	27 N.J.R. 916(b)
10A:22-2.10	Release of juvenile records	27 N.J.R. 436(b)		
10A:26	Bureau of Parole: policies and procedures	26 N.J.R. 4143(a)	R.1995 d.85	27 N.J.R. 550(a)
10A:71	State Parole Board rules	26 N.J.R. 4150(a)	R.1995 d.109	27 N.J.R. 686(b)
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11:1-38	Oversight of firemen's relief associations	27 N.J.R. 634(a)		
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11:3-2B	Market Transition Facility of New Jersey: payment prioritization and claims payment deferral	26 N.J.R. 4590(a)	R.1995 d.50	27 N.J.R. 368(a)
11:3-10.3	Automobile physical damage claims	27 N.J.R. 437(a)		
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11:5-1.7	Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement	26 N.J.R. 3110(a)		
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11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)	R.1995 d.26	27 N.J.R. 371(a)
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)	R.1995 d.112	27 N.J.R. 709(a)
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11:20-3.2, 4.1, 12.3, 12.5, Exh. A–G, Q	Individual Health Coverage Program: standard policy forms	26 N.J.R. 4884(a)	R.1995 d.51	27 N.J.R. 565(a)
11:21-2.1, 2.5	Small Employer Health Benefits Program: Board membership	26 N.J.R. 4310(a)	R.1995 d.65	27 N.J.R. 585(a)
11:21-2.5	Small Employer Health Benefits Program: public hearing regarding Board membership	26 N.J.R. 4311(a)		

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11:21-2.5	Small Employer Health Benefits Program: public hearing on Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(b)		
11:21-3.2	Small Employer Health Benefits Program: optional benefit riders	26 N.J.R. 4729(a)	R.1995 d.116	27 N.J.R. 918(a)
11:21-4.4, Exh. DD	Small Employer Health Benefits Program: policy forms; compliance and variability rider	27 N.J.R. 439(a)		
11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		

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12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
12:20	Department of Labor hearings	26 N.J.R. 2174(a)		
12:40	Worker Adjustment and Retraining Notification (WARN) procedures	26 N.J.R. 4311(b)	R.1995 d.42	27 N.J.R. 373(a)
12:100-10.10	Safety and health standards for public employees: respiratory protection devices	26 N.J.R. 4313(a)	R.1995 d.43	27 N.J.R. 373(b)
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13:44E-2.6	Board of Chiropractic Examiners: practice identification	26 N.J.R. 4964(a)		
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13:70-4.22	Thoroughbred racing: collection and use of Social Security numbers by Racing Commission	27 N.J.R. 44(a)		
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13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
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14A:11	Periodic reporting by energy industries: recodify as 14:34	26 N.J.R. 4484(b)	R.1995 d.70	27 N.J.R. 504(a)

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16:28-1.61	Speed limit zones along Collins Avenue-Nixon Drive under State jurisdiction in Burlington County	26 N.J.R. 4337(b)	R.1995 d.95	27 N.J.R. 733(c)
16:28-1.62	Speed limits along connector roads to U.S. 202, U.S. 206, and Route 28 in Somerset County	27 N.J.R. 46(b)		
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16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 4745(a)	R.1995 d.98	27 N.J.R. 734(b)
16:28-1.158	Speed limit zones along Route 179 in West Amwell Township	26 N.J.R. 4486(b)	R.1995 d.62	27 N.J.R. 505(a)
16:28A-1.21	No stopping or standing zones along U.S. 30 in Oaklyn Borough	26 N.J.R. 4971(a)	R.1995 d.93	27 N.J.R. 734(c)
16:28A-1.33	No stopping or standing zone on Route 47 in Millville	27 N.J.R. 309(a)		
16:28A-1.36	Handicapped parking along Route 57 in Washington Borough, Warren County	26 N.J.R. 4160(b)	R.1995 d.67	27 N.J.R. 505(b)
16:28A-1.37	No stopping or standing zones along Route 70 in Cherry Hill and Pennsauken	26 N.J.R. 4338(a)	R.1995 d.94	27 N.J.R. 735(a)
16:28A-1.38	No stopping or standing along Route 71 in Bradley Beach Borough	26 N.J.R. 4161(a)	R.1995 d.66	27 N.J.R. 505(c)
16:28A-1.38	Parking restrictions along Route 71 in Asbury Park	27 N.J.R. 48(a)		
16:28A-1.41	Bus stops along Route 77 in Bridgeton	27 N.J.R. 49(a)		
16:28A-1.52	No stopping or standing zones along Route 173 in Town of Clinton	26 N.J.R. 4971(b)	R.1995 d.96	27 N.J.R. 735(b)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township	26 N.J.R. 3820(a)	R.1995 d.54	27 N.J.R. 506(a)
16:28A-1.57	Bus stop on U.S. 206 in Princeton Township: administrative correction and extension of comment period	26 N.J.R. 4487(a)		
16:28A-1.58	Parking restrictions along U.S. 206-94 in Newton	27 N.J.R. 49(b)		
16:30-1.4	One-way access along U.S. 202 in Bernardsville	27 N.J.R. 50(a)		

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16:30-3.13	Left turns along U.S. 9 in Middle Township, Cape May	26 N.J.R. 4746(a)	R.1995 d.99	27 N.J.R. 736(a)
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16:30-7.4	Interstate highways: classes of traffic	26 N.J.R. 4162(b)	R.1995 d.16	27 N.J.R. 126(b)
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16:31-1.8	Turn prohibitions along Route 47 in Middle Township, Cape May	26 N.J.R. 3937(b)	R.1994 d.607	27 N.J.R. 506(c)
16:31-1.26	Left turn prohibitions along Route 27 in Metuchen and Highland Park	26 N.J.R. 4488(a)	R.1995 d.100	27 N.J.R. 736(b)
16:31-1.37	Turn prohibitions along Route 70 in Cherry Hill	27 N.J.R. 643(a)		
16:32	Truck operations within State	26 N.J.R. 4163(a)	R.1995 d.73	27 N.J.R. 507(a)
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16:49	Transportation of hazardous materials	26 N.J.R. 4488(b)	R.1995 d.74	27 N.J.R. 509(a)
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)	R.1995 d.75	27 N.J.R. 521(a)
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
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16:62	Air safety and hazardous zoning	26 N.J.R. 4502(a)	R.1995 d.76	27 N.J.R. 525(a)
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18:22-5.5, 11.12, 14	Public Utility Tax: expression of tax rates; Municipal Purposes Tax Assistance Fund	27 N.J.R. 473(a)		
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