

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 19, 1988

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT FEBRUARY 16, 1988

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **April 20, 1988**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Proposed Rule

Regulatory Flexibility Analysis

Proposed Amendment: N.J.A.C. 1:30-3.1

Authorized By: Ronald I. Parker, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(f), (h), (i).

Proposal Number: PRN 1988-134.

Submit comments by April 20, 1988 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

L.1986 c.169, entitled the New Jersey Regulatory Flexibility Act, became effective on December 4, 1986. The purpose of the new law was to provide some flexibility in government rules as applied to small businesses. The Act defined a small business as any business resident in this State, independently owned and operated, not dominant in its field and which employs fewer than 100 full-time employees. The new law required that any agency proposing a rule must utilize approaches which would minimize any adverse economic impact of the proposed rule on small businesses. Acceptable approaches to minimize the impact were set out in the statute. The new law required that an agency prepare a regulatory flexibility analysis or statement regarding a proposed rule to be included as part of the proposal notice pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-4(a). The new law also set out several standards required to be included in any analysis.

During the past year, the OAL rulemaking rules merely required that rulemaking agencies develop a Regulatory Flexibility Statement in accordance with the Regulatory Flexibility Act. With this rulemaking, amending N.J.A.C. 1:30-3.1, the OAL proposes to provide further guidance to State agencies concerned with complying with the provisions of the Regulatory Flexibility Act. The proposed amendment at new subsection (f), paragraph 4, states that a regulatory flexibility analysis or statement must be included as part of an agency's notice of proposed rule. The agency must indicate whether its proposed rule imposes reporting, recordkeeping or other compliance requirements on small businesses. If the proposed rule does not impact small businesses, a statement is prepared which indicates this fact and explains the basis for such finding. On the other hand, if the agency proposed rule does impact small businesses, an analysis is prepared which describes the specific methods chosen to minimize adverse impact and contains an explanation of the compliance burdens placed on such small businesses.

To further assist State agencies in fulfilling the statutory requirements of the Regulatory Flexibility Act, the OAL has developed a form which outlines each element to be addressed in preparing a regulatory flexibility statement or analysis. The form will be distributed to State agencies as a guide to help in the preparation of statements or analyses. The form will also be included in the OAL Rulemaking Manual and is published for informational purposes as part of this proposal but is not included as part of the rule. A properly developed regulatory flexibility analysis answers and discusses each discrete question in Part II of the form. A properly prepared regulatory flexibility statement answers and discusses the question posed in Part III of the form. A completed form, however, need not be submitted with the OAL rule proposal. The proposed amendment to N.J.A.C. 1:30-3.1 also contains codification changes which outline the organizational structure of the rule in a more readable framework.

Social Impact

The proposed amendment will primarily affect three groups. First, State agencies which propose rules will be required to comply with the requirements of the new amendment. Although State agencies have been required to comply with the Regulatory Flexibility Act since December 4, 1986, this proposal codifies those requirements as part of the rulemaking process. Because of the many questions the OAL received relating to the Act's requirements, the OAL believes that codifying these requirements in a rule and providing a form which outlines questions to be answered will assist many State agencies in their preparation of regulatory flexibility analyses or statements.

Secondly, the proposed amendment will assist the OAL in its review of regulatory flexibility statements and analyses. The amendment provides definite standards which must be addressed by rulemaking agencies complying with the Regulatory Flexibility Act and hopefully minimizes any ambiguities in application. This will facilitate a speedier review by the OAL of the statement or analysis as well as the entire proposal.

Thirdly, the proposed amendment should benefit small businesses which are the primary beneficiaries of the Regulatory Flexibility Act. By outlining the Act's requirements in a rule, State agencies will be in a better position to weigh the benefits of the rules versus the burdens imposed upon regulated small businesses.

Economic Impact

The proposed amendment is not expected to increase the economic impact on anyone affected by its provisions. Although State Agencies may incur administrative costs in preparing the regulatory flexibility analysis, this is not a new economic burden caused by the proposed amendment, since agencies should have already been complying with the requirements of the Regulatory Flexibility Act. The OAL may realize a decrease in time required to review a regulatory flexibility analysis or statement and process an agency proposal since fewer questions with regard to regulatory flexibility may arise. Finally, the proposed amendment may reduce the economic impact upon small businesses as State agencies apply the provisions of the rule on a proposal-by-proposal basis.

Regulatory Flexibility Statement

The proposed amendment to N.J.A.C. 1:30-3.1 primarily affects the process and procedure which state agencies are required to follow when proposing a rulemaking. As such, the amendment does not affect, impact or impose reporting, recordkeeping or other compliance requirements on small businesses. Since small businesses are not required to comply with the provisions of this proposed rule, a regulatory flexibility analysis is not required.

Questions to be Answered by Agencies Preparing Regulatory Flexibility Analyses or Statements

PART I

1. Does this rule impose reporting, recordkeeping or other compliance requirements on small businesses?

If YES, consideration of the answers to the questions in Part II will assist in your preparation of the analysis

If NO, see PART III

PART II (Preparing the Regulatory Flexibility Analysis)

Answer each question and explain the reasons for including or excluding the method:

1. Does the rule establish differing compliance or reporting requirements or timetables that take into account resources available to small businesses?

2. Does the rule use performance rather than design standards?

3. Does the rule exempt small businesses from all or part of its reporting, recordkeeping or other compliance requirements?*

*If non-exemption is based on endangerment to public health, safety and welfare, please explain the relationship between the non-exempted requirement and the public health, safety and welfare.

4. Does the rule utilize other methods to minimize any adverse economic impact on small businesses?

Analyze each factor with as much quantification as is practical or reliable.

1. Describe the types of small businesses to which the rule applies.

2. Describe the number of small businesses to which the rule applies.

3. Describe the reporting, recordkeeping and other compliance requirements.

4. Describe the kinds of professional services likely to be needed to comply.

5. Estimate the initial capital costs for compliance, and indicate any likely variation on differing types and sizes of small businesses.

6. Estimate annual compliance cost, and indicate any likely variation on differing types and sizes of small businesses.

7. Indicate how the rule is designed to minimize any adverse economic impact on small businesses.

PART III. Rules which do not impose recordkeeping or other compliance requirements on small businesses must be accompanied by a statement that "a Regulatory Flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses." Following this sentence, explain the basis for concluding that the rulemaking does not impact on small businesses.

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

1:30-3.1 Notice of proposed rule

(a) Where the law requires that an agency give notice of its rulemaking proceedings, the agency shall prepare a "notice of proposed rule" and submit the notice to the OAL. The notice of proposed rule shall [include:] **comply with the requirements of this section.**

(b)[1.] **The notice of proposed rule shall include [A] a proposed N.J.A.C. citation of the new rule amendment, repeal or readoption.**

(c)[2.] **The notice of proposed rule shall include [The] the name of the adopting agency head and agency and the signature of the adopting agency head or other authorized signatory as provided in N.J.A.C. 1:30-2.4.**

(d)[3.] **The notice of proposed rule shall include [A] a citation to the specific [statutory authority] Public Law and N.J.S.A. statutory authority for the proposed rule.** An agency may not cite its general statutory authority unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect shall be made in the summary.

(e)[4.] **The notice of proposed rule shall include [An] an announcement of the public's opportunity to be heard regarding the proposed rule, which shall include:**

1.[i.] When, where, and how persons may present their views orally or in writing.

2.[ii.] When and where persons may attend any formal rule adoption proceeding.

(f)[5.] **The notice of proposed rule shall include [A] a brief statement for the proposed rule, which shall include:**

1.[i.] A summary statement of the proposed rulemaking with a clear and concise explanation of its purpose and effect. The summary shall describe, detail and identify:

i. [(1)] Who and what will be affected by the proposal; and

ii. [(2)] How, when and where the effect will occur; and

iii. [(3)] What the proposal prescribes, proscribes or otherwise mandates; and

iv. [(4)] What enforcement mechanisms and sanctions may be involved; and

v. [(5)] Any other relevant or pertinent information.

2.[ii.] A social impact statement which describes the expected social impact of the proposed rulemaking on the public, particularly on any segments of the public proposed to be regulated, and including any proposed or expected differential impact on different segments of the public, including the rulemaking action, and justification therefor.

3.[iii.] An economic impact statement which describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, particularly any segments of the public proposed to be regulated.

[iv. A regulatory flexibility statement in accordance with N.J.S.A. 52:14B-16 et seq.]

4. A regulatory flexibility analysis or statement shall be provided.

i. All rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include a regulatory flexibility analysis which describes the methods utilized to minimize any adverse economic impact on small businesses.

ii. "Small business" means any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and which employs fewer than 100 full time employees.

ii. Rules which do not impose reporting, recordkeeping or other compliance requirements on small businesses shall be accompanied by a regulatory flexibility statement which indicates that no such requirements are imposed, and the basis for that finding.

iv. Rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include a regulatory flexibility analysis which addresses the following methods, and the reasons for including or excluding these methods in the rules:

(1) Establishment of differing compliance or reporting requirements or timetables that take into account resources available to small businesses;

(2) Use of performance rather than design standards;

(3) Exemption from coverage by all or part of the rule, provided that the public health, safety or general welfare is not endangered. A finding of endangerment shall explain the relationship between the regulatory requirement that cannot be exempted and the public health, safety or general welfare; and

(4) Such other appropriate methods which minimize any adverse economic impact on small businesses.

v. Rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall also include in the regulatory flexibility analysis as much quantification as is practical or reliable, of the following factors:

(1) Description of the types and an estimate of the number of small businesses to which the rule will apply.

(2) Description of the reporting, recordkeeping and other compliance requirements, and the kinds of professional services likely to be needed to comply with the requirements.

(3) Estimate of the initial capital costs, and an estimate of the annual compliance costs, with an indication of any likely variation on small businesses of differing types and sizes.

(4) Indication of how the rule is designed to minimize any adverse economic impact on small businesses.

vi. The regulatory flexibility analysis in 4 iv. and v. above shall be required whenever small businesses comprise part of, or the entire regulated group on which reporting, recordkeeping or other compliance requirements are imposed.

(g)[6.] **The notice of proposed rule shall include the [The] full text of the proposed new rule, amendment, repeal or readoption, specifically indicating additions and/or deletions of any rule being repealed or renumbered.**

(h)[(b)] Upon receipt of the proposal notice which conforms to these requirements:

1. The OAL shall submit the notice, other than a notice of a Federally required rule (see N.J.A.C. 1:30-3.7), to the Senate and the General Assembly;

2. The OAL shall publish the notice of proposed rule in the next available issue of the New Jersey Register. Pursuant to N.J.S.A. 52:14B-7(c), any proposal notice which would be cumbersome, or unduly expensive to publish shall not be printed in full. Instead, such proposals shall be summarized in the Register. The proposing agency shall make available the proposed rule and provide the notice the manner in which, and from where, copies may be obtained.

3. The agency shall mail the notice of proposed rule, as filed, to those persons who have made timely request of the agency for notice of its rulemaking actions; and

4. The agency shall undertake an additional method of publicity other than publication in the Register, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule:

i. The additional method of publicity shall include information on the time, place, and manner in which interested persons may present comments and either of the following:

(1) The full text of the proposed rule; or

(2) A statement of the substance of the proposed action; or

(3) A description of the subject and issues involved.

ii. The additional method of publicity may be by:

(1) Notice in a newspaper of general circulation;

(2) Trade, industry, government or professional publications;

- (3) Distribution of a press release to the news media;
 - (4) Posting of a notice in an appropriate location(s);
 - (5) Mailing to a distribution list; or
 - (6) Any other manner reasonably calculated to inform those persons most likely to be affected by or interested in the intended action.
- iii. The additional method of publicity shall provide at least 30 days notice of the intended action.
- (i)[(c)] Any proposal notice which does not meet the requirements [in (a) and (b) 3 above or any additional notice which does not meet the requirements in (b4)] in (c)-(g), (h)3 or (h)4 above may be subject to the provisions of N.J.A.C. 1:30-1.12.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Building and Mechanical Subcodes

Proposed Amendments: N.J.A.C. 5:23-3.14 and 3.20

Authorized By: Leonard S. Coleman, Commissioner,
Department of Community Affairs.

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

Proposal Number: PRN 1988-125.

Submit comments by April 20, 1988 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 5 of the State Uniform Construction Code Act (N.J.S.A. 52:27D-123) provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." However, it is necessary, when revisions or amendments are made to model codes, for the Department to amend the appropriate sections of N.J.A.C. 5:23 so that cross-references will be correct. Accordingly, the Department proposes these rule amendments in order to enable code enforcement officials, builders and property owners to use the 1988 Accumulative Supplements to the BOCA National Building Code/1987 and the BOCA National Mechanical Code/1987.

The BOCA National Building Code/1987 and National Mechanical Code/1987 are the respective building and mechanical subcodes of the State Uniform Construction Code. Both are adopted by reference subject to modifications stated in the Uniform Construction Code rules. The sponsoring organization of the model codes, Building Officials and Code Administrators International, Inc., engages in a public code change process and issues supplements between succeeding editions of its codes. This procedure enables the codes to be responsive to rapidly advancing building technology. The modifications being made to the supplements by the proposed amendments relate to the administration and enforcement systems of the State Uniform Construction Code and do not change the technical provisions of the model codes.

Social Impact

Adoption of the appropriate references to the building and mechanical subcode supplements will allow users of the Uniform Construction Code to avoid confusion as to what Code provisions are in effect and to have the benefit of the most recent Code changes and the technical advances upon which they are based.

Economic Impact

The technical changes which have gone into effect by operation of law may decrease construction costs in some cases and increase them in others. Correct cross-referencing, to the extent that it results in diminished uncertainty as to what is required, may be expected to reduce the likelihood of work being done in reliance upon obsolete provisions which may then have to be done over.

Regulatory Flexibility Statement

Since this proposal simply reflects changes made to the BOCA codes so that the New Jersey Construction Code remains consistent, there is

no identifiable special impact on small business as a result of the proposed amendments. All businesses, both large and small, are subject to the U.C.C. and must remain so in order to promote uniform construction standards throughout the State.

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

5:23-3.14 Building subcode

- (a) Rules concerning the building subcode adopted are as follows:
- 1.-2. (No change.)

3. The 1988 Supplement to the BOCA National Building Code/1987 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.

- (b) (No change.)

(c) **The following articles or sections of the 1988 Supplement to the building subcode are modified as follows:**

1. The following amendment is made to Article 1 of the building subcode, entitled "Administration and Enforcement":

- i. Sections 108.2, 108.2.1, 111.4, 115.2, 115.2.3.2 are deleted.

2. The following amendment is made to Article 2 of the building subcode, entitled "Definitions":

- i. The definition, "Inspection, special" is amended to delete the words "Section 108.0" and substitute in lieu thereof "N.J.A.C. 5:23-2.21".

3. The following amendments are made to Article 6 of the building subcode, entitled "Special Use and Occupancy Requirements":

- i. Section 602.2 is deleted; and
- ii. Section 624.3.1 is amended to delete the word "code" and substitute in lieu thereof "building subcode".

4. The following amendment is made to Article 13 of the building subcode, entitled "Materials and Tests":

- i. Delete section 1307.0 Special Inspections in its entirety and substitute in lieu thereof "See N.J.A.C. 5:23-2.18 for Special Inspection requirements".

5. The following amendments are made to Appendix A of the building subcode, entitled "Reference Standards":

- i. Delete the entire subheading "ASHRAE" and all titles under this subheading;

- ii. Under the subheading "BOCA", delete the following titles:

- (1) National Existing Structures Code;
- (2) National Plumbing Code; and
- (3) Basic/National Private Sewage Disposal Code;

- iii. Under the subheading "CABO", delete the following titles:

- (1) One and Two Family Dwelling Code; and
- (2) Model Energy Code; and

- iv. Under the subheading "NFIPA", delete the title "National Electrical Code."

5:23-3.20 Mechanical [S]subcode

- (a) Rules concerning the mechanical subcode adopted are as follows:
- 1.-2. (No change.)

3. The 1988 Supplement to the BOCA National Mechanical Code/1987 is adopted by reference with modifications cited in (c) below as part of the mechanical subcode for New Jersey.

- (b) (No change.)

(c) **The following articles or sections of the 1988 Supplement to the mechanical subcode are modified as follows:**

1. The following amendment is made to article 3 of the mechanical subcode, entitled "Air Distribution Systems":

- i. Section M-312.2.2 is amended to delete the word "code" and substitute in lieu thereof "fire protection".

2. The following amendments are made to Appendix A of the mechanical subcode entitled "Reference Standards":

- i. Under the subheading "ASHRAE", delete the following titles:

- (1) Thermal Environmental Conditions for Human Occupancy;
- (2) Energy Conservation in New Building Design; and
- (3) Handbook, Fundamentals Volume;

- ii. Under the subheading "BOCA", delete the following title:

- (1) Basic/National Plumbing Code;

- iii. Under the subheading "NFIPA", delete the following title:

- (1) National Electrical Code.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Freshwater Wetlands Protection Act Rules Fees, Penalties and Hearings

Proposed New Rules: N.J.A.C. 7:7A-15 and 16

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq., specifically 58:10A-4, 58:10A-6 and 13:9B-1 et seq. (P.L. 1987, c.156), specifically 13:9B-25 (section 25 of P.L. 1987, c.156).

DEP Docket Number: 011-88-02.

Proposal Number: PRN 1988-145.

A **public hearing** concerning these proposed new rules will be held on:
April 7, 1988 at 10:00 A.M.
New Jersey Department of Environmental Protection
Division of Coastal Resources
Conference Room A
5 Station Plaza
501 East State Street
(Corner of East State Street and Clinton Avenue)
Trenton, New Jersey

Submit written comments by May 20, 1988 to:
Suzanne Dice, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On December 21, 1987 the New Jersey Department of Environmental Protection (Department) proposed new rules at 19 N.J.R. 2330(a) to implement the Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq. The Act requires strict regulation of activities in freshwater wetlands, the discontinuation of the Department's discretion to exempt the discharge of dredged or fill material into State waters from the requirement of a New Jersey Pollutant Discharge Elimination System (NJPDES) permit, and the application within one year by the Department for assumption of the Federal 404 program under section 404(g) of the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 (33 U.S.C. §1344) and implementing regulations. These proposed new rules supplement the December 21, 1987 proposal by adding two subchapters, one setting application fees for the review of letters of interpretation, freshwater wetlands permit applications and open water fill permit applications (N.J.A.C. 7:7A-15) and one establishing civil administrative penalties for the violation of the Act or this chapter, or any permit, order, waiver, or approved mitigation plan issued pursuant thereto (N.J.A.C. 7:7A-16).

Pursuant to the Act, the Department is authorized to assess fees to cover the cost of the processing and review of five types of submittals: requests for letters of interpretation, freshwater wetlands permit applications, open water fill permit applications, notices of proposed activity covered by a general permit, and requests for a transition area waiver. Fees for the processing and review of transition area waiver requests have not yet been established, and are unnecessary at this time, because the transition area provisions of the Act do not go into effect until July 1, 1989. Those fees will be proposed at a later date in conjunction with the proposal of rules to implement the transition area provisions of the Act.

The Department has analyzed the cost of reviewing and processing the remaining four types of submittals. These analyses include professional staff time required to review applications and, if necessary, to perform on-site inspections. Data regarding person-hour estimates for review activities were obtained from existing permit programs which are currently administered by the Department such as those authorized by the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Flood Hazard Area Control Act (Stream Encroachment), N.J.S.A. 58:16A-50 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Waterfront Development Law, N.J.S.A. 12:5-3. These person-hour estimates were multiplied by anticipated hourly staff salaries and associated

clerical salaries and overhead costs to arrive at the fee schedule proposed herein.

The cost to the State for reviewing and acting upon a request for a letter of interpretation will depend on the size of the site, the skill and experience level of the staff needed to review the request, and whether one or more site visits are required to identify and/or verify the extent of a freshwater wetland on a parcel of land. A letter of interpretation which indicates only the presence or absence of a freshwater wetland will require no boundary delineation. As less staff time and resources would be needed to issue a letter of interpretation which does not identify or verify a boundary, the associated review fee is smaller.

It is estimated that a relatively simple letter of interpretation with boundary delineation (for example, one delineating a freshwater wetland boundary on a moderate sized parcel of land requiring only one half-day site visit) should take about 11 hours of staff time to process. A larger site will usually require a greater amount of time and resources. Accordingly, the fee schedule for a letter of interpretation is graduated according to the size of the parcel of land and whether a determination of wetlands boundaries, in addition to their presence, is requested.

It is estimated that the time and resources required for review and processing of freshwater wetlands permit applications will, like letters of interpretation, vary with the size of the parcel of land and with the size and complexity of the project proposed thereon. In addition, the effort required will vary according to the number and type of regulated activities proposed and the water dependence or non-water dependence of the activities. For example, a freshwater wetlands permit for a de minimus activity such as driving pilings will involve less review and have a lesser fee than a more complex or extensive activity such as building an industrial facility.

Open water fill permit applications require a very similar type of review to that for freshwater wetlands permits. Accordingly, a similar fee schedule is proposed for both types of permit.

Unlike requests for letters of interpretation and applications for freshwater wetlands and open water fill permits, a notice of proposed activity covered by a general permit should not require a great deal of review effort. When the Department receives notice of a proposed activity covered by a general permit, the Department must verify the extent of freshwater wetlands involved and whether the activity is indeed authorized under that general permit or whether an individual permit will be necessary. Accordingly, a uniform minimal fee is proposed for processing notices of proposed activity covered by a general permit.

The proposed new rules at N.J.A.C. 7:7A-16 establish the procedures for the assessment of civil administrative penalties as authorized by Section 21(d) of the Act. Most violators will be assessed civil administrative penalties within ranges which are determined by two factors: the severity of the environmental harm caused by the violation and the conduct of the violator. Other factors, such as the compliance history of the violator, may affect the specific penalty figure within the appropriate range. Certain violations, such as activities conducted without a permit, are assigned separate penalty amounts because the violations obstruct the ability of the freshwater wetlands protection program to monitor and regulate activities in freshwater wetlands.

Social Impact

The proposed fee schedule will have a positive social impact. By establishing fees for Departmental review of planned projects in freshwater wetlands, the Department will be able to support a qualified staff for its permit program. The permit program will efficiently carry out the Act's mandate to prevent environmentally destructive, uncoordinated private and public actions which in the past have damaged ecologically important wetland areas and aggravated existing flooding problems. Further, the fees will place part of the program's cost on those who derive benefit from engaging in regulated activities in freshwater wetlands, instead of placing the entire cost of the program on New Jersey's taxpayers.

The social impact of the proposed civil administrative penalty schedule will also be positive. The penalty schedule will provide a predictable framework for assessing penalties, and an effective, quickly activated deterrent to violations.

Economic Impact

The proposed fees are calculated so as to charge the amount necessary to cover the Department's review and processing activities. The proposed fees will have some economic impact on persons contemplating activities in and around freshwater wetlands and open water areas, including small landowners contemplating small projects. However, the proposed fees are graduated by size of land parcel in order to reflect the Departmental effort

required for review. This graduated fee schedule is likely to produce a fee which is generally proportional to an applicant's project budget. At the same time, the proposed fees will minimize the economic impact of the freshwater wetlands and open water fill permit programs on the taxpaying public at large.

The proposed penalty schedule will have no adverse economic impact on persons who comply with the Act, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and this chapter. The penalties are designed, however, to have a negative economic impact on potential violators, in order to deter violation of the law. The amount, and thus the economic impact of each penalty, is designed to appropriately reflect the nature and harm of the violation.

Environmental Impact

Freshwater wetlands and open waters are important and diminishing environmental and economic resources in New Jersey. They are an important element in protecting and purifying ground and surface water supplies, in the retention of floodwaters, and in providing habitat for a unique variety of plants and animals. The proposed fee schedule and civil administrative penalty schedule are essential elements of the freshwater wetlands protection program. The proposed fee schedule will have a positive environmental impact in that the fees will provide funding for the freshwater wetlands and open water fill permit programs, which are key elements of the program for the protection of New Jersey's remaining freshwater wetlands. The proposed civil administrative penalty schedule will also have a positive environmental impact in that it will deter unlawful destruction of this valuable natural resource.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169), the Department has determined that the proposed new fee rules will apply to virtually any activity in freshwater wetlands and virtually any discharge of dredged or fill material into the open waters of the State. To comply with the proposed new fee rules, small businesses will have to comply with the requirements set forth in the Summary above. In so doing, it is unlikely that small businesses will need professional services such as engineers, consultants, etc. Further, it is unlikely that small businesses would incur any additional capital costs in compliance. While not providing differing requirements, the fees are graduated by size of land parcel so that small businesses, which usually seek review of smaller projects and parcels than other applicants, will tend to incur smaller fees than those of other applicants.

In developing the civil administrative penalty schedule, the Department has determined that these proposed new rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses which comply with the substantive provisions of this chapter and the Act. The purpose of these rules is to supplement the enforcement authority for existing compliance requirements. In the penalties assessed for engaging in regulated activities without a permit, the Department has developed a formula which will assign penalties on the basis of project size, resulting in an economic impact on small businesses which may be roughly proportional to their resources. As to all other violations, the Department has determined that severity of violations has no relationship to business size, and that any further adjustment for small businesses would be inappropriate.

In developing these proposed new rules, the Department has balanced the need to protect the environment against the economic impact of the rules and has determined that to minimize the impact of the rules would endanger the environment, public health and public safety. Therefore, no exemption from coverage is provided.

Full text of the proposal follows.

SUBCHAPTER 15. FEES

7:7A-15.1 Payment of fees

(a) Except when submitted by an agency of the State, each request for a letter of interpretation, or freshwater wetlands permit application, open water fill permit application, or notice of proposed activity covered by a general permit shall be accompanied by the appropriate fee as set forth below at N.J.A.C. 7:7A-15.2 to 15.6. Except when submitted by an agency of the State, no request, application, or notice will be considered complete, and therefore will not be acted on by the Department, unless accompanied by the appropriate fee.

(b) All fees shall be paid by personal check, certified check, attorney check, or money order. Checks and money orders shall be

payable to "Treasurer, State of New Jersey" and submitted to:

Division of Coastal Resources
New Jersey Department of Environmental Protection
CN 401
5 Station Plaza
501 East State Street
Trenton, New Jersey 08625

(c) Each check or money order shall be marked to identify the nature of the submittal (for example, freshwater wetlands permit application) for which the fee is paid and the name of the applicant.

7:7A-15.2 Fees for review of requests for letters of interpretation

(a) If a request is made for a letter of interpretation to determine only whether any freshwater wetlands are present or absent on a parcel of land, the fee shall be \$100.00.

(b) Any request for a letter of interpretation which requires any freshwater wetlands boundary delineation, or verification of a delineation, shall be accompanied by the following fee:

1. For a parcel of land which is smaller than one acre, the fee shall be \$100.00; or

2. For a parcel of land of one acre or more, the fee shall be \$250.00 plus \$20.00 per acre or any fraction thereof.

(c) If in order to review and process a request for a letter of interpretation, more than one inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed \$1,000. No letter of interpretation shall be issued until this fee has been paid.

7:7A-15.3 Fees for review of freshwater wetlands permit applications

(a) The fee for the review and processing of a freshwater wetlands permit application to drive pilings shall be \$500.00. If a freshwater wetlands permit application is for any regulated activity as set forth in (b) below, in addition to pile driving, the fee for review will be that set forth in (b) below.

(b) The fee for the review and processing of a freshwater wetlands permit application for any of the following activities shall be \$1,000 plus \$100.00 per one-tenth acre, or any fraction thereof, of freshwater wetlands affected by any of the following proposed regulated activities:

1. The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind;
2. The drainage or disturbance of the water level or water table;
3. The dumping, discharging or filling with any materials;
4. The placing of obstructions other than pilings; and
5. The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees.

(c) If, in order to review and process a freshwater wetlands permit application, more than one inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed \$1,000. No permit shall be issued until this fee has been paid.

7:7A-15.4 Fees for review of open water fill permit applications

(a) The fee for the review and processing of an open water fill permit application shall be \$1,000 plus \$100.00 per one-tenth acre, or any fraction thereof, of State-regulated open waters affected by the proposed discharge of dredged or fill material.

(b) If, in order to review and process an open water fill permit application, more than one inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed \$1,000. No permit shall be issued until this fee has been paid.

7:7A-15.5 Fees for review of notices of proposed activity covered by a general permit

(a) The fee for review of a notice of proposed activity covered by a general permit pursuant to N.J.A.C. 7:7A-8.4(a) shall be \$100.00.

(b) If a project proposal requires more than one type of general permit, the fee shall be \$100.00 for each general permit.

ENVIRONMENTAL PROTECTION

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7:7A-15.6 Fees for review and processing of requests for transition area waivers (Reserved)

SUBCHAPTER 16. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:7A-16.1 General penalty provisions

(a) This subchapter shall apply only to violations of the Act which involve freshwater wetlands and transition areas. This subchapter shall not apply to regulated activities in State-regulated open waters. The penalty procedures and amounts for open water fill permit violations are set by N.J.A.C. 7:14-8. This subchapter shall also govern the procedures for requesting an adjudicatory hearing with respect to the assessment of a civil administrative penalty or the issuance of an administrative order.

(b) Each violation of each condition or provision of the Act or any rule, order, approved mitigation plan, waiver or permit issued pursuant thereto shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct violation for which a separate

civil administrative penalty may be assessed. A violation shall be considered to continue as long as it is not rectified, remedied, repaired or removed to the satisfaction of the Department. For example, each day that an obstruction, structure, piling, fill or discharge placed or constructed in violation of the Act remains in place shall constitute an additional, separate, and distinct violation. For destruction, dredging, or removal of freshwater wetlands components such as soil or vegetation, each day between the destruction or removal and the replacement, restoration, or remediation to the satisfaction of the Department shall constitute an additional, separate, and distinct violation.

(d) In addition to the civil administrative penalties assessed under this subchapter, restoration and/or mitigation may be required pursuant to N.J.A.C. 7:7A-14.

(e) The Department may in its discretion settle any civil administrative penalty assessed under this chapter.

7:7A-16.2 Civil administrative penalty determination

(a) The Department shall, except as provided in N.J.A.C. 7:7A-16.3 through 16.6 below, assess a civil administrative penalty within the following ranges, which have been established on the basis of the environmental damage and the conduct of the violator:

ENVIRONMENTAL DAMAGE				
		MAJOR	MODERATE	MINOR
C O N D U C T	MAJOR	\$10,000	\$7,000-\$10,000	\$6,000-\$8,000
	MODERATE	\$7,000-\$10,000	\$6,000-\$8,000	\$4,000-\$7,000
	MINOR	\$6,000-\$8,000	\$4,000-\$7,000	\$1,500-\$5,000

(b) The environmental damage factor of the violation shall be determined as major, moderate or minor as follows:

1. Major environmental damage shall include:

- i. Any violation which has caused or may cause serious harm to human health or the environment; or
- ii. Any violation which has caused or may cause irreparable or irreversible harm to the environment;

2. Moderate environmental damage shall include:

- i. Any violation which has caused or may cause substantial harm to human health or the environment; or
- ii. Any violation which has caused or may cause harm to the environment, which harm can only be reversed with difficulty or will take more than 30 days to repair; and

3. Minor environmental damage shall include any violation not covered in (b)1 or 2 above.

(c) The conduct factor of the violation shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

3. Minor conduct shall include any other conduct not identified in (c)1 or 2 above.

(d) The civil administrative penalty shall be determined by the Department within the ranges established pursuant to (a) above after consideration of the following:

1. The compliance history of the violator;

2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the current violation or to prevent future violations;

4. Whether the penalty will provide a sufficient deterrent to future violation; and/or

5. Other relevant factors.

7:7A-16.3 Civil administrative penalty for engaging in regulated activities without approval

(a) The Department may assess a civil administrative penalty in accordance with the provisions of this section against each violator who engages in a regulated activity in a freshwater wetland without

a freshwater wetlands permit or engages in a regulated activity in a transition area without a transition area waiver.

(b) For each violation under this section, the penalty shall be \$10,000. Each day, from the day the regulated activity begins to the day its effects are rectified, remediated, repaired, or removed to the satisfaction of the Department, shall constitute an additional, separate, and distinct violation.

7:7A-16.4 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty in accordance with the provisions of this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, under the Act or any rule, administrative order, permit, mitigation plan, or waiver issued pursuant thereto.

(b) Each day, from the day of receipt of the information by the Department, to the day of receipt of correction by the Department, shall be an additional, separate, and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty assessed pursuant to this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing, or willful act or omission by the violator, the penalty shall be in an amount of not more than \$10,000 nor less than \$8,000 per violation; and

2. For each other violation, the penalty shall be in the amount of \$1,000.

7:7A-16.5 Civil administrative penalty for failure to allow entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day from the initial day of failure to allow entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate entry and inspection, shall constitute an additional, separate, and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty assessed pursuant to this section as follows:

1. If an administrative order, freshwater wetlands permit, open water fill permit, transition area waiver, approved mitigation plan or transition area averaging plan, or general permit authorization notification exists for the property in question, the penalty shall be an amount no greater than \$10,000 nor less than \$7,000.

2. For any other refusal not covered by (c)1 above, the penalty shall be an amount no greater than \$7,000 nor less than \$1,500.

7:7A-16.6 Civil administrative penalty for failure to pay a civil administrative penalty assessed under the Act

(a) The Department shall assess a civil administrative penalty pursuant to this section against each violator who fails to pay a civil administrative penalty assessed pursuant to the Act.

(b) The Department shall assess a civil administrative penalty pursuant to this section in an amount equal to the amount of each unpaid civil administrative penalty for each violation.

7:7A-16.7 Economic benefit factor

The Department may add to each civil administrative penalty assessed pursuant to this subchapter an amount equal to the total economic benefit which the violator has received from not complying, or from delaying compliance with the requirements of the Act or any rule, permit, mitigation plan, waiver or administrative order issued pursuant thereto. If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$10,000 per violation.

7:7A-16.8 Procedures for assessment of civil administrative penalties under the Act

(a) To assess a civil administrative penalty under the Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. The Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, mitigation plan, waiver, permit or administrative order violated;

2. Specify the amount of the civil administrative penalties to be assessed pursuant to this chapter; and

3. Advise the violator of the right to request an adjudicatory hearing pursuant to N.J.A.C. 7:7A-16.9.

(b) Payment of a civil administrative penalty is due upon issuance by the Department of a Final Order in a contested case or when the Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7A-16.9, the Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. If the Department denies the hearing request, a 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 held, the Department, after the hearing and upon a finding that a violation has occurred, shall issue a Final Order in a contested case specifying the amount of the civil administrative penalty being assessed. The civil administrative penalty is due upon receipt by the violator of the Final Order.

7:7A-16.9 Procedures for requesting an adjudicatory hearing to contest an Administrative Order and/or a Civil Administrative Penalty Assessment

(a) To request an adjudicatory hearing to contest the assessment of a penalty, the issuance of an administrative order, or any findings of fact contained therein, the violator shall include the following information in a request for an adjudicatory hearing:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact, stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the 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 violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location.

(b) All requests for adjudicatory hearings shall be received by the Department within 20 days after receipt by the violator of a Notice of Civil Administrative Penalty Assessment and/or an Administrative Order.

(c) Failure to comply with either (a) or (b) above shall be grounds for the Department to deny the request for a hearing.

(d) All adjudicatory hearings held pursuant to this section shall be 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.

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Pesticide Control Code

Proposed Amendments: N.J.A.C. 7:30

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-9 and 13:1F-1 et seq., particularly 13:1F-4.

DEP Docket Number: 010-88-02.

Proposal Number: PRN 1988-144.

Public hearings concerning the proposed amendments will be held on:

April 21, 1988 from 2:00 to 5:00 P.M. and 6:00 to 8:00 P.M.

Randolph Municipal Building

Millbrook Avenue

Randolph Township, New Jersey

April 25, 1988 from 2:00 to 5:00 P.M. and 6:00 to 8:00 P.M.

Vineland Municipal Building

Council Chambers

7th and Wood Streets

Vineland, New Jersey

Submit comments by April 27, 1988 to:

Gary J. Brower, Esq.

Office of Regulatory Services

Department of Environmental Protection

CN 402

Trenton, N.J. 08625

The agency proposal follows:

Summary

The Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 et seq., granted to the Department of Environmental Protection (the "Department") the authority to formulate and promulgate rules to cover the registration of pesticides, the licensing of dealers and applicators, and the regulation of pesticide use in order to prevent adverse effects on persons and the environment. Pursuant to this authority, the Pesticide Control Code, N.J.A.C. 7:30 (the "Code") was adopted in 1974 and has had major updates in 1976, 1983 and 1985.

Due to additional information available on the effects of pesticides on persons and the environment and changes in practice which have occurred since the enactment of the current code in 1987, the Department is now proposing to amend the code.

The proposed amendments, when implemented, will clarify certain sections of the existing rules, provide a more easily useable source of reference through the reorganization of the restricted use pesticide list and the use of common names of pesticides, address new areas identified as requiring more comprehensive and efficient regulation such as the

notification requirements, and modify the fee structure to more accurately reflect program costs.

During the recent readoption of the code, the Department received comments in a number of areas which were taken under advisement. Many of the concerns expressed are addressed in these proposed amendments, particularly in the area of notification. After a review of notification of area wide spraying, the Department has determined that the current provisions requiring notice in the two area newspapers most likely to inform the area population is sufficient provided such notification is made within a reasonable period of time of the date of the application. For this reason the Department is proposing to reduce the notification provision requiring that such notice be given no more than 60 days in advance of the application to no more than 30 days in advance of the application.

Studies of the effectiveness of the operator certification program, gypsy moth control and mosquito control continue. Based on the findings of the committee studying these areas, the Department will propose amendments in the future, if appropriate.

Some of the major revisions to the code are the following:

N.J.A.C. 7:30-1, "Pesticide Product Registration and General Requirements", requires registration of all pesticide products held, used, distributed, sold or offered for sale in New Jersey (State). The proposed amendments clarify the current requirement that all brand or trade names must be registered separately. Additionally, the proposed amendments require the registrants of termiticides to supply manuals, clean up procedures, and sampling methodology for their products during the registration process and require registrants of tributyltin (TBT) antifoulant paints labeled for marine uses to certify they are co-polymer formulations and have an acceptable release rate. The annual product registration fee is being increased from \$40.00 to \$80.00.

N.J.A.C. 7:30-2, "Prohibited and Restricted Use Pesticides", lists the pesticides or pesticide uses currently classified as restricted uses in New Jersey. This list is in addition to pesticides restricted by the United States Environmental Protection Agency (EPA). The compounds 2, 4-D (in concentrations above 20 percent) and TBT (marine uses) are being added to the restricted use list in N.J.A.C. 7:30-2 due to their effects on wildlife mortality and aquatic organisms respectively. The restricted use pesticide list is reorganized into a more useable form through recategorization of the pesticides on the list and by replacing chemical names with approved common names. Neurotoxicity is being added to N.J.A.C. 7:30-2.4 as a criteria for evaluating pesticides for prohibited or restricted use status.

N.J.A.C. 7:30-3, "Pesticide Dealers", requires the certification and registration of persons who sell restricted use pesticides, and N.J.A.C. 7:30-4, "Pesticide dealer businesses," requires businesses that sell restricted use pesticides to register each outlet with the Department and to have a responsible certified and registered pesticide dealer at each outlet. In both subchapters, changes are being proposed which clarify the intent of certain current definitions and sections. Both subchapters contain amendments which specify valid operator licenses acceptable in lieu of a New Jersey pesticide applicator's registration for purchasing chlorine gas. They also provide an exemption from the purchaser registration requirement for veterinarians obtaining restricted use pesticide for use on animals as part of their practice. N.J.A.C. 7:30-3.9 and 4.5 are being added to prohibit dealers from selling to an unlicensed person when the dealer knows that the person should be licensed under the code. The annual dealer registration fee of N.J.A.C. 7:30-3.4 is increased from \$20.00 to \$30.00 and the dealer business registration fee of N.J.A.C. 7:30-4.2 is increased from \$50.00 to \$75.00.

N.J.A.C. 7:30-5, "Pesticide Operators", requires the registration and training of persons who apply pesticides under the supervision of a certified, registered applicator. The proposed amendments ease the annual commercial operator registration fee from \$5.00 to \$10.00 and eliminate the private operator registration fee as required by P.L. 1987, c.204.

N.J.A.C. 7:30-6, "Commercial Pesticide Applicators", requires the certification and registration of persons who use or supervise the use of pesticides commercially. The proposed amendments exempt veterinarians, water treatment operators, wastewater treatment operators, and certified pool operators from the current certification and registration requirements, if they hold the proper credentials. New certification categories including interior landscaping, antifoulants, and pet grooming are added. Record retention requirements for the commercial application of termiticide are defined and record retention requirements for termiticides are extended from the current two years to five years. Record retention for other applicators is increased from the current two years

to three years. The annual applicator registration fee is increased from \$20.00 to \$30.00.

N.J.A.C. 7:30-7, "Pesticide Applicator Businesses", requires pesticide applicator businesses to register each location and name under which they operate, mandates recordkeeping requirements and requires businesses to employ registered commercial pesticide applicators certified in each category in which the business conducts applications. The proposed amendments in N.J.A.C. 7:30-7.2 provide an exemption from registration for businesses where the only pesticides used are antimicrobial agents, wood preservatives or antifouling paints, or agents which are not classified as restricted use pesticides. Termiticide applicator recordkeeping and period of retention requirements are added in N.J.A.C. 7:30-7.3. The financial responsibility insurance requirements in N.J.A.C. 7:30-7.4 are modified. N.J.A.C. 7:30-7.7 added to clarify that businesses are responsible for the actions of their employees. The annual business registration fee is increased from \$50.00 to \$75.00.

N.J.A.C. 7:30-8, "Private Pesticide Applicators", requires the certification and registration of persons who use or supervise the use of restricted use pesticides on agricultural land in order to produce an agricultural commodity and mandates recordkeeping requirements. The proposed amendments eliminate the annual private applicator registration fee pursuant to recent legislative action (P.L. 1987, c. 204).

N.J.A.C. 7:30-9, "Pesticide Exposure Management", deals with community or areawide pesticide applications, pesticide storage, container labeling, pesticide disposal, application and safety equipment, notification, farm worker safety and reporting of pesticide spills. The requirements in N.J.A.C. 7:30-9.3 for obtaining an aquatic use permit are clarified. The existing requirement in N.J.A.C. 7:30-9.4 that any person storing a pesticide maintain a list of pesticides stored or likely to be stored at the facility during the year and notify the fire company of the location of storage is modified to require that a copy of the list be provided to the fire department for use in emergency response. Safety equipment requirements for the use of any 2, 4-D compound are added in N.J.A.C. 7:30-9.7. The current notification requirements in N.J.A.C. 7:30-9.8 for community or areawide large scale applications are refined as are requirements related to the beekeeper notification program. N.J.A.C. 7:30-9.11 and 9.10 containing the notification requirements for the two largest commercial pesticide application industries in the State, ornamental/turf and general household or structural applications, are being proposed. These sections contain various notification mechanisms to address numerous scenarios such as single family homes, multiple family homes, institutions and commercial buildings, large public places, restaurants, corporate lawns, schools, parks, and golf courses. The notification mechanisms include requirements for written notices to customers and sign postings. The notifications must contain a consumer information sheet, proposed dates of application, appropriate precautions, pesticides to be used, and the name and phone number of the applicator business involved.

N.J.A.C. 7:30-10, "Pesticide Use", regulates pesticide use and application, pesticide contamination clean-up and other related topics. This subchapter also regulates aerial and termite control applications. A requirement that a fully certified and registered applicator be present at the application site for fumigation treatments is being proposed at N.J.A.C. 7:30-10.3.

The termite treatment requirements in N.J.A.C. 7:30-10.4 are being refined and a requirement that a diagram of the structure to be treated be included as part of the record and retained for five years is being added. A fee schedule for sample analyses is being proposed in N.J.A.C. 7:30-10.7. N.J.A.C. 7:30-10.7 also sets forth the manufacturer's responsibility for sampling costs when sampling taken at the manufacturer's facility indicates misformulation of a pesticide product. N.J.A.C. 7:30-10.3 prohibits the use of pesticides in schools during school hours or when the building is occupied. Use restrictions are placed on the use of products containing tributyltin (TBT) in N.J.A.C. 7:30-10.3 due to its effects on aquatic organisms, and on diazinon due to its effects on geese.

The Pesticide Control Council was consulted on the proposed amendments to the code and a copy of the proposal provided pursuant to N.J.S.A. 13:1F-8. After review, the Council voted to recommend that these amendments be proposed by the Department.

Social Impact

The positive social impact of the code has been significant. The negative effect to public health and the environment from exposure to pesticides, including carcinogens, has been greatly reduced. Prior to Federal and State regulations, numerous instances of harm due to misapplication of pesticides were documented. These incidents lead to the passage of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136,

(FIFRA), and the New Jersey Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 et seq. The Pesticide Control Code was adopted in 1974 to implement the Pesticide Control Act. The amendments to the code in 1983, 1985 and 1987 have further defined the correct use of pesticides and have brought the rules into conformance with current scientific knowledge.

The entire population of New Jersey has been positively benefited by protection of their health. Residues on food, drift from aerial applications, contamination of water supplies and dumping of pesticides have all been reduced in New Jersey. In addition, wildlife and the environment have also been protected from improper pesticide use. Approximately 6000 licensed commercial applicators, 3000 operators, 3000 private applicators and 200 restricted use pesticide dealers have successfully completed the State training program, which is recognized as a national model.

A positive social impact will result from the proposed amendments to the code. Some of the positive benefits are as follows:

Reorganization of the restricted use pesticide list and the replacement of chemical names with approved common names will make the list more understandable to regulated dealers in New Jersey. This should result in fewer restricted use pesticides being offered for sale inadvertently to unlicensed persons.

New certification categories in the areas of interior landscaping, antifoulants and pet grooming will insure that pesticides are applied correctly by applicators working in those areas.

The new notification requirements for ornamental or turf and general household or structural pest control will make available to any concerned persons information on proposed pesticide applications in these areas so that they can take appropriate action. This will help reduce potential pesticide exposure of concerned or sensitive persons.

The requirement that a licensed applicator be present at the site of a fumigation will insure that this type of potentially dangerous application is done safely.

The banning of pesticide applications in schools while they are in session or occupied will be extremely beneficial in limiting pesticide exposure to children who may be particularly sensitive to the effects of pesticides.

The proposed upgrading of the code will, in combination with adequate enforcement, result in greater protection from the negative aspects of pesticides while allowing their continued beneficial use in New Jersey.

Economic Impact

The code has had a positive economic impact by reducing the number of health problems associated with improper pesticide use. There has also been a decrease in the number of contamination cases requiring expensive clean-up procedures. Properly regulated use of pesticides enables farmers to protect their crops from damage due to agricultural pests. Proper use of pesticides has protected the residents of New Jersey from harmful and destructive pests.

The major part of the proposed amendments is rewording of existing text for clarity or minor additions which have no great economic impact. However, several proposed amendments of the code will increase costs to the regulated community.

The most significant new cost of the proposed amendments is related to increases in existing fees to be borne by the regulated community. An increase in the registration fee for pesticide products from \$40.00 to \$80.00 will provide an estimated \$360,000 in additional funds. This will be paid at the manufacturing/producing end of the pesticide distribution network by those persons who register pesticide products.

The remainder of the fee increases are distributed as follows: applicator business registration and restricted pesticide dealer registration (increased from \$50.00 to \$75.00), commercial pesticide applicator and pesticide dealer registering (\$20.00 to \$30.00) and commercial pesticide operator (\$5.00 to \$10.00). The fees previously charged to private pesticide applicators and operators has been eliminated as mandated by a recent legislative change. The proposed changes will provide an estimated \$107,000 in additional funds.

The Department has not increased applicator or business registration fees since 1982, a period in which inflation and additional costs associated with implementation of the code have increased operating expenses. In addition to providing funds to more accurately reflect current operating costs, the increases will allow the Department to add inspectors to more efficiently meet its inspection commitment and to increase research into areas of potential concern such as the levels and persistence of pesticides in the air inside residences after spraying. The Department has evaluated these expenses and has determined that by imposing registration and other fees in the manner provided by these proposed amendments, these

costs will be shared realistically and fairly by all aspects of the industry. Industry should bear the burden of the costs of ensuring that their products and services are safe for the public and the environment.

The purchase of signs, posters and circulars to be used with the new notification system will produce an added cost to the regulated community. This cost should be minimal and may be partially offset by re-using signs where possible. In addition, the effect of advanced notification may result in a more efficient use of time by having customers make advanced preparations for pest control work.

Environmental Impact

The proposed amendments to the code will have a positive environmental impact by reducing the risk to animals and the environment of unnecessary exposure to pesticides.

New use restrictions will be placed on the use of products containing tributyltin (TBT) due to effects on aquatic organisms and diazinon because of incidents involving wildlife mortality.

Increased minimum distance requirements for notification to beekeepers of spraying and use restrictions on certain crops during pollination periods will further protect the State's bee population and help prevent the loss of crops due to nonpollination.

The addition of new certification categories for commercial pesticide applicators in the areas of antifoulants and pet grooming will insure that applications in those categories are performed safely and properly. Training and licensing under the registration program have been successful in reducing environmental hazards by making the pest control industry more efficient and aware of potential harm to the environment.

Regulatory Flexibility Statement

At the present time there are approximately 1,700 pesticide applicator businesses, 100 pesticide dealer businesses, 200 restricted use dealers, 6000 commercial applicators, 3000 private applicators and 3000 pesticide operators that are regulated by the Department. Virtually all of the regulated businesses come under the definition of a small business with less than 100 employees as specified in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169). Therefore, there is no basis for two sets of compliance regulations. Exemption from coverage of the rule is not feasible because it would endanger public health and the environment by allowing untrained persons to apply restricted use pesticides which have been determined to be potentially harmful if misused. The elimination of the \$5.00 annual fee for private pesticide applicators and operators minimizes the economic impact on small-scale or family farming operations.

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

CHAPTER 30 PESTICIDE CONTROL CODE

SUBCHAPTER 1. PESTICIDE PRODUCT REGISTRATION AND GENERAL REQUIREMENTS

7:30-1.1 (No change.)

7:30-1.2 Definitions

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

"Acceptable release rate" means a measured release rate not to exceed 5.0 micrograms per square centimeter per day at steady state conditions as determined in accordance with the U.S. Environmental Protection Agency (EPA) testing procedure outlined in the EPA data call-in notice of July 29, 1986, on tributyltin (TBT) in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136.

... **"Misbranded"** means a condition as to a pesticide wherein:

1.-5. (No change.)

6. The label does not bear the information designated in N.J.A.C. 7:30[1.10(a)]1.9(a)2; or

7.-8. (No change.)

... **"Registrant"** means any person whose name is on a registration issued by the [Office] Bureau of Pesticide Control.

"Restricted use pesticide" means any pesticide or pesticide use so classified under the provisions of N.J.A.C. 7:30-2[.1], or so classified

by the Administrator of the United States Environmental Protection Agency.

...

"Subterranean application" means the placement of any pesticide:

1. Under or adjacent to structures by trenching; or
2. Under slabs or under or within six inches of foundation walls by rodding; or

3. Within the interior voids of foundation walls.

"Supplemental registration" means an additional registration, with the EPA, of a primary registered pesticide product for the purpose of allowing a distributor to market that pesticide product under the distributor's brand name. The supplemental registered product is characterized by having the same composition and labeling claims as the primary registered product and by having a label which bears the registration number of the primary registered product and the distributor's company number as a suffix to that registration number.

"TBT antifoulant paint" means any paint formulation containing any tributyltin compounds having three normal butyl groups attached to a tin atom and with an anion such as chloride, fluoride or oxide.

"Termiticide" means any pesticide labeled, designed, or intended for use in preventing, destroying, repelling or mitigating termites.

...

7:30-1.3 Registration

- (a) (No change.)

- (b) Any pesticide product containing a supplemental registration and all brand or trade names [must] shall be registered separately.

- (c) At the time of registration the registrant shall file a statement with the [department] Department which includes:

- 1.-2. (No change.)

3. A complete copy of the label, which shall contain all statements, words, graphic material and any other information required by FIFRA, and the labeling accompanying the pesticide and a statement of all claims including the directions and precautions for use; [and]

4. The use classification of the pesticide as required by Federal or State regulation[.];

5. For registration of pesticide products which are termiticides labeled for subterranean application, resource manuals, clean-up procedures, and sampling methodology shall be supplied; and

6. For registration of any TBT antifoulant paint labeled for marine uses, a certification which states that the TBT antifoulant paint:

- i. Is a co-polymer formulation, as opposed to the free-association formulation; and

- ii. Has an acceptable release rate, based on tests conducted in accordance with the EPA testing procedure as outlined in the EPA data call-in notice of July 29, 1986, on tributyltin in antifoulant paints under FIFRA.

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

- (g) Before holding, using, distributing, selling, or offering for sale any pesticide in this State, the applicant or registrant shall pay an annual registration fee of \$[40.00]80.00 to the Department or its authorized representative for each pesticide to be registered. All such registrations shall expire on December 31 of each calendar year.

- (h)-(l) (No change.)

7:30-1.4 (No change.)

7:30-1.5 Experimental use permits

- (a) The holder of a Federally issued experimental use permit shall:

- 1.-2. (No change.)

3. Submit to the [department] Department the names, locations, and acreage of the site(s) in New Jersey where the experimental pesticide will be used[;], and the addresses and telephone numbers of any persons who will be applying an experimental pesticide in the State of New Jersey;

4. Indicate the amount of experimental pesticide that will be used at each site in the State of New Jersey; and]

- [5.]4. Submit to the [department] Department the names and addresses of any person(s) whose property in the State of New Jersey will be used for the experimental use program, and the location, total acreage treated, and amount of experimental pesticide that will be used at each site; and

- [6.]5. (No change in text.)

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

7:30-1.6 through 1.8 (No change.)

7:30-1.9 General requirements

- (a) No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State:

1. (No change.)

2. Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read—a label bearing the following information:

- i.-v. (No change.)

- vi. The EPA [registration] establishment number assigned to each establishment in which it was produced and the EPA registration number, and supplemental registration number, if applicable, assigned to the pesticide, if required by regulations under FIFRA; [and]

- vii.-ix. (No change.)

- 3.-5. (No change.)

- (b)-(j) (No change.)

7:30-1.10 (No change.)

SUBCHAPTER 2. [PROHIBITED] PROHIBITED AND RESTRICTED USE PESTICIDES [LIST]

7:30-2.1 Definitions

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

"Acceptable release rate" means a measured release rate not to exceed 5.0 micrograms per square centimeter per day at steady state conditions as determined in accordance with the U.S. Environmental Protection Agency (EPA) testing procedure outlined in the EPA data call-in notice of July 29, 1986, on tributyltin (TBT) in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136.

...

"Aquatic site" means any target site outside a structure where water is physically and visibly present on the surface of the site at the time a pesticide is applied.

"CAS number" means the Chemical Abstract [Society] Service Registry number.

...

"TBT antifoulant paint" means any paint formation containing any tributyltin compounds having three normal butyl groups attached to a tin atom and with an anion such as chloride, fluoride or oxide.

...

7:30-2.2 Prohibited pesticides

- (a) No person shall distribute, sell, offer for sale, purchase, or use any pesticide which has been suspended or cancelled by the [EAP] EPA, except as provided for in the suspension or cancellation order.

- (b) All marine uses of free association formulations of antifoulant paints and co-polymer formulations with release rates greater than the acceptable release rate as defined in this subchapter are prohibited.

7:30-2.3 Restricted use pesticides

- (a) The following pesticides are restricted use pesticides which can be purchased and/or used only by certified and registered responsible pesticide applicators or persons working under their direct supervision. Unless it is otherwise provided, all formulations and uses of the following pesticides are restricted use.

1. Any pesticide if its labeling bears any restriction which would cause any user who was not certified and registered, by virtue of the very fact that he or she was not certified and registered, to use the pesticide in a manner inconsistent with its labeling. Provisions of this subsection shall not apply to any pesticide classified as an antimicrobial agent, a wood preserving agent, or an antifouling paint or

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agent, the commercial applicator of which is not required to be certified and registered under the [provision] **provisions** of N.J.A.C. 7:30-6.2(a)5, **6**, and **7** to purchase and use these pesticides.

2. (No change.)

3. Any fumigant except:

i. Any pesticide containing naphthalene, ortho-dichlorobenzene, and/or para-dichlorobenzene as the sole active ingredient or in combination with another active ingredient which is not classified for restricted use if the pesticide product is used to control mosquitoes or clothes moths, or to **repel warm blooded animals**;

ii-iv. (No change.)

4. Any pesticide which contains labeling instructions indicating that the pesticide is intended for [aquatic use and which contains restrictions on the use of the treated water for potable purposes, irrigation, agricultural sprays, stock watering, swimming, or the use of fish from the treated water for food or feed. If the labeling contains statements indicating that the pesticide cannot be applied to waters that are used for any of the above uses, or if there are restrictions on how close to a potable water intake the pesticide can be applied, those pesticides are also considered restricted use pesticides.] **use in the waters of the State or on aquatic sites.**

5. Any [fungicides, nematocides, fumigants and related materials] **pesticide with one or more of the active ingredients** listed below:

CAS Number	Restricted Pesticides
7440-43-9	Cadmium products (containing salts or metal complexes)
297-97-2	0,0-diethyl 0-2-pyrazinyl phosphorothioate
534-52-1	4,6-dinitro-0-cresol and salts
131-89-5	4,6-dinitro-0-cyclohexyphenol and salts
87-86-5	Pentachlorophenol and salts—all concentrations above 5%
140-56-7	Sodium diazenesulfonate—all concentrations above 5%
76-87-9	Triphenyltin hydroxide—all concentrations above 10%
26628-22-8	Sodium Azide—all concentrations above 0.5%
7439-97-6	Any pesticide containing mercury as an inorganic or organic compound except those used as a drug as defined in N.J.S.A. 24:21-2, those used as a fungicide in the treatment of textiles and fabrics intended for continuous outdoor use, those used as an in-can preservative in water-based paints and coatings, or those used as a fungicide in water-based paints and coatings used for exterior application.

22224-92-6 Fenamiphos]

[6. Any herbicides and related materials listed below:

CAS Number	Restricted Pesticides
94-75-7	2,4-Dichlorophenoxyacetic acid (high volatile esters)
7775-09-9	Sodium Chlorate
93-76-5	2,4,5-Trichlorophenoxyacetic acid
50-31-7	2,3,6-Trichlorobenzoic acid and related polychlorobenzoic acids, dimethylamine salts
21725-46-2	[[2-(4-chloro-6-(ethylamino)-s-triazin-2-yl)amino]-2-methyl-propionitrile—all concentrations above 30
61-82-5	Amitrole
88-85-7	Dinoseb
7784-46-5	Sodium arsenite
15972-60-8	Alachlor
1596-84-5	Daminozide]

[7. Any insecticides and related materials listed below:

CAS Number	Restricted Pesticides
57-74-9	Chlordane
62-73-7	2,2-dichlorovinyl dimethyl phosphate—all concentrations above 3%; resin strips not restricted unless so classified by the EPA as referenced in 2 above.
2310-17-0	Phosalone—all concentrations above 12%
56-72-4	0,0-diethyl 0-(3 chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl) phosphorothioate—all concentrations above 5%
333-41-5	0,0-Diethyl 0-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate—all concentrations above 25%
315-18-4	Mexacarbate—all concentrations above 2%
122-10-1	dimethyl 3-hydroxyglutamate dimethyl phosphate—all concentrations above 1%
55-38-9	Fenthion—all concentrations above 0.5%

563-12-1	Ethion—all concentrations above 6% G; 3% all others
114-26-1	0-Isopropoxyphenyl-methylcarbamate—all concentrations above 2%; resin strips not restricted unless so classified by the EPA as referenced in 2 above.
58-89-9	Lindane (Gamma isomer of benzene hexachloride)—all concentrations above 20%
311-45-5	Paraoxon
60-51-5	Dimethoate—all concentrations above 25%
22781-23-3	Bendiocarb—all concentrations above 15%
732-11-6	N-(Mercaptomethyl) phthalimide S-(0,0-dimethyl) phosphorodithioate—all concentrations above 20%
112-56-1	Beta-Butoxy beta'-thiocyano diethyl ether—all concentrations above 10%
2032-65-7	4-(Methylthio)-3,5-xylyl methylcarbamate—all concentrations above 2%
919-86-8	Metasystox—all concentrations above 7%
23103-98-2	Pirimicarb—all concentrations above 15%
23505-41-1	Pirimiphos-ethyl—all concentrations above 20%
52-68-6	Dimethyl (2,2-1-hydroxyethyl) phosphonate—all concentrations above 15%
390-00-2	Aldrin
60-57-1	Dieldrin
76-44-8	Heptachlor
8001-35-2	Toxaphene
72-20-8	Endrin
2921-88-2	Chlorpyrifos—all concentrations above 15%
7440-38-2	Any inorganic arsenical pesticide not specifically covered elsewhere which has greater than 0.5 ounces of active ingredient
115-29-7	Endosulfan
86-50-0	Azinphos-methyl
298-04-4	Disulfoton—all concentrations above 2%
7681-49-4	Sodium fluoride]

[8. Any rodenticides and related materials listed below:

CAS Number	Restricted Pesticides
117-52-2	3-(alpha-acetonylfurfuryl)-4-hydroxycoumarin—all concentrations above 3%
86-88-4	Alpha-Naphthylthiourea—all concentrations above 4%
504-24-5	4-Aminopyridine
535-89-7	2-Chloro-4-(dimethylamino)-6-methylpyrimidine
82-66-6	Diphacinone—all concentrations above 3%
7723-14-0	Phosphorus (yellow, white)
83-26-1	2-Pivalyl-1, 3-indandione—all concentrations above 3%
81-81-2	Warfarin—all concentrations above 3%
28772-56-7	3-[3-(4'-Bromo-[1,1'-biphenyl]-4-yl)-3-hydroxyl-1-phenylpropyl]-4-hydroxy-2H-1-benzopyran-2-one—all concentrations above 0.01%
3691-35-8	2-[(p-Chlorophenyl)phenylacetyl]-1,3-indandione—all concentrations above 0.2% and above.
507-60-8	Red Squill—all concentrations above 30%
1327-53-3	Arsenic Trioxide—all concentrations above 1.5% in products intended for the control of rodents.
56073-10-0	Brodifacoum—all concentrations above 0.005%]

i. **Fungicides, nematocides, and other materials as follows:**

CAS Number	Common Name
7440-43-9	cadmium products (containing salts or metal complexes)
534-52-1	DNOC, DNC
131-89-5	DNOCHP, dinitrocyclohexylphenol
22224-92-6	fenamiphos
140-56-7	fenaminosulf (concentrations above 5%)
7439-97-6	Any pesticide containing mercury as an inorganic or organic compound except those used as a drug as defined in N.J.S.A. 24:21-2, those used as a fungicide in the treatment of textiles and fabrics intended for continuous outdoor use, those used as an in-can preservative in water-based paints and coatings, or those used as a fungicide in water-based paints and coatings used for exterior application.
87-86-5	pentachlorophenol, PCP (concentrations above 5% for non-wood preservative uses)
26628-22-8	sodium azide, azide (concentrations above 0.5%)
297-97-2	thionazin

various	tributyltin (marine uses of co-polymer formulations with acceptable release rates)
76-87-9	triphenyltin hydroxide (concentrations above 10%)
ii. Herbicides/growth regulators as follows:	
CAS Number	Common Name
94-75-7	2,4-dichlorophenoxy-acetic acid (2,4-D) (concentrations above 20%)
5742-19-18	2,4-D diethanolamine salt (concentrations above 20%)
2008-39-1	2,4-D dimethylamine salt (concentrations above 20%)
2702-72-9	2,4-D sodium salt (concentrations above 20%)
1929-73-3	2,4-D butoxyethanol ester (concentrations above 20%)
1928-45-6	2,4-D, propylene glycol butyl ether esters (concentrations above 20%)
1928-43-4	2,4-D 2-ethylhexyl ester (concentrations above 20%)
25168-26-7	2,4-D isooctyl ester (concentrations above 20%)
533-23-3	2,4-D ethyl ester
94-11-1	2,4-D, isopropyl ester
1928-38-71	2,4-D methyl ester
94-80-4	2,4-D, mixed butyl esters
1713-15-1	2,4-D mixed isobutyl esters
93-76-5	2,4,5-T
50-31-7	2,3,6-TBA and related polychlorobenzoic acids, dimethylamine salts
15972-60-8	alachlor
61-82-5	amitrole
21725-46-2	cyanazine (concentrations above 30%)
596-84-5	daminozide
88-85-7	dinoseb
7784-46-5	sodium arsenite
7775-09-9	sodium chlorate
iii. Insecticides as follows:	
CAS Number	Common Name
390-00-2	aldrin
86-50-0	azinphos-methyl
22781-23-3	bendiocarb (concentrations above 15%)
122-10-1	bomyl (concentrations above 1%)
57-74-9	chlordane
2921-88-2	chlorpyrifos (concentrations above 15%)
56-72-4	coumaphos (concentrations above 5%)
333-41-5	diazinon (concentrations above 25%)
62-73-7	dichlorvos (concentrations above 3%) (Note 3iv. above)
60-57-1	dieldrin
60-51-5	dimethoate (concentrations above 25%)
298-04-4	disulfoton (concentrations above 2%)
115-29-7	endosulfan
72-20-8	endrin
563-12-1	ethion (concentrations above 6% Granular and 3% other formulations)
55-38-9	fenthion (concentrations above 0.5%)
76-44-8	heptachlor
7440-38-2	inorganic arsenicals (above 0.5 oz. active ingredient)
112-56-1	lethane 384 (concentrations above 10%)
58-89-9	lindane (concentrations above 20%)
2032-65-7	mercaptodimethur, methiocarb (concentrations above 2%)
919-86-8	methyl demeton (concentrations above 7%)
315-18-4	mexacarbate (concentrations above 2%)
311-45-5	paraoxon
2310-17-0	phosalone (concentrations above 12%)
732-11-6	phosmet (concentrations above 20%)
23103-98-2	pirimicarb (concentrations above 15%)
23505-41-1	pirimiphos-ethyl (concentrations above 20%)
114-26-1	propoxur (concentrations above 2%) (Note (a)3iv above)
7681-49-4	sodium fluoride
8001-35-2	toxaphene
52-68-6	trichlorfon (concentrations above 15%)
iv. Rodenticides as follows:	
CAS Number	Common Name
86-88-4	antu (concentrations above 4%)
1327-53-3	arsenic trioxide (concentrations above 1.5% in rodenticides)
504-24-5	avitrol
56073-10-0	brodifacoum (concentrations above 0.005%)
28772-56-7	bromadiolone (concentrations above 0.01%)

3691-35-8	chlorophacinone (concentrations 0.2% and above)
117-52-2	coumafuryl (concentrations above 3%)
535-89-7	crimidine
82-66-6	diphacinone (concentrations above 3%)
7723-14-0	phosphorus (yellow, white)
83-26-1	pindone (concentrations above 3%)
507-60-8	red squill (concentrations above 30%)
81-81-2	warfarin (concentrations above 3%)

Note: Chemical Abstract [Society] Service (CAS) numbers of 7440-43-9, 7439-97-6, and 7440-38-2 are for the elemental form.

(b) (No change.)

7:30-2.4 Amending prohibited and restricted-use pesticide lists

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

(c) The Department shall consider the following criteria when evaluating a pesticide for placement on the prohibited or restricted use pesticide list:

1. (No change.)

2. Neurotoxicity;

Renumber 2. through 5. as 3. through 6. (No change in text.)

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

SUBCHAPTER 3. PESTICIDE DEALERS

7:30-3.1 Definitions

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

...
 "Commercial pesticide operator" means any person who applies pesticides by equipment other than aerial under the direct supervision of a responsible commercial pesticide applicator.

...
 "Pesticide operator" as used in this subchapter means both a commercial pesticide operator and private pesticide operator.

"Pesticide outlet" means any site, location or place at or through which restricted use pesticides are distributed to an end user. This term does not include any site, location, or place used solely for the storage of restricted use pesticides or solely as a holding area where [a purchaser] an end user takes physical possession of a restricted use pesticide after it has been purchased.

"Private pesticide operator" means any person who applies pesticides by equipment other than aerial under the direct supervision of a responsible private pesticide applicator.

...
 "Under direct supervision" means under the instructions and control of another person who is responsible for actions taken and who is available if and when needed, even if not physically present. For the purposes of this subchapter, a person is "under direct supervision" only if the person supervising and the person supervised are employed at the same pesticide outlet.

7:30-3.2 General requirements

(a) [Effective February 6, 1984, no] No person shall distribute, sell, or offer for sale or supervise the distribution, sale, or offering for sale of any restricted use pesticide to an end user without first meeting the requirements of certification and registration as a pesticide dealer unless:

1. Such person is working under the direct supervision of a responsible pesticide dealer and where an employer-employee relationship exists between the person supervising and the person actually distributing pesticides; [or]

2. Such person is a pesticide applicator who distributes pesticide only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application; [or]

3. Such person is a State or county agent or instrumentality thereof and is providing pesticides to its employees for its own programs; [or]

4. Such person is a duly licensed pharmacist dispensing a prescription pharmaceutical which contains a substance which could be classified as a restricted use pesticide; [or]

5. Such person is a veterinarian administering or dispensing a restricted use pesticide for use [in] on animals as a part of his or her practice; [or]

6.-7. (No change.)

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

7:30-3.3 (No change.)

7:30-3.4 Registration

(a) Within 12 months after a person has become certified and eligible to register as a pesticide dealer, the certified pesticide dealer [must] **shall** complete and file with the [department] **Department** an application to register and [must] **shall** include as an integral part of the application an annual registration fee of \$[20.00]**30.00**. A fee not to exceed \$10.00 may be charged for each [additional duplicated] **duplicate** registration certificate issued. Any certified pesticide dealer who fails to file within the 12 month period will lose certification status and must again become certified in accordance with the provisions of this subchapter.

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

7:30-3.5 Registration

(a) A certified pesticide dealer shall reregister annually with the Department and pay the reregistration fee of **\$30.00**.

(b) (No change.)

7:30-3.6 (No change.)

7:30-3.7 Records

(a) A pesticide dealer shall keep, for each distribution or sale of restricted use pesticides with which he or she is associated, a record containing the following information:

1. (No change.)

2. The brand/trade name and the EPA [product] registration number of each restricted use pesticide distributed or sold;

3.-4. (No change.)

5. The certified pesticide applicator registration number used by the purchaser at the time of sale or distribution. **If any of the acceptable alternatives to a State of New Jersey pesticide applicator's registration, as specified in N.J.A.C. 7:30-3.8 below, are used, the certification or license number or other proof used shall be recorded in lieu of the certified pesticide applicator registration number.**

(b) (No change.)

7:30-3.8 Sale of restricted use pesticides

(a) No pesticide dealer shall distribute or sell a restricted use pesticide to an end user unless the purchaser presents a valid pesticide applicator registration.

1.-2. (No change.)

3. **For the purposes of this section, one of the valid operator licenses or certifications listed below is acceptable in lieu of a State of New Jersey pesticide applicator's registration for obtaining chlorine gas, a restricted use antimicrobial:**

i. Certified Pool Operator;

ii. Public Water Treatment System license;

iii. Public Water Distribution System license;

iv. Public Wastewater Treatment System license;

v. Public Wastewater Collection System license; or

vi. Industrial Wastewater Treatment System license, except NN license.

4. **For the purpose of this section, proof that the end user is a veterinarian is acceptable in lieu of a State of New Jersey pesticide applicator's registration if the veterinarian is obtaining the restricted use pesticides for use on animals as part of his or her practice.**

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

7:30-3.9 Sale of pesticides

No pesticide dealer shall sell any pesticide to a person who they know should be certified and registered under the provisions of N.J.A.C. 7:30-6 or N.J.A.C. 7:30-7 unless such person is so certified and registered.

7:30-3.[9]10 (No change in text.)

7:30-3.[10]11 Reciprocity

(a) The [department] **Department** may waive initial certification testing where an applicant has previously been certified [and registered] in [the State] **another state or territory** [in which he resides] pursuant to a valid certification test given in [any other] **that** state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a dealer certification program substantially equivalent to New Jersey's.

(b) A New Jersey pesticide dealer registration will be issued pursuant to this section if the following conditions are satisfied:

1. The [department] **Department** receives proof of a valid [license] **certification** from any state or territory which has been officially recognized by the State of New Jersey as having a dealer certification program substantially equivalent to New Jersey's and which has signed a cooperative agreement with the State of New Jersey relating to the certification of pesticide dealers and the reciprocal acceptance thereof; [and]

2.-3. (No change.)

[(c) The provisions of this section shall not be construed to apply to persons domiciled, residing, or living in New Jersey.]

7:30-3.[11]12 (No change in text.)

SUBCHAPTER 4. PESTICIDE DEALER BUSINESSES

7:30-4.1 Definitions

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

...
"Pesticide dealer business" means any person, as defined in this subchapter, who ultimately controls the transactions conducted at and the operation of a pesticide outlet.

"Pesticide operator" as used in this subchapter means both a commercial pesticide operator and a private pesticide operator.

"Pesticide outlet" means any site, location, or place at or through which restricted use pesticides are distributed to an end user. [() This term does not include any site, location, or place used solely for the storage of restricted use pesticides or solely as a holding area where [a purchaser] an end user takes physical possession of a restricted use pesticide after it has been purchased. ()]

"Private pesticide operator" means any person who applies pesticides by equipment other than aerial under the direct supervision of a responsible private pesticide applicator.

...
"Under direct supervision" means under the instruction and control of another person who is responsible for actions taken and who is available if and when needed, even if not physically present. **For the purposes of this subchapter, a person is "under direct supervision" only if the person supervising and the person supervised are employed at the same pesticide outlet.**

7:30-4.2 Registration

(a) [Effective February 6, 1984, no] **No person shall cause, suffer, allow or permit the operation of a pesticide dealer business which distributes restricted use pesticide to end users in the State of New Jersey without first registering such business with the [department] Department, on forms provided by the [department] Department, unless:**

1. Such person is a duly licensed pharmacist dispensing a prescription pharmaceutical which contains a substance which could be classified as a restricted use pesticide; [or]

2. Such person is a veterinarian administering or dispensing a restricted use pesticide for use [in] on animals as a part of his or her practice; [or]

3. Such person is a pesticide applicator who sells or distributes pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application; [or]

4. Such person is a State or county agency or instrumentality thereof and is providing pesticides to its employees for its own programs; [or]

5.-6. (No change.)

(b) (No change.)

(c) A location, such as the home of a salesperson or agent of a pesticide dealer business, which is different from the main location of the business with which he or she is associated and from which transactions, other than those specifically excluded in the definition of a pesticide outlet, are conducted, shall be considered to be a separate pesticide-outlet which must be registered with the Department as a pesticide dealer business.

(d) An annual registration fee of \$[50.00] **75.00** shall be paid to the [department] **Department** at the time of registration for each separate registration. The registration period shall end on June 30 of each calendar year.

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

7:30-4.3 Records

(a) A pesticide dealer business shall keep, for each distribution or sale of restricted use pesticide to an end user, a record containing the following information:

1.-4. (No change.)

5. The certified pesticide applicator registration number used by the purchaser at the time of sale or distribution[.]. **If any of the acceptable alternatives to a State of New Jersey pesticide applicator's registration, as specified in N.J.A.C. 7:30-4.4, are used, the certification or license number, or other proof used, shall be recorded in lieu of the certified pesticide applicator registration number; and**

6. (No change.)

(b) (No change.)

7:30-4.4 Sale of restricted use pesticides

(a) No pesticide dealer business shall distribute or sell a restricted use pesticide to an end user unless the purchaser presents a valid pesticide applicator registration.

1.-2. (No change.)

3. **For the purpose of this section, one of the valid operator licenses or certifications listed below is acceptable in lieu of a State of New Jersey pesticide applicator's registration for obtaining chlorine gas, a restricted use antimicrobial:**

- i. Certified Pool Operator;
- ii. Public Water Treatment System license;
- iii. Public Water Distribution System license;
- iv. Public Wastewater Treatment System license;
- v. Public Wastewater Collection System license; or
- vi. Industrial Wastewater Treatment System license, except NN license.

4. **For the purpose of this section, proof that the end user is a veterinarian is acceptable in lieu of a State of New Jersey pesticide applicator's registration if the veterinarian is obtaining the restricted use pesticides for use on animals as part of his or her practice.**

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

7:30-4.5 Sale of Pesticides

No pesticide dealer business shall sell any pesticide to a person who they know should be certified and registered under the provisions of N.J.A.C. 7:30-6 or N.J.A.C. 7:30-7 unless such person is so certified and registered.

7:30-4.[5]6 (No change in text.)

7:30-4.[6]7 (No change in text.)

SUBCHAPTER 5. PESTICIDE OPERATORS

7:30-5.1 (No change.)

7:30-5.2 General requirements

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

[(e) The requirement for registration as a commercial pesticide operator shall be operative October 1, 1983. The requirement for registration as a private pesticide operator shall be operative 60 days after the effective date of this section (January 3, 1985)].

7:30-5.3 (No change.)

7:30-5.4 Registration

(a) At the completion of training, the pesticide operator [must] **shall** file with the Department, on forms provided by the Department, an application to register. The applicator [must] **shall** be co-signed by a certified and registered responsible pesticide applicator who was responsible for the training and shall indicate that the co-signer will be the responsible pesticide applicator for pesticide applications performed by the pesticide operator. An annual registration fee of \$[5.00]**10.00** [must]**shall** be included as an integral part of the application **to register a commercial pesticide operator.**

(b) (No change.)

(c) Applications for new registrations will be accepted from pesticide operators throughout the calendar year but, **for commercial pesticide operators**, a full year's registration fee will be required. All such registrations will expire on September 30 following the date of application, except that the Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year.

(d)-(i) (No change.)

7:30-5.5 Reregistration

A pesticide operator [must]**shall** re-register annually with the [department] **Department** and, **for commercial pesticide operators**, pay the reregistration fee of \$[5.00]**10.00**.

7:30-5.6 through 5.9 (No change.)

SUBCHAPTER 6. COMMERCIAL PESTICIDE APPLICATORS

7:30-6.1 Definitions

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

...
"Termiticide" means any pesticide labeled, designed, or intended for use in preventing, destroying, repelling or mitigating termites.
 ...

7:30-6.2 General requirements; variances

(a) No commercial pesticide applicator shall engage in, cause, suffer, allow, or permit the use or application of, or supervise the use or application of, any pesticide in any category or subcategory in which he or she has not been certified and registered unless:

1.-2. (No change.)

3. Such person is applying pesticides by equipment other than aerial under the direct supervision of a responsible commercial pesticide applicator and where an employer-employee relationship exists between the person supervising the application and the person applying the pesticide; [or]

4. Such person is applying a pesticide on property or premises owned or rented by the Federal government:

i. If such person is a Federal employee engaged in the performance of his official duties; and;

ii. If such person has been certified as an applicator of pesticides under a Federal agency plan which has been approved by the United States Environmental Protection Agency pursuant to the provisions of Section 4 of the FIFRA, as amended; [or]

5. Such person is applying antimicrobial agent unless such agents have been classified as restricted use pesticides[.];

6. Such person is applying wood preserving agents unless such agents have been classified as restricted use pesticides[.];

7. **Such person is applying antifouling paints or agents unless such paints or agents have been classified as restricted use pesticides;**

8. **Such person is a veterinarian, or is working under the direct supervision of a veterinarian, and is applying pesticides to animals as part of his or her practice; or**

9. **Such person is applying chlorine gas, a restricted use antimicrobial agent, and is a holder of, or is working under the direct supervision of a holder of, one of the valid operator licenses, or certifications listed below, provided that the operator license held is the one required for the facility where the chlorine gas is being used:**

i. Certified Pool Operator;

ii. Public Water Treatment System license;

- iii. Public Water Distribution System license;
- iv. Public Wastewater Treatment System license;
- v. Public Wastewater Collection System license; or
- vi. Industrial Wastewater Treatment System license, except NN license.

(b) Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any pesticide applicator may be **vicariously and** jointly and severally responsible for any aspect of any pesticide application in which he or she is involved.

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

7:30-6.3 Categories

(a) Any commercial pesticide applicator who satisfactorily completes the requirements for Core certification may become certified in one or more of the following categories or subcategories:

- 1. Agricultural pest control:

i. (No change.)

ii. Animals: This subcategory includes commercial pesticide applicators using or supervising the use of pesticides on animals, including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. [Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire or publicly holding themselves out as pesticide applicators are included in this category.]

2. (No change.)

- 3. Ornamental and turf pest control:

i.-ii. (No change.)

iii. **Interior Landscaping:** This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance of interior landscapes.

4.-6. (No change.)

- 7. Industrial, institutional, structural pest control:

i.-v. (No change.)

vi. **Antifoulants:** This subcategory includes commercial pesticide applicators using or supervising the use of restricted use antifouling paints or other agents on boat hulls and other areas to control barnacles, algae, and other marine pests.

- 8. Public health pest control:

i.-iii. (No change.)

iv. [Antimicrobial and cooling] **Cooling tower pest control:** This subcategory includes commercial pesticide applicators using or supervising the use of pesticides to control microbial and other pests in cooling towers [, swimming pools,] or related areas.

v. **Antimicrobial pest control:** This subcategory includes commercial pesticide applicators using or supervising the use of restricted use antimicrobial agents in swimming pools, for sterilization of medical supplies and instruments, for water or wastewater treatment, or for other uses.

vi. **Pet grooming:** This subcategory includes commercial pesticide applicators using or supervising the use of pesticides to control pests on animals normally kept as pets, including, but not limited to, fleas, ticks, or mites.

9.-11. (No change.)

(b) (No change.)

7:30-6.4 (No change.)

7:30-6.5 Registration

(a) Within 12 months after a person has become fully certified and eligible to register as a commercial pesticide applicator, the certified commercial pesticide applicator [must] **shall** complete and file with the [department] **Department** an application to register, and [must] **shall** include as integral part of the application an annual registration fee of \$[20.00]**30.00**. A fee not to exceed \$10.00 may be charged for each [additional duplicated] **duplicate** registration certificate issued. Any certified pesticide applicator who fails to file within the 12[-]month period will lose certification status and must again become certified in accordance with the provisions of this subchapter.

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

(g) Rutgers University Cooperative Extension [Service] personnel who participate as **instructors or in the preparation of subject matter** for [in] applicator certification and/or recertification training pro-

grams shall be exempt from the fee requirements as provided in (a) above and N.J.A.C. 7:30-6.6(a).

(h) (No change.)

7:30-6.6 Reregistration

(a) A certified commercial pesticide applicator shall reregister annually with the [department] **Department** and pay the reregistration fee of \$[20.00] **30.00**.

(b) (No change.)

7:30-6.7 Continuing certification

(a) (No change.)

(b) Persons registered as commercial pesticide applicators [who are held to be responsible for a pesticide misuse] **whom the Department determines are responsible for a pesticide misuse** under the provisions of the Act or this chapter, may be required by the Department to provide evidence of continued competency to apply or supervise the application of pesticides by repeating the certification requirements of N.J.A.C. 7:30-6.4.

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

7:30-6.8 Records

(a) A commercial pesticide applicator shall keep, for each application of pesticides made by him or her or under his or her direct supervision, a record of application containing the following information:

1.-4. (No change.)

5. The dosage or rate of each pesticide used; [and]

6. The name of the person making the application[.]; and

7. **For applications by a commercial applicator of a termiticide, the record shall include a diagram of the structure treated, depicting the lower level of the structure, the location of the termite infestations and damage, areas treated, and any significant items such as location of wells, drainage systems and streams and ponds nearby.**

(b) (No change.)

(c) All records and information required to be kept pursuant to this section shall be kept for a minimum of [two] **three years except that all records of termiticide applications shall be kept for a minimum of five years.** [and must] **The records shall** be immediately available upon request by the Department, and by medical personnel in emergency cases. In non-emergency cases, medical personnel may request this information through the Department. These records may be kept by a business pursuant to N.J.A.C. 7:30-7[.1 et seq].

(d) (No change.)

7:30-6.9 (No change.)

7:30-6.10 Purchase of restricted use pesticides

No person shall purchase a restricted use pesticide unless he or she presents a valid certified pesticide applicator registration or a **valid substitute as allowed in N.J.A.C. 7:30-6.2(a)4, 8, or 9.**

7:30-6.11 (No change.)

7:30-6.12 Reciprocity

(a) The [department] **Department** may waive initial certification testing where an applicant has previously been certified [and registered] in [the] **another state or territory** [in which he resides] pursuant to a valid certification test given in [any other] **state** state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a certification program substantially equivalent to New Jersey's.

(b) A New Jersey pesticide applicator registration will be issued pursuant to this section, if the following conditions are satisfied:

1. The [department] **Department** receives proof of a valid [license] **certification** from any state or territory which has been officially recognized by the State of New Jersey as having a certification program substantially equivalent to New Jersey's and which has signed a cooperative agreement with the State of New Jersey relating to the certification of pesticide applicators and the reciprocal acceptance thereof; [and]

2.-3. (No change.)

[(c) The provisions of this section shall not be construed to apply to persons domicile or residing in New Jersey.]

7:30-6.13 (No change.)

SUBCHAPTER 7. PESTICIDE APPLICATOR BUSINESSES

7:30-7.1 Definitions

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

... "Antimicrobial agents" mean:

1. Disinfectants intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects;

2. Sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces, in water, or in air;

3. Bacteriostats intended to inhibit the growth of bacteria in the presence of moisture;

4. Sterilizers intended to destroy viruses and all living bacteria, fungi, and their spores, on inanimate surfaces;

5. Fungicides and fungistats intended to inhibit the growth of, or destroy, fungi (including yeasts) pathogenic to man or other animals on inanimate surfaces; or

6. Commodity preservatives and protectants intended to inhibit the growth of, or destroy, bacteria in or on raw materials (such as adhesives and plastics) used in manufacturing, or manufactured products (such as fuel, textiles, lubricants, and paints), but not in wood treatment, the pulp and paper process or cooling towers.

... "Reentry time" means the period of time that must elapse after a field is treated with a pesticide, and before farm workers are permitted to enter to engage in an activity requiring substantial contact with treated plants, as provided in N.J.A.C. 7:30-9.[10]13.

... "Restricted use pesticide" means any pesticide or pesticide use so classified under the provisions of N.J.A.C. 7:30-2 or so classified by the Administrator of the United States Environmental Protection Agency.

"Termiticide" means any pesticide labeled, designed, or intended for use in preventing, destroying, repelling or mitigating termites.

"TBT antifoulant paint" means any paint formulation containing any tributyltin compounds having three normal butyl groups attached to a tin atom and with an anion such as chloride, fluoride or oxide.

...

7:30-7.2 Registration

(a) No person shall cause, suffer, allow or permit the operation of a pesticide applicator business as defined by this subchapter in the State of New Jersey without first registering such business with the [department] Department on forms provided by the Department[.], unless the only pesticides used are antimicrobial agents, wood preservatives, or antifouling paints or agents which are not classified as restricted use pesticides.

(b) An annual registration fee of \$[50.00]75.00 [must] shall be paid to the [department] Department at the time of registration. The registration period shall end on September 30 of each calendar year except that the [department] Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year.

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

7:30-7.3 Records

(a) Every business required to register pursuant to the provisions of N.J.A.C. 7:30-7.2 shall keep, for each application of pesticides made by that business, a record of application containing the following information:

1.-4. (No change.)

5. The dosage or rate of each pesticide used; [and]

6. The name of the person making the application[.] ; and

7. For pesticide applicator business applications of a termiticide, the record shall include a diagram of the structure treated, depicting the lower level of the structure, the location of the termite infestations and damage, areas treated, and any significant items such as location of wells.

(b) (No change.)

(c) All records and information required to be kept pursuant to this section, or copies thereof, shall be kept for a minimum of [two] **three years except that all records of termiticide applications shall be kept for a minimum of five years** at the place of business. [and must] **The records shall be immediately available upon request by the Department, and by medical personnel in emergency cases. In non-emergency cases, medical personnel may request this information through the Department.**

(d) (No change.)

7:30-7.4 Financial responsibility

(a) Businesses required to register pursuant to N.J.A.C. 7:30-7.2 shall submit proof of financial responsibility with the application for registration to the Department and, upon obtaining a registration, shall maintain financial responsibility at all times while such registration is in effect. The financial responsibility shall meet or exceed the standards set forth below:

1. For pesticide applicator businesses which do not engage in fumigation pest control:

[i. Bodily injury liability insurance:

(1) \$100,000 for each occurrence;

(2) \$300,000 in the aggregate.]

i. **Liability insurance coverage with a \$300,000 combined single limit of liability for bodily injury and property damage, including completed operations; and**

[ii. Property damage liability insurance:

(1) \$50,000 for each occurrence.]

ii. **As part of the coverage required in (a)1i above, an endorsement for Pesticide or Herbicide Applicator Coverage is required. This endorsement shall be the Insurance Services Office standard endorsement GL 04 09 or equivalent.**

2. For pesticide applicator businesses engaged, wholly or in part, in fumigation pest control:

[i. Bodily injury liability insurance:

(1) \$300,000 for each occurrence;

(2) \$500,000 in the aggregate.]

i. **Liability insurance coverage with a \$500,000 combined single limit of liability for bodily injury and property damage, including completed operations; and**

[ii. Property damage liability insurance:

(1) \$300,000 for each occurrence.]

ii. **As part of the coverage required in (a)2i above, an endorsement for Pesticide or Herbicide Applicator Coverage is required. This endorsement must be the Insurance Services Office standard endorsement GL 04 09 or equivalent.**

3. (No change.)

7:30-7.5 and 7.6 (No change.)

7:30-7.7 Responsibility of pesticide applicator business for actions of employees

Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any pesticide applicator business shall be vicariously and jointly and severally responsible for any violation of the Act committed by an employee.

7:30-[7.7]7.8 (No change in text.)

SUBCHAPTER 8. PRIVATE PESTICIDE APPLICATORS

7:30-8.1 through 8.3 (No change.)

7:30-8.4 Registration

(a) Within 12 months after a person has become fully certified and eligible to register as a private pesticide applicator, the certified private pesticide applicator [must] **shall complete and file with the [department] Department, on forms provided by the Department, an application to register [and must include as an integral part of the application a one year registration of \$5.00].** Any certified pesticide applicator who fails to file for registration within the 12 month period will lose certification status and must again become certified in accordance with the provisions of this subchapter.

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ENVIRONMENTAL PROTECTION

(b) Applications for new registrations will be accepted from certified private pesticide applicators throughout the calendar year [but a full year's registration fee will be required]. All such registrations will expire on September 30 following the date of application, except that the [department] **Department** may issue a registration for an additional year when an application is initially filed during the last three months of the registration year.

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

7:30-8.5 Reregistration

(a) A certified private pesticide applicator shall renew his or her registration every year[, and pay a fee of \$5.00 at the time of renewal] on a form supplied by the [department] **Department**.

(b) (No change.)

7:30-8.6 through 8.10 (No change.)

7:30-8.11 Denial, suspension, or revocation of private pesticide applicator documents

(a) (No change.)

(b) Each of the following acts shall constitute a ground for which any of the disciplinary actions described in (a) above may be taken:

1.-6. (No change.)

7. Failing to comply with reentry time requirements as provided in N.J.A.C. 7:30-9.[10]13 and any days to harvest interval as stated on a pesticide label(s);

8.-10. (No change.)

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

7:30-8.12 Reciprocity

(a) The [department] **Department** may waive initial certification testing where an applicant has previously been certified [and registered] in [the] **another** state [in which he resides] or **territory** pursuant to a valid certification test given in [any other] **that** state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a certification program substantially equivalent to New Jersey's.

(b) A New Jersey [P]pesticide [A]pplicator registration will be issued pursuant to this section if the following conditions are satisfied:

1. The [department] **Department** receives proof of a valid [license] **certification** from any state or territory which has been officially recognized by the [state] **State** of New Jersey as having a certification program substantially equivalent to New Jersey's and which has signed a cooperative agreement with the State of New Jersey relating to the certification of pesticide applicators and the reciprocal acceptance thereof.

2.-3. (No change.)

[(c) The provisions of this section shall not be construed to apply to persons domiciled, residing, or living New Jersey.]

7:30-8.13 (No change.)

SUBCHAPTER 9. PESTICIDE EXPOSURE MANAGEMENT

7:30-9.1 Definitions

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

“Aquatic pesticide” means any pesticide that contains labeling instructions indicating that the pesticide is intended for use in the waters of the State or on aquatic sites.

“Aquatic site” means any target site outside a structure where water is physically and visibly present on the surface of the site at the time a pesticide is applied.

“Flowering stage” means when plants bear any portion of a blossom as part of the blooming process associated with pollen and nectar production.

“Significant risk of harm, injury or damage” means a potential for harm, injury or damage which is not purely remote or highly speculative, but capable of being perceived or recognized based on the location, type

and amount of pesticide involved, and available scientific information about the pesticide and its effects on persons, property, and the environment.

“Treated area” means the target site for a pesticide application.

7:30-9.2 (No change.)

7:30-9.3 Aquatic use permits

(a) No person shall apply an aquatic pesticide to any waters of the State or on any aquatic site without having obtained [approval] **an aquatic use permit** [for an aquatic application] from the **Department** prior to the proposed date of application.

[(b) An approval is not required if the pesticide used is not a restricted use pesticide as specified by N.J.A.C. 7:30-2.3(a)4.]

[(c)](b) [An approval] **An aquatic use permit** shall not be required if the application is to waters of the State which are not used as a source of potable water and:

1. The application is made to waters which have no [outflow] **outlet** and which are bounded by land wholly owned or rented, and controlled, by one person;

2.-3. (No change.)

[(d)](c) Applications for [approval of an aquatic application must] **an aquatic use permit** shall be made on forms supplied by the **Department** at least 21 days prior to the proposed application date.

1.-2. (No change.)

3. The **Department** may require the submission of a report addressing the effectiveness of the treatment and any environmental effects as a condition for approval. The person performing the application shall submit such information to the **Department** at the time and in the format as specified on the approved aquatic [pesticide application form] **use permit**.

4. The applicant [must] **shall** notify the **Department** of any proposed changes in the [application] **approved aquatic use permit** and receive approval for such changes prior to the application.

[(e)](d) Failure to submit any requested information or the falsification of any information may result in the denial or revocation of an aquatic [application approval] **use permit**; the aforementioned shall not constitute the only reasons for the denial or revocation of an approval.

(e) **All conditions for approval specified in an aquatic use permit shall be fulfilled.**

(f) A \$5.00 fee may be charged for each **aquatic use permit**.

(g) The **Department** may exempt any person from the formal application provisions of [(d)](c) above if the **Department** determines that such person has already satisfied the requirements necessary to obtain **an aquatic use permit**.

(h) The **Department** will respond to any application for [approval of an aquatic pesticide application] **an aquatic use permit** within 21 days after the **Department** receives the information deemed necessary to evaluate the application.

7:30-9.4 Storage of pesticides

(a) (No change.)

(b) Any person who stores any pesticide [must] **shall** maintain a list of the pesticides stored or likely to be stored during the calendar year and [must] **shall** [notify] **send a copy of this list to** the local fire [department] **company along with a designation of the actual** location of the storage area; provided that the provisions of this subsection shall not apply to individuals who are storing pesticides for their personal use on their private residence or persons who are storing pesticides for less than seven calendar days at loading or application sites in connection with their use.

1.-2. (No change.)

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

(f) No person shall store or transport pesticides in any service vehicle unless:

1.-6. (No change.)

7. The pesticides are stored in a compartment separate from the driver, such as the bed of a pick-up truck or a van equipped with a partition to limit movement of the pesticide containers. [Provisions

of N.J.A.C. 7:30-9.4(f)7 shall be operative 90 days after the effective date of this section (February 2, 1986).]

8.-9. (No change.)

7:30-9.5 and 9.6 (No change.)

7:30-9.7 Pesticide application and safety equipment

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

(d) **No person shall mix or load any 2,4-D compound unless the appropriate safety equipment is worn, a minimum of which shall be gloves and eye protection.**

7:30-9.8 Notification; community or areawide applications

(a) No person shall apply any pesticide on a community or areawide basis unless prior notification of the proposed application has been given to persons residing in the vicinity of the proposed target site.

1. The notification shall be made through advertisement in at least two newspapers having the greatest likelihood of informing the public within the area of application. **The notice shall be placed in the legal advertisement section.**

2. The newspaper notification [must] shall be given a maximum of [60]30 days and a minimum of seven days prior to the proposed application date.

3. The notification shall contain at least:

i.-iv. (No change.)

v. Application equipment to be used; [and]

vi. The name, address and phone number of a person who may be contacted and is responsible for supplying updated information on the advertised pesticide applications to those persons requesting it[.]; and

vii. **The New Jersey Poison Information and Education System telephone number for emergencies and the New Jersey Department of Health telephone number for routine health inquiries.**

4. Upon the request by a person residing in the vicinity of the proposed target site, to a person designated pursuant to (a)3vi above, such designated person shall provide, at a minimum, the following information at least 12 hours prior to the application, except that if a reasonable attempt to provide notice is unsuccessful, an attempt to notify such person, by telephone, shall be made immediately prior to the application.

i.-ii. (No change.)

iii. Any precautionary statement(s) on the product's Federal registered label **relating to homeowner or general public safety.**

5.-6. (No change.)

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

7:30-9.9 Notification to apiarists (beekeepers)

(a) No person shall make an outdoor application of a pesticide product which has information on its label or labeling noting that the product is toxic to bees unless such person first notifies, at least 36 hours prior to the application, each apiarist who:

1. (No change.)

2. Maintains an apiary which is located within [one-half mile] **one mile** of the target site; and

3. (No change.)

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

(e) The provisions of this section shall not apply to any person using a pesticide on an aggregate area less than three acres; provided that the application is not made with hydraulic spraying equipment **capable** of operating at a rate greater than 300 psi and 10 gpm, airblast sprayers, or aerial equipment.

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

(h) The provisions of this section shall not apply to any pesticide application which is made for agricultural purposes, except to the **following** crops within the dates [and/or stage as] stated below **or when in the flowering stage:**

1.-3. (No change.)

4. **Peaches April 15 to May 15**

Renumber 4. through 8. as **5. through 9.** (No change in text.)

[(i) The dates in (h) above may be annually adjusted by consultation with the Cooperative Extension Service of Rutgers University as determined by seasonal variations, subject to the approval of the Department. These adjusted dates shall be kept on file at the Office

of Pesticide Control and shall become effective upon publication in the New Jersey Register. Applicators required to notify apiarists under the provisions of this section shall be responsible for ascertaining the correct dates from the Office of Pesticide Control.]

7:30-9.10 Notification; household or structural pest control

(a) At single family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out:

1. At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the residents of the property:

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and active ingredient);

iii. Label instructions relating to resident or general public safety, including precautions;

iv. The name, address and phone number of the applicator or applicator business;

v. The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations; and

vi. A statement, in writing, that a copy of the labels for the pesticides used will be available, if requested by the contracting party.

2. If the customer desires prior notification of the specific date of the application, such notification shall be provided by the applicator business.

(b) At multiple family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out:

1. At least 48 hours prior to the proposed date of the application, the applicator or applicator business shall provide a notice to each occupied unit to be treated, containing the information listed in (b)2i-v below.

i. The applicator or applicator business shall be responsible for distributing the notices, but may delegate the distribution to the contracting party, in writing, in order to expedite the distribution;

ii. If the application is postponed, a new notice shall be issued prior to the next proposed date; and

iii. In an emergency involving pest infestations, the requirements for the 48 hour pre-notification may be waived upon approval of the Department.

2. At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the contracting party:

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and active ingredient);

iii. Applicable label instructions including precautions;

iv. The name, address and phone number of the applicator or applicator business;

v. The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations; and

vi. A statement, in writing, that a copy of the labels for the pesticides used will be available, if requested by the contracting party.

(c) At institutions, commercial or public buildings, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out:

1. At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the contracting party:

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and active ingredient);

iii. Label instructions relating to building user or general public safety, including precautions;

iv. The name, address and phone number of the applicator or applicator business;

v. The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations; and

vi. A statement, in writing, that a copy of the labels for the pesticides used will be available if requested by the contracting party;

2. If the customer desires prior notification of the specific date of the application, he or she may obtain this from the applicator business.

3. The applicator or applicator business shall post permanent notices as specified below, such notice to include the date of latest application, the pesticide used (brand name and active ingredient), the name of a contact person and a telephone number for additional information, and the proposed date of next application.

i. At health care facilities, the notice shall be permanently posted at the nurse's station adjacent to the areas treated;

ii. At restaurants, the notice shall be permanently posted next to the Health Department inspection card;

iii. At hotels and motels, the notice shall be permanently posted at the main desk;

iv. At schools, places of worship and public meeting places, the notice shall be prominently posted at the central bulletin board; and

v. At commercial work places, the notice shall be posted in a prominent place for the benefit of the employees.

4. At malls, stores, airports and other large public places, the applicator or applicator business shall post signs during the application, where the public may come in contact with the treated area, and the posting shall remain until the pesticide has settled or dried.

i. The signs shall bear the following information in letters at least one inch high "Pesticide Treated Area"; and

ii. The signs shall be placed at the entrance to the treated areas.

(d) The application of fumigants or the use of aerosol generators in structures which are attached to or part of other occupied structures shall require the notification of the occupants of those attached structures in the manner prescribed by (b) above.

7:30-9.11 Notification; turf or ornamental applications

(a) At single family residences, no commercial application of pesticides shall be made for the control of turf or ornamental pests on residential properties without the following provisions being carried out:

1. Signs shall be posted on the treated property, at the start of the application and for at least 24 hours following the application, or longer if required by re-entry directions on the label;

i. The signs shall bear the following information in letters at least one inch high: "Pesticide Treated Area";

ii. The signs shall also contain a three and one-half inch diameter circular illustration, in standard international signage, depicting an adult and a child on a lawn walking a dog on a leash. The illustration shall depict, with a diagonal line across the circle, that this action is prohibited;

iii. The signs shall be placed in such a manner that they are clearly visible from all streets fronting the treated property and principal accesses to the property; and

iv. The applicator business shall be responsible for posting and removing the signs; however, the applicator business may delegate to the contracting party, in writing, the removal of the signs.

2. At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator or applicator business, in writing, to the contracting party:

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and active ingredients);

iii. Label instructions relating to contracting party or general public safety, including precautions;

iv. The name, address and telephone number of the applicator business; and

v. The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations.

3. If the customer desires prior notification of the specific date of the application, such notification shall be provided by the applicator business.

(b) At multi-family residences and commercial buildings, no commercial application of pesticides shall be made for the control of turf or ornamental pests without the following provisions being carried out:

1. Signs shall be posted on the treated property at the start of the application and for at least 24 hours following the application, or longer if required by re-entry directions on the label.

i. The signs shall bear the following information in letters at least one inch high: "Pesticide Treated Area";

ii. The signs shall also contain a three and one half inch diameter circular illustration, in standard international signage, depicting an adult and a child on a lawn walking a dog on a leash. The illustration shall depict, with a diagonal line across the circle, that this action is prohibited;

iii. The signs shall be placed in such a manner that they are visible from the principal access points to the treated area; and

iv. The applicator shall be responsible for posting and removing the signs; however, the applicator may delegate to the contracting party, in writing, the removal of the signs.

2. At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the contracting party:

i. The proposed date of the application;

ii. The pesticides to be used (brand name and active ingredients);

iii. Label instructions relating to contracting party or general public safety, including precautions;

iv. The name, address and telephone number of the applicator or applicator business;

v. The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations; and

vi. A statement, in writing, that a copy of the labels for the pesticides used will be available if requested by the contracting party.

3. If the customer desires prior notification of the specific date of application, such notification shall be provided by the applicator business.

(c) At golf courses, no commercial application of pesticides shall be made for the control of turf or ornamental pests on golf courses without the following provisions being carried out:

1. Signs shall be posted at the first and ninth tees so that the signs are visible to persons using the course.

i. The signs shall bear the following information in letters at least one inch high: "Pesticide Treated Area"; and

ii. The signs shall also include the following information which shall be changed as necessary:

(1) The dates of last application;

(2) The areas treated;

(3) The pesticides used (brand name and active ingredient);

(4) The proposed dates of next application; and

(5) The name and telephone number of the person to contact for additional information.

2. If the golf course owner desires prior notification of the specific date of application, such notification shall be provided by the applicator business.

(d) At schools, institutions, parks and similar sites, no commercial application of pesticides shall be made for the control of turf or ornamental pests without the following provisions being carried out:

1. Signs shall be posted at the start of the application and remain for at least 24 hours following the application. The signs shall be posted in such a manner that they are visible from the principal access points to the treated areas such as athletic fields, play grounds and recreation areas.

i. The signs shall bear the following information in letters at least one inch high: "Pesticide Treated Area";

ii. The signs shall also contain a three and one half diameter circular illustration, in standard international signage, depicting an adult and a child on a lawn, walking a dog on a leash. The illustration shall depict with a diagonal line across the circle that this action is prohibited;

iii. The signs shall be posted for at least 24 hours following the application, or longer if required in re-entry directions on the label; and

iv. The applicator or applicator business shall be responsible for posting and removing the signs; however, the applicator may delegate to the contracting party, in writing, the removal of the signs.

2. At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the contracting party:

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and active ingredient);

iii. Label instructions relating to building or site user or general public safety, including precautions;

iv. The name, address and telephone number of the applicator or applicator business;

v. The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations; and

vi. A statement in writing that a copy of the labels for the pesticides used will be made available, if requested, by the contracting party.

7:30-9.12 Additional notification

(a) The following applies to all applications covered by the household, structural, turf and ornamental notification rules at N.J.A.C. 7:30-9.10 and 9.11:

1. No person shall make a commercial application of pesticides for household, structural, turf or ornamental pest control without complying with (b) below where a person not previously notified requests to be notified of such an application or conditions indicate that notification in addition to that specified in this subchapter is necessary to prevent a significant risk of harm, injury or damage.

(b) When such need for notification is identified, notification shall be made and reasonable precautions taken, including the allowance of sufficient time for those notified to take appropriate precautions, before application may commence.

7:30-9.[10]13 Farm worker safety

(a)-(l) (No change.)

[(m) The provisions of this section shall be operative 60 days after the effective date of the section (January 3, 1986).]

7:30-9.[11]14 Reporting of pesticide spills

(a) (No change.)

(b) The report shall be made to the Department immediately and may be made by telephone to the [Office] Bureau of Pesticide Control or the Department Hotline at (609) 292-7172. A written report of the pesticide spill by the person responsible for the report pursuant to (a) above, shall be mailed to the Department within 10 days of the date of occurrence.

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

7:30-9.15 Accidental pesticide misapplications and spills

(a) When, during the application of a pesticide, an accidental reportable pesticide spill has occurred, or if movement of a pesticide to a non-target site within a structure has occurred, no violation of this chapter shall be cited provided:

1. The person responsible for the application reports the spill or movement of the pesticide to the Department in accordance with N.J.A.C. 7:30-9.14;

2. Necessary procedures to cleanup the pesticide to a level deemed acceptable by the Department are immediately implemented to reduce or remove resultant contamination at the non-target site. The Department may, at its discretion, extend the time period of initiation of the cleanup; and

3. It can be adequately demonstrated to the Department that the following conditions relevant to the application were met:

i. No injury to persons or the environment resulted from the incident or the presence of the pesticide at the non-target site;

ii. All persons involved in the application were properly licensed under the provisions of this chapter;

iii. Equipment used during the application was properly maintained and/or calibrated;

iv. The record of pesticide application contains all mandated information; and

v. The application was performed in a manner consistent with the provisions of the Federal registered label of the pesticide used and other restrictions as contained in the Act or this chapter.

SUBCHAPTER 10. PESTICIDE USE

7:30-10.1 Definitions

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

...
"Aerosol" means a suspension in air of fine liquid or solid particles between 0.1 to 100 microns in size which is produced by blasts of heated

air, or exhaust gas, or rapid volatilization of a liquified gas or propellant, or mechanical aerosol generators.

...
"Basement" means any accessible space under a structure, wholly or partly below the surface of the ground, that is greater than [three] six feet in height and contained by foundation walls.

...
"Commercial boat yard" means any facility which engages for hire in the construction, storage, maintenance, repair, or refurbishing of vessels or any licensed independent marine maintenance contractor who engages in such activities.

...
"Crawlspace" means any [accessible] space under a structure that is [three] six feet or less in height and contained by foundation walls.

...
"Fumigant" means a substance or mixture of substances which produces matter in a gaseous state, not including aerosols, intended to prevent, control, or destroy pests.

"Heating unit" means a furnace and any associated duct work.

"Inaccessible crawl space" means any space under a structure which is not open to normal ingress from within and/or without the structure.

...
"Low pressure injection" means [the application at 25 psi or less pressure at the pump, or] the minimum amount of pressure required for the termiticide to clear the hose at the nozzle [where 25 psi is insufficient].

...
"TBT antifoulant paint" means any paint formulation containing any tributyltin compounds having three normal butyl groups attached to a tin atom and with an anion such as chloride, fluoride or oxide.

...
"Vessel" means every description of watercraft, other than a sea-plane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

7:30-10.2 (No change.)

7:30-10.3 Pesticide use and/or application

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

(h) No person shall add water to any pesticide handling, storage, or application equipment via a hose, pump, or other equipment unless such hose, pump, or other equipment is fitted with an effective valve or device to prevent backflow of pesticides or liquids containing pesticides into water supply systems, streams, lakes, other sources of water or other areas; except that such backflow devices or valves are not required when the hose, pump, or other equipment is not allowed to contact or fall below the level of the liquid in the handling, storage, or application equipment to which water is being added and no other possible means of establishing a back-siphon or backflow exists.]

(i)-(j) (No change.)

(k) No person shall perform a community or areawide pesticide application for gypsy moth control [between 7:30 and 8:30 A.M.] during normal student commuting times, as determined by the local school district, within two miles of a school including part or all of grades K through 8 and within two and one-half miles of a school including part or all of grades 9 through 12. Provisions of this subsection shall not apply on those days when a school is not in session.

(l) (No change.)

(m) No person shall fail to remove a rodenticide after a rodenticide contract has been fulfilled or terminated.

(n) No person shall make an application of a fumigant unless at least one applicator certified and registered in the fumigation subcategory as described in N.J.A.C. 7:30-6.3(a)7iii or the food manufacturing and processing subcategory as described in N.J.A.C. 7:30-6.3(a)7iv is present at the application location for the duration of the application.

(o) No person shall make an application of a pesticide containing diazinon to sod farms, golf courses, or other turf areas greater than three acres.

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(p) No person shall make an application of any pesticide in or around a school when students are on the school premises.

(q) No person shall make an application of a TBT antifoulant paint unless applied:

1. Within a commercial boat yard; and
2. To vessels which exceed 25 meters (82.02 feet) in length or which have aluminum hulls.

7:30-10.4 Restrictions on use of termiticides

(a) (No change.)

(b) No person shall apply any termiticide without first pressurizing the application equipment and inspecting for leaks, including but not limited to observation of the tank, pump, hose, fittings, and injection apparatus. Any leak detected during this inspection shall be repaired prior to starting the application. If any leaks are detected during the application, the application shall immediately cease until the leak has been repaired and the spill soaked up with an absorbent material. Provisions of N.J.A.C. 7:30-[10.8]9.15 shall also apply.

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

(i) No person shall make an application of a termiticide into voids of foundations unless done pursuant to the following restrictions listed by foundation type:

1. Hollow block, brick, and tile foundations shall:

i.-ii. (No change.)

iii. Have any paneling or other wall covering, as in the case of (i)lii above or, have a member of the termite application crew inside the basement during treatment observing for evidence of leaks. If a leak is observed by such crew member, application shall immediately cease, the spill be absorbed, the paneling or other wall covering removed, and any visible holes or cracks sealed prior to continuing treatment. If this second option is selected, other clean-up procedures, to be determined by the Department when discovered or reported pursuant to N.J.A.C. 7:30-[10.8]9.14, may be required in addition to absorption of the termiticide.

2. Rubble and stone foundations shall:

i.-ii. (No change.)

iii. Be injected [at a treatment pressure not exceeding 25 psi at the pump] **only with low pressure injection**; and

iv. (No change.)

(j) (No change.)

(k) No person shall make a subterranean application of any [organo-chlorine] termiticide to a basement floor, unless applied pursuant to the following restrictions listed by structural floor type and/or condition:

- 1.-3. (No change.)

4. Concrete slab floors with a French drain system shall [not] be treated[. Treatment] by low pressure injection[, may be done] beneath the slab and/or expansion joint with a pesticide, other than an organo-chlorine, labeled for this site.

5. (No change.)

(l) No person shall make a subterranean application of a termiticide to a crawlspace unless applied pursuant to the following restrictions listed by structural type and/or other conditions:

- 1.-3. (No change.)

4. Accessible plenum crawlspaces shall be treated consistent with (l)1 or 2 above, but only with a termiticide other than an organo-chlorine which is labeled for this site and only in conjunction with positive ventilation during and for 24 hours following the end of the plenum crawlspace treatment. [Pump pressure shall not exceed 25 psi at the pump] **Only low pressure injection shall be used** and the point of termiticide injections shall be at least four inches beneath the crawlspace floor. Immediately following treatment, cover treated soil with at least 4 mil polyethylene or equivalent sheeting as may be approved by the Department. Occupants of the treated structure shall be advised to vacate during treatment and for the 24 hour aeration period.

(m) No person shall make a subterranean application of a termiticide to an inaccessible [sub-floor area] **crawl space** unless applied pursuant to the following restrictions:

- 1.-3. (No change.)

(n) No person shall make a subterranean application of a termiticide to a slab unless applied in accordance with the following restrictions by slab type and/or other conditions:

- 1.-3. (No change.)

4. Wood [over] on slab construction shall be drilled and treated as in (n)2 and 3 above, except [pressure shall not exceed 25 psi at the pump] **only low pressure injection shall be used** and the quantity of termiticide pumped into each hole shall not be great enough to cause excess termiticide to emerge from adjacent holes.

5. (No change.)

6. Slabs covering or containing air ducts may be treated with a termiticide, other than an organo-chlorine, without sealing of the duct openings and installation of an alternative air circulation/heating system provided:

i.-ii. (No change.)

iii. Application under the slab is limited to gravity or low pressure injection [not to exceed 25 psi at the pump];

iv.-vi. (No change.)

(o) Accidental duct contamination resultant from an application performed in strict accordance with (n)6i-vi above[,] shall be subject to reporting and review under the provisions of N.J.A.C. 7:30-[10.8]9.14.

(p) No person shall make a subterranean application of a termiticide to a property on which wells and/or related water sources are located unless applied pursuant to the following restrictions:

1. If the well or other water source is within the linear distance of the treatment site as provided in (p)4 below and if a connection **is made** to a public water supply system [is practical and feasible, delay treatment until this is done] **the well shall be sealed according to the specifications of the Division of Water Resources at N.J.A.C. 7:9-9.9.**

- 2.-5. (No change.)

(q) Retreatments with termiticides are allowed only when there is evidence of reinfestation subsequent to the initial treatment, or if there is a disruption of the pesticide barrier in the soil due to construction, excavations, or landscaping. In cases of disruption of the soil barrier, only those locations where this occurred may be re-treated. In cases of evidence of termite infestations, the entire premises may be treated if:

1. (No change.)

2. Live termites are found **on or within the structure.**

(r)-(s) (No change.)

(t) **A diagram of the structure to be treated, depicting the lower level of the structure, the location of termite infestations and damage, areas treated and any significant items such as location of wells shall become a part of the termite application records and shall be maintained by the applicator for a minimum of five years.**

7:30-10.5 Aerial application of pesticides

(a)-(r) (No change.)

(s) No pesticide shall be deposited by aircraft within 100 feet of any private residence unless the aerial pesticide applicator and/or applicator business has written consent of an inhabitant of said private residence of legal age. The aerial **pesticide** applicator **and/or applicator** business shall obtain the written consent, or the party who is contracting for the services of an aerial **pesticide** applicator **and/or applicator** business shall obtain the written consent and forward it to the aerial **pesticide** applicator **and/or applicator** business for record keeping purposes. The consent agreement shall include:

1. **The [D]date of agreement;**
2. **The [T]time period for which the consent is valid;**
3. **The [L]location or designation of the private residence; and**
4. **The [S]signature of the consenting inhabitant of the private residence.**

i. Any consenting inhabitant may withdraw consent by notifying, in writing, the party which requested the consent. Consent may be withdrawn following the application [seas] **season** or at any time for a pesticide misapplication involving the consenting inhabitant's property under this chapter. Upon such notification, the previous consent shall be invalidated. Copies of all consent agreements shall be maintained by the aerial pesticide applicator and/or applicator business

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and made immediately available, upon request, to the Department. [Provisions of this subsection shall not apply to any private residence that is occupied by the person contracting to have the spray performed and which is located on a property which includes the target site.]

(t) No person shall be exempt from any of the provisions of this section except under these conditions:

1.-2. (No change.)

3. The provisions of (s) above shall not apply to any private residence that is occupied by the person contracting to have the spray performed and which is located on a property which includes the target site.

7:30-10.6 (No change.)

7:30-10.7 Assessment of fees for sample analysis

(a) In any situation involving a suspected misapplication or spill of a pesticide [and], where the sample(s) routinely collected during the initial inspection and sampling date define a violation of the Act or [regulations] rules promulgated thereunder and show the need for collection of additional samples to define the extent of the contamination as required by the Department to fully evaluate the procedures necessary to remedy said violation, a fee for all sampling may be assessed against the person responsible for the violative application or spill, such fee to reflect the actual cost incurred by the Department for the analyses of the sample(s).

(b) A manufacturer of pesticide products shall be responsible for sample analysis fees when analysis of products collected at the manufacturer's facility indicate the samples are violative as misformulations.

(c) Fees for pesticide sample analysis of formulations are as follows:

1. Liquids, except detergents: \$300.00 per sample.
2. Powders: \$340.00 per sample.
3. Aerosols, baits, traps, and detergents: \$400.00 per sample.
4. User dilution: \$500.00 per sample.

(d) Fees for pesticide sample analysis of residues are as follows, reflecting a cost per analyte. Each additional analyte increases the applicable fee by 10 percent.

1. Swab: \$125.00 per sample.
2. Air (puf): \$150.00 per sample.
3. Air (chromosorb): \$100.00 per sample.
4. Water: \$150.00 per sample.
5. Soil and other solids: \$225.00 per sample.
6. Biological tissue: \$250.00 per sample.

(e) The fee for a pesticide scan shall be \$250.00 per group.

(f) Any sample requiring extra preparatory work or special analysis shall be charged \$100.00 per hour for the preparatory work or special analysis in addition to the fees specified in (c), (d) or (e) above.

[7:30-10.8 Accidental pesticide misapplications and spills

(a) When, during the application of a pesticide, it can be shown that an accidental reportable pesticide spill has occurred, or if movement of a pesticide to a non-target site within a structure has occurred, no violation of the pesticide regulations shall be cited provided:

1. The person responsible for the application reports the spill or movement of the pesticide to the Department in accordance with N.J.A.C. 7:30-9.11;

2. Necessary procedures to cleanup the pesticide, subject to the review of and to a level deemed acceptable by the Department, are immediately implemented to reduce or remove resultant contamination at the non-target site. The Department may, at its discretion, extend the time period for initiation of the clean up; and

3. It can be adequately demonstrated to the Department that the following conditions relevant to the application were met:

- i. No injury to persons resulted from the incident or the presence of the pesticide at the non-target site;
- ii. All persons involved in the application were properly licensed under the provisions of the pesticide regulations;
- iii. Equipment used during the application was properly maintained and/or calibrated;
- iv. The record of pesticide application contains all mandated information; and

PROPOSALS

v. The application was performed in a manner consistent with the provisions of the Federal registered label of the pesticide used and other restrictions as contained in the Act or regulations promulgated thereunder.]

7:30-10.[9]8 (No change in text).

HEALTH

The following proposals are authorized by Molly Joel Coye, M.D., M.P.H., Commissioner of the Department of Health; with the approval of the Health Care Administration Board.

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Graduate Medical Residents; Implementation Schedule; Cost Appeal Option

Proposed Amendments: N.J.A.C. 8:31B-3.22, 3.31 and 3.51.

Authority: N.J.S.A. 26:2H-1, et seq.; specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1988-141.

Submit comments by April 20, 1988 to:

Pamela S. Dickson, Director
Hospital Reimbursement
New Jersey Department of Health, Room 601
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The Department of Health has established a set of minimum requirements that graduate medical residents must meet if they are to be included in the determination of hospital teaching category and counted among those residency positions approved for reimbursement through hospital rates.

First, residents must qualify for a New Jersey medical license, with the exception of graduate medical education requirements. In addition, they must graduate from a medical or osteopathic school accredited by the LCGME or the AOA, or from a foreign medical school; if the latter, the Foreign Medical School Graduate Examination in the Medical Sciences (FMGEMS) must be passed in no more than three attempts.

In this rulemaking, the Department is proposing a schedule requiring all residents to meet these minimum requirements by 1992, if reimbursement eligibility through Chapter 83 is to be maintained. The schedule for meeting requirements is as follows:

First and Second-year residents (PGY1-PGY2): no later than July 1, 1988;

First through Third-year residents (PGY1-PGY3): no later than July 1, 1989;

First through Fourth-year residents (PGY1-PGY4): no later than July 1, 1990;

First through Fifth-year residents (PGY1-PGY5): no later than July 1, 1991;

All residents (PGY1-PGY6): no later than July 1, 1992.

The Department is also proposing that hospitals which wish to add residents through transfer, not in excess of the statewide limit, be allowed to appeal for these additional costs under the accept option.

To provide hospitals flexibility within the State cap, there is a proposed deletion of the rule allowing the Hospital Rate Setting Commission to remove costs from hospitals having more than the approved number of residency slots.

Social Impact

The proposed amendments will assure the quality of graduate medical education in New Jersey. The timetable proposed should minimize disruption within the teaching hospitals that may need to upgrade their resident staffs.

Economic Impact

None of the proposed amendments is expected to have a direct economic impact upon the citizens of New Jersey. The amendment related

to transfers of residents between institutions is economically neutral because present rules allow no increase in reimbursement as a result of transfer alone.

Regulatory Flexibility Statement

The proposed rules apply only to the 89 hospitals that have rates established by the Hospital Rate Setting Commission. With one exception, each of these hospitals employs more than 100 full time employees and, therefore, does not fall into the category of small business as defined in Section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169). The one hospital which has less than 100 employees employs no residents and, therefore, is not affected by the proposed amendments.

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

8:31B-3.22 Standard costs per case

(a) (No change.)

(b) Classification of Teaching (Major, Minor) and Non-Teaching Hospitals.

1.-5. (No change.)

6. All residents initially employed as first year residents (PGY1) by hospitals on July 1, 1987 or later must meet either criteria (b)6i and ii, or criteria (b)6 i and iii listed below, in order to be included among those residents used to determine teaching categories described in (b)1 and 2 above[:]. **To be similarly included, second-year residents (PGY2) must meet these same minimum requirements by July 1, 1988; third-year residents (PGY3), by July 1, 1989; fourth-year residents (PGY4), by July 1, 1990; fifth year residents (PGY5), by July 1, 1991; and all residents by July 1, 1992.**

i.-iii. (No change.)

7. (No change.)

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

8:31B-3.31 Commission adjustments and approvals

(a) (No change.)

(b) [The Commission shall approve adjustments to hospitals' Schedules of Rates for 1986 and subsequent years as necessary to subtract approved indirect costs associated with residents in excess of the number of residents approved by the Commission for reimbursement for the twelve-month period beginning July 1, 1985.] The Commission shall [also] approve adjustments to hospitals' Schedules of Rates for 1988 and subsequent years as necessary to subtract approved costs associated with residents not meeting the minimum requirements as defined in N.J.A.C. 8:31B-3.22(b)6; [and] for any costs associated with residents in programs which have lost accreditation as defined in N.J.A.C. 8:31B-3.22(b)7; and for any costs associated with previously approved but now vacant residency positions which are unfilled as a result of a hospital's inability to recruit residents meeting these minimum standards. [This adjustment will be effective January 1, 1988.] These costs shall include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies.

(c) The Commission may approve hospital appeals to transfer Commission approved resident positions and associated costs between hospitals. [A hospital must conditionally accept or not accept in order to appeal for additional resident positions by transfers] A hospital may appeal under any option to reduce or increase the number of resident positions by transfer. An addition of resident positions by transfer may not result in a change to a higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teaching status peer group. The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.

(d) (No change.)

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. Accept the Certified Revenue Base: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Follow-

ing Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount will be fixed and included as an indirect cost in the mark-up factor. A hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital's being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. Subject to approval, acceptance provides the right of the hospital to appeals set forth under N.J.A.C. 8:31B-3.55 through 3.58, and, in 1988 only, 8:31B-3.24. **A hospital whose increased costs are solely the result of increases in the number of graduate medical residents will be allowed to appeal for those costs under this accept option, if the increase results from a transfer of residents from one institution to another, and does not increase the total number of residents or the total costs approved for reimbursement under the Chapter 83 Reimbursement System.**

2.-3. (No change.)

4. Notwithstanding the above, effective for the 1986 Proposed Schedule of Rates, hospitals may only appeal under the not accept option for **statewide increases** in costs associated with numbers of graduate medical residents in excess of the total number of FTE residents approved by the Commission for reimbursement for the period beginning July 1, 1985.

(a)

RESEARCH, POLICY AND PLANNING

Uncompensated Care Trust Fund Financial Elements

Proposed New Rule: N.J.A.C. 8:31B-4.37

Proposed Amendment: N.J.A.C. 8:31B-4.39

Authority: N.J.S.A. 26:2H.

Proposal Number: PRN 1988-138.

Submit comments by April 20, 1988 to:

Scott Crawford, Director
Health Care for the Uninsured Program
New Jersey Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rule and amendments are designed to clarify the responsibilities of hospitals and patients before services provided by the hospitals to patients can be reported as charity care and paid for pursuant to N.J.S.A. 26:2H-18 et seq. (P.L. 1978, c.83) and the Uncompensated Care Trust Fund Act (P.L. 1986, c.204)

First, the rules require both posted and individual notice of the availability of charity care. N.J.A.C. 8:31B-4.37(a) specifies the form and the content of this notice.

N.J.A.C. 8:31B-4.37(b) establishes the income eligibility criteria for charity care patients. Charity care is available to persons whose individual or family income falls below 150 percent of the Federal Income Poverty Guidelines. Reduced Charge Charity Care is available to persons whose individual or family income falls between 150 and 250 percent of the Federal Income Poverty Guidelines. (See Table 1.) Income is defined as the lesser of actual income for the 12 months preceding the eligibility determination or four times actual income for the three months preceding the determination of eligibility.

Reduced Charge Charity Care is available on a sliding fee scale based on income as a percentage of the Federal Income Poverty Guidelines. (See Table 2.)

TABLE 1

		Federal Income Poverty Guidelines—1987		
Family	Size	100 Percent	150 Percent	250 Percent
	1	\$ 5,500	\$ 8,250	\$13,750
	2	7,400	11,100	18,500
	3	9,300	13,950	23,250

4	11,200	16,800	28,000
5	13,100	19,650	32,750
6	15,000	22,500	37,500
7	16,900	25,350	42,250
8	18,800	28,200	47,000

TABLE 2

Income as a Percentage of HHS Income Poverty Guideline		Percentage of Charges Paid by Patient
From	To	
151	170	10
171	180	20
181	190	30
191	200	40
201	210	50
211	220	60
221	230	70
231	240	80
241	250	90

Persons eligible for reduced charge charity will be eligible for full charity care after the amount of charges payable by the person equals ten percent of annual income.

N.J.A.C. 8:31B-4.37(c) sets up criteria for an assets test which must be met before a person is eligible for charity care. In addition, it defines the type of assets that will be used in the eligibility determination.

N.J.A.C. 8:31B-4.37(d) requires hospitals to determine the eligibility for charity care of patients who indicate an inability to pay for care. This charity care eligibility determination is limited to persons who are residents of New Jersey. However non-residents' care may still be paid as bad debt. While the rules stipulate that patients with insurance coverage may also be eligible for charity care for any unpaid balance, the rule specifies that all other payment sources must be utilized prior to attributing costs to charity care. The rule also specifies the timing for a determination of eligibility for charity care. It further sets out the information that must be provided to a charity care applicant when an eligibility determination is favorable or unfavorable. The burden of proof in an eligibility determination is placed on the patient. Finally, the rule states that in a situation of medical urgency, necessary hospital services must be provided prior to the screening process in N.J.A.C. 8:31B-4.37(d).

N.J.A.C. 8:31B-4.37(e) provides that persons eligible for charity care may not be billed or subject to other collection action. Persons eligible for reduced charge charity care may not be billed or subject to collection action for that portion of the bill that is reduced charge charity care.

N.J.A.C. 8:31B-4.37(f) sets up an appeals process for denials of eligibility. It provides for appeal to the Department within 30 days of receipt of the hospital's notice of denial of eligibility. The hospital is precluded from billing the person during the course of the appeal.

Finally, the amendment to N.J.A.C. 8:31B-4.39(a) authorizes the Commission to penalize a hospital for failing to substantially comply with N.J.A.C. 8:31B-4.37. Hospitals may not recover the amount of this penalty from either the Trust Fund or the Chapter 83 system. Moreover, if a patient who is eligible for charity care is subject to collection procedures, the hospital may not receive reimbursement from the Uncompensated Care Trust Fund or the Chapter 83 system for the cost of the services.

Social Impact

The proposed new rule and amendments will have a positive social impact in that they will add clarity and specificity to the charity care eligibility process. Currently, hospitals, within parameters established by the Hospital Rate Setting Commission, may devise their own criteria for determining charity care eligibility. This means that patients may be eligible at one hospital but denied charity care status at another. In addition to inconveniencing the patients, this places a charity care service burden on the hospitals with expansive charity care criteria. The proposed new rule will foster equitable treatment for charity care patients.

The rule places the responsibility of documenting charity care eligibility on the patient. It places the requirement of providing notice of the availability of charity care and making eligibility determination on the hospital.

Economic Impact

The proposed new rule and amendments should have little overall economic impact. The Hospital Rate Setting System has been recognizing and paying for uncompensated care—both bad debt and charity

care—since 1980. The rule is likely to change the distribution of uncompensated care; more charity care will be provided, which should lead to a reduction in the bad debt component of uncompensated care.

The proposal will have a profound impact on those patients eligible for charity care under the proposed new rule and amendments who would have either not been screened or who would have been determined to be ineligible. They will be able to receive hospital care without financial barriers. To the extent that hospitals had more expansive eligibility criteria, some patients will no longer be eligible for charity care. This is most likely to occur in those hospitals that have no assets tests for charity care eligibility.

Hospitals have been required to screen for charity care since the inception of the Chapter 83 System. Therefore, the financial impact of this rule on the hospitals should be minimal. Limited new costs for notices and additional documentation may be deemed appropriate. The Department will incur a small amount of new costs associated with producing and distributing notices in English, Spanish or other languages pursuant to N.J.A.C. 8:31B-4.37(a)1.

Regulatory Flexibility Statement

The proposed new rule and amendments affect only those hospitals whose rates are set by the Hospital Rate Setting Commission. There are no hospitals subject to the rules with fewer than 100 full-time employees. Therefore, the rules have no impact on any institution which would qualify as a small business pursuant to section two of the Regulatory Flexibility Act. (P.L. 1986, c.169)

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

8:31B-4.37 Charity care and reduced charge charity care for indigent patients

(a) Hospitals shall provide the following notice of availability of charity care, and shall post the notice, in addition to any notices required under Federal law, as follows:

1. The Department shall provide notices in English and Spanish about the availability of charity care and reduced charge charity care. The facility shall post these notices in appropriate areas of the facility, including but not limited to, the admissions area, the business office, outpatient clinic areas, and the emergency room. If the usual language of the households of 10 percent or more of the population in the service area of the facility, according to the most recent figures published by the Bureau of Census, is other than English or Spanish, the facility shall notify the Department who shall translate the notice into that language and supply the posted notice to the facility. The facility shall then also post the translated notice.

2. The facility shall provide individual written notice, in English and Spanish, of the availability of charity care and reduced charge charity care under these rules to each person who seeks services in the facility on behalf of himself or another, and to the legally responsible parent, spouse or guardian, if any, of the person seeking services. This notice shall:

i. State that the facility can request payment from the Uncompensated Care Trust Fund if it provides care without charge or below charges to people who meet the eligibility requirements of these rules.

ii. Set forth the criteria for determining eligibility for charity care and reduced charge charity care under these rules.

iii. State the location in the facility where anyone seeking a determination of eligibility for charity care and reduced charge charity care may make such a request.

iv. State that the facility will make a written determination of whether the person is eligible for charity care or reduced charge charity care as soon as possible, but no more than two working days from the time of the request for such services. If the request does not include sufficient documentation to make such a determination, the request shall be denied. If the request is denied for lack of documentation, the applicant will be allowed to present additional documentation.

v. State that an applicant found ineligible may reapply at a future time when the applicant presents him or herself for services and believes his or her financial circumstances have changed, making him or her eligible for charity care or reduced charge charity care.

vi. State that charity care and reduced charge charity care is available only for medically necessary care.

3. The facility shall provide the individual written notice of the availability of charity care or reduced charge charity care before providing services, except where the emergency nature of the services provided makes prior notice impractical. If this exception applies, the facility shall provide the written notice to the patient or responsible party as soon as practical, but no later than when first presenting a bill for services.

4. The facility shall make reasonable efforts to communicate the contents of the posted notice and the individual written notice to persons who it has reason to believe cannot read the notices.

(b) Income eligibility criteria for identifying charity care patients are as follows:

1. The provisions of 42 U.S.C. 9902(2), the poverty income guidelines revised annually by the United States Department of Health and Human Services, are hereby incorporated by reference. (For further information on the poverty income guidelines, contact Joan Turek-Brezina, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201, telephone 202-245-6141.) A person is eligible for charity care or reduced charge charity care if he or she falls into one of the following categories:

i. A person whose individual or, if applicable, family income, as determined by reference to (b)2 below, is less than 150 percent of the HHS Income Poverty Guidelines as adopted by the Department shall be eligible for charity care for necessary health services without cost.

ii. A person whose individual or, if applicable, family income, as determined by reference to (b)2 below, is greater than 150 percent of the HHS Income Poverty Guidelines as adopted by the Department but not more than 250 percent of these guidelines shall be eligible for charity care for necessary health services at a reduced rate as prescribed by (b)3 below.

2. A person's income, for purposes of determining eligibility for charity care or reduced charge charity care, shall be the lesser of the following:

i. The actual income of the individual or, if applicable, the family, for the 12 months preceding the services.

ii. Four times the actual income of the individual or, if applicable, the family, for the three months preceding the services.

3. A person who is eligible for reduced charge health services shall be charged a percentage of the normal charge for health services after any applicable third party has paid; that percentage shall be calculated by the following:

i. Income as a Percentage of HHS Income Poverty Guideline as adopted by the Department		Percentage of Charges Paid by Patient
From	To	
151	170	10
171	180	20
181	190	30
191	200	40
201	210	50
211	220	60
221	230	70
231	240	80
241	250	90

ii. If the percentage of charges for individuals between 150 and 250 percent of the federal poverty guidelines which is unpaid by other parties and billed to the patient exceeds 10 percent of the person's, or family if applicable, annual income as calculated by reference to (b)2 above, this excess will be eligible for treatment as charity care. This 10 percent threshold must be met once per family in a 12 month period.

4. Family income that must be considered for eligibility determination includes a spouse's income for an adult and parent's(s') income for a minor child.

(c) Assets eligibility criteria for identifying charity care patients are as follows:

1. An individual is eligible for charity care or reduced charge charity care if:

i. His or her individual liquid assets do not exceed \$1,000; and
ii. His or her family's liquid assets, if applicable, do not exceed \$2,000.

2. Liquid assets are assets which consist of, or which can be readily converted into, cash. This includes, but is not limited to, cash, savings and checking accounts, certificates of deposit, treasury bills, negotiable paper and corporate stocks and bonds.

3. Family assets that shall be considered for eligibility determinations include a spouse's assets for an adult and parent's(s') assets for a minor child.

(d) Eligibility determination for charity care and reduced charge charity care shall be as follows:

1. Based on the criteria in (b) and (c) above, hospitals shall determine the eligibility for charity care or reduced charge charity care for all New Jersey residents who present characteristics indicating an inability to pay for services including, but not limited to: absence of third party insurance coverage; receipt of unemployment or welfare benefits; limited income; and expressions of difficulty with paying for care. A patient with third party insurance coverage may still be eligible for uncompensated care and shall be screened for eligibility if he or she presents other characteristics indicating an inability to pay for services. A patient who is eligible for, but not enrolled in, Medicaid (Title XIX), for the services in question may not be determined to be eligible for charity care.

i. Hospitals shall make arrangements for reimbursement for services from private and federal, state and local governmental third party payers when a person is found to be eligible for such payment. Hospitals shall collect from any party liable to pay all or part of a person's bill, prior to attributing it to charity care. Subject to waiver provisions, the hospital shall, as part of this obligation, pursue reimbursement for the uncollectible copayments and deductibles of indigent participants in Title XVIII of the Social Security Act (Medicare).

2. A patient or patient guardian may request a facility to make a determination for charity care or reduced charge charity care at any time up to one year from the date of service. Such a determination shall be made as soon as possible, but no later than two working days from the day of the request. If the request does not include sufficient documentation to make such a determination, the request shall be denied. The hospital shall promptly provide the applicant with a written copy of the determination. If a denial of eligibility has been made because of inadequate documentation, the patient or responsible party shall be permitted to provide additional documentation.

3. A determination that an applicant is eligible shall indicate:

i. That the facility will provide charity care services at no charge or at a specified charge which is less than the allowable charge for the services;

ii. The date on which services were requested;

iii. The date on which the determination was made;

iv. The applicant's family size, income and eligibility computation;

v. The date on which the services were or will be provided to the applicant; and

vi. The length of time that the hospital will provide charity care based on this determination. A hospital shall not provide charity care on the basis of a determination of eligibility that is more than three months old.

4. The facility shall provide each applicant who requests charity care and is denied it, in whole or in part, with a written and dated statement of the reasons for the denial when the denial is made, including the information required in (d)3 above. In addition, this notice shall state that the applicant may reapply if the applicant believes his or her financial circumstances have changed so as to make him or her eligible for charity care for future services. The notice must also inform the applicant about the availability of an appeals process pursuant to (f) below.

5. A facility shall, as a condition of finding any applicant eligible for charity care or reduced charge charity care, require the applicant to furnish any information that is reasonably necessary to substantiate the applicant's income and is within the applicant's ability to supply. Such proofs may include proof of receipt of welfare benefits, unemployment compensation, or proof of wage level as well as bank statements and other proofs of assets. The hospital shall retain proof that this documentation was provided.

6. Whenever the medical condition of the prospective patient so dictates, all necessary hospital services shall be provided prior to the financial screening or verification required by these rules.

(e) Collection procedures and prohibited action requirements are as follows:

1. Persons determined to be eligible for charity care or reduced charge charity care pursuant to these rules shall not be subject to the collection procedures set forth in N.J.A.C. 8:31B-4.40. Persons determined to be eligible for reduced charge charity care pursuant to these rules shall not be subject to the collection procedures set forth in N.J.A.C. 8:31B-4.40 for the portion of the bill that is reduced charge charity care. If the portion of the bill that will be reduced charge charity care cannot be determined prior to billing because third party payments have not been made, the statement shall indicate that part of the bill will be reduced charge charity care.

2. No demand for payment or collection action, including rendering a bill for services, shall be instituted against persons found eligible for charity care. No demand for payment, including the rendering of a bill for services, shall be instituted for the portion of the cost of services determined to be reduced charge charity care. A statement of charges may be sent as long as the statement clearly indicates that it is not a bill or demand for payment.

3. No demand for payment or collection action shall be instituted before a hospital screens a patient pursuant to N.J.A.C. 8:31B-4.37(d) and renders an eligibility determination.

4. Hospitals are prohibited from denying persons medically necessary treatment if the hospital has the medical capacity to provide such care.

(f) Appeals of denials of eligibility shall be conducted as follows:

1. Applicants who wish to appeal a decision regarding eligibility for charity care or reduced charge charity care must notify the Department in writing of their intention to appeal within 30 days of the applicant's receipt of the notice described in N.J.A.C. 8:31B-4.37(d)4.

2. The Department shall attempt to facilitate a mutually acceptable resolution of the dispute between the applicant and the hospital. The Department shall notify the applicant and the hospital of the results of such efforts within 60 days of its receipt of the applicant's notice of intent to appeal.

3. If no resolution of the dispute is obtained within this 60 day period, the Department shall transmit the matter to the Office of Administrative Law for resolution as a contested case pursuant to N.J.A.C. 1:1. In proceedings before the Office of Administrative Law, the Department shall be a non-adversarial party.

4. The hospital shall not pursue collection of payment from an applicant for charity care or reduced charge charity care until the completion of the administrative review process described in this section.

8:31B-4.39 Determination of uncompensated care factor

(a) In order to prospectively include a factor for Uncompensated Care, such care shall be measured for the Current Cost Base pursuant to N.J.A.C. 8:31B-4.131 as follows:

1.-6. (No change.)

7. [In evaluating a hospital's compliance with appropriate collection procedures, the Commissioner shall consider patients who are incapable of paying for hospital care if the patient fulfills all the necessary requirements for indigent care per Title XIX Federal regulations and/or other criteria deemed appropriate by the Hospital Rate Setting Commission. The hospital shall not pursue payment according to specified billing procedures for those patients who meet the aforementioned criteria.] **The hospital shall not pursue payment according to specified billing procedures for those patients who meet the criteria described in N.J.A.C. 8:31B-4.37.**

8. [In distinguishing Bad Debts from Charity, hospitals shall follow Hospital Financial Management Association Principles and Practices Board Statement 2.] With respect to any historical data to be reported to the Department of Health, wherever historical records are unavailable, conservative, reasonable estimates shall be made. Nevertheless, Total Deductions from Gross Operating Revenue for the Current Cost Base year must agree with the hospital's financial statement for the same reporting period.

9. The Commission may levy a fine or reduce or eliminate a hospital's uncompensated care factor if the hospital substantially fails to follow the procedures set forth in N.J.A.C. 8:31B-4.37. In deciding to reduce or eliminate a hospital's uncompensated care factor, the Commission shall consider the extent to which the hospital has failed to

follow the procedures including, but not limited to, its failure to provide notice of availability of charity care or reduced charge charity care or its failure to provide written determinations of eligibility. This reduction in the hospital's uncompensated care factor is not intended to diminish the hospital's continuing obligation to provide medically necessary care to all patients regardless of their ability to pay. Hospitals may not recover the amount of this penalty from either the Uncompensated Care Trust Fund or the Chapter 83 system.

10. If a patient who is eligible for charity care pursuant to N.J.A.C. 8:31B-4.37 is subjected to collection procedures in violation of N.J.A.C. 8:31B-4.37(e), the cost of services to such patient shall not be included in the facility's uncompensated care factor, regardless of the outcome of the collection procedures, unless the denial is a result of the failing of the patient or responsible party to provide sufficient documentation for the hospital to make an eligibility determination.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Drug Treatment Facilities Standards for Licensure

Proposed Repeal and New Rules: N.J.A.C. 8:42B

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1988-137.

Submit comments by April 20, 1988 to:

Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department proposes a repeal and the adoption of new rules at N.J.A.C. 8:42B, for the licensure of drug treatment facilities. The existing rules are scheduled to expire on August 1, 1988, pursuant to the "sunset" provisions of Executive Order No. 66 (Governor Byrne, 1978).

The rules in this chapter pertain to all facilities which provide inpatient drug treatment services, including hospitals which provide these services as a separate service. The existing rules constitute the basis for the licensure of 13 drug treatment facilities by the New Jersey State Department of Health.

Drug treatment facilities provide specialized, integrated care to chemically dependent or drug-addicted individuals in order to assist these individuals in reaching the maximum functional levels of which they are capable as well as to protect their health and safety. The aim of this chapter is to establish minimum rules to which a drug treatment facility must adhere in order to obtain a license to operate in New Jersey.

Development of the proposed rules for licensure of drug treatment facilities, N.J.A.C. 8:42B, entailed research, study, and planning by representatives of state agencies, drug treatment facilities, and health care professions. Among them were providers of care in licensed drug treatment facilities, staff of the New Jersey State Department of Health, including staff of the Division of Narcotic and Drug Abuse Control, and representatives of the New Jersey Association for the Prevention and Treatment of Substance Abuse.

Patients who would be affected by the proposed new rules are people requiring drug treatment services. Care is rendered by means of a multi-disciplinary approach to treatment, requiring the active involvement of professionals, the patient, and, in some instances, family members.

The proposed rules, while reflecting the intent of the current rules at N.J.A.C. 8:42B, are designed to simplify and clarify regulations and to allow the facilities maximum flexibility to develop workable means of delivering drug treatment services to their patients. The Department maintains that the proposed rule N.J.A.C. 8:42B is responsive to the needs of facilities and would protect the health and safety of patients. The rules would provide the State's drug treatment facilities and the health care professionals working in them with the opportunity to devise innovative, effective methods of providing drug treatment services.

A summary of the proposed new rule follows:

The scope and purpose of the rules in this proposed chapter are set forth in the proposed subchapter N.J.A.C. 8:42B-1. The proposed rule contains definitions of technical terms, many of which are the same as those for the terms in licensure rules developed by the Department for other types of health care facilities. There are, however, terms specific to drug treatment facilities which are defined for the purposes of this text, and general terms which are defined from a drug treatment perspective. The proposed rule delineates the qualifications for health care practitioners to which the proposed rule refers. The proposed rules include, for example, specification of the qualifications of the administrator, N.J.A.C. 8:42B-1.4, the director of drug counseling services, N.J.A.C. 8:42B-1.6, and the drug counselors, N.J.A.C. 8:42B-1.8.

The proposed subchapter N.J.A.C. 8:42B-2, Licensure Procedures, outlines procedures for obtaining licensure, which are similar to those for other types of health care facilities. Sections of the proposed subchapter N.J.A.C. 8:42B-2 address requirements for the following: Certificate of Need; application for licensure; newly constructed or expanded facilities; surveys and temporary license; full license; surrender of license; the fee schedule for filing an application for licensure; as well as the facility's right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

General areas common to the licensure rules for many types of health care facilities are addressed by the proposed subchapter N.J.A.C. 8:42B-3. The proposed rules require job descriptions for all personnel and that at least one staff member trained in cardiopulmonary resuscitation be present in all patient areas when patients are present. The facility is also required to maintain written staffing patterns and to substitute staff with equivalent qualifications for absent staff members, so as to meet patient care goals.

The proposed subchapter N.J.A.C. 8:42B-4 outlines the responsibilities of the governing authority, which retains legal responsibility for the management, operation, and financial viability of the facility. Responsibilities enumerated in the proposed rules include provision of a safe, adequately staffed and equipped physical plant.

The proposed subchapter N.J.A.C. 8:42B-5 applies to the administration of the facility. The proposed rules require the appointment of a full-time administrator who shall be available on the premises of the facility at all times and of a designee to act in the absence of the administrator. The proposed subchapter also enumerates administrative responsibilities.

Requirements for patient care policies for the facility are set forth in the proposed subchapter N.J.A.C. 8:42B-6. The rationale for this subchapter is to protect patient health and safety, to facilitate the delivery of appropriate patient care, and to enhance the patient's access to information and participation in the treatment process. While the proposed subchapter delineates areas for patient care which require the formulation of written policies and procedures, the facility retains control over their actual content in many instances. Many of the subject areas are the same as for other health care facilities, but the policies and procedures are to be adapted to the drug treatment environment, according to the determination of the individual facility. The proposed rules also contain a series of provisions to ensure that the patient is fully informed of all financial arrangements.

The proposed subchapter N.J.A.C. 8:42B-7, Medical Services, is the first of the proposed subchapters which discusses requirements for the specialized professional services to be offered by drug treatment facilities. The proposed rules require that a medical director and medical services be available to all patients at all times.

The structure and rationale of the proposed subchapter N.J.A.C. 8:42B-7 are shared by the proposed subchapter on nursing services, N.J.A.C. 8:42B-8. The proposed rule N.J.A.C. 8:42B-8 includes a requirement for a registered professional nurse to direct the nursing service. The proposed rules also stipulate that additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with a systematic determination of nurse staffing levels on the basis of acuity of patient need. Requirements for nursing care services related to pharmaceutical services are also specified.

Subchapter N.J.A.C. 8:42B-9 concerns patient assessments and treatment plans and is formulated so as to reflect the multidisciplinary approach necessary for successful drug treatment, with emphasis on continuity of care. The proposed rules include a requirement for individual assessment of the patient at the time of admission. Assessments are used to develop a multidisciplinary patient treatment plan, which is to be reviewed and revised, based upon the patient's response to the care

provided. The proposed rules require that the patient's assigned drug counselor be responsible for the coordination and maintenance of the patient treatment plan. Each health care practitioner providing services to the patient participates as a member of the multidisciplinary team.

The proposed rules at N.J.A.C. 8:42B-10 require that drug counseling services be provided on the premises to patients as specified in the patient treatment plan. Supportive services, such as vocational, legal and educational counseling, are to be available for patients.

The requirements for a planned, diversified program of patient activities are delineated by the proposed subchapter N.J.A.C. 8:42B-11, Recreational Services.

Licensing of laboratory services and radiological services by the appropriate State agency (Departments of Health and Environmental Protection, respectively) is addressed in N.J.A.C. 8:42B-12.

According to the proposed rules at N.J.A.C. 8:42B-13, pharmaceutical services must be available to all patients. Those facilities providing acute medical detoxification services must also adhere to specified rules, N.J.A.C. 8:42B-13.2(a)1 through 8, similar to those required of hospital pharmaceutical services.

The proposed subchapter N.J.A.C. 8:42B-14 includes requirements for dietary services and represents an updating and clarification of the current rules. Dietary services must be provided to meet the nutritional needs of patients. In addition to a dietitian, a full-time food service supervisor is required.

Requirements for patient rights are stated in the proposed subchapter N.J.A.C. 8:42B-15. Drug treatment facilities are required to develop and implement policies and procedures regarding, for example, the following patient rights: right to appropriate treatment; freedom from discrimination or abuse; right to register complaints; and right to privacy and to security of personal possessions.

The content of the proposed subchapter N.J.A.C. 8:42B-16, Emergency Services and Procedures, incorporates principles of fire safety and emergency planning. The facility is required by the proposed rules to develop a written emergency plan for various emergency situations, including medical emergencies, equipment breakdown, fire, and other disasters. All emergency plans are to be posted, and drills and tests are to be conducted and documented. The provisions contained in the proposed subchapter are intended to promote patient safety.

The proposed subchapter N.J.A.C. 8:42B-17 concerns discharge planning, an important part of the continuum of care in a drug treatment setting. The intent of the provisions for discharge planning contained in the proposed rules is to promote the preparation of the patient for independent functioning in the community.

Requirements for medical records, including provisions for medical record maintenance, storage, contents, and confidentiality, are presented in the proposed subchapter N.J.A.C. 8:42B-18. The proposed rules stipulate that a medical record shall be maintained for each patient. The proposed rule N.J.A.C. 8:42B-18.2 requires that the facility employ the services of a medical record practitioner, whose qualifications are specified in the proposed rule N.J.A.C. 8:42B-1.12. These requirements are similar to those for other health care facilities.

The proposed subchapter N.J.A.C. 8:42B-19 includes rules for infection prevention and control. While the facility is given flexibility in the management of infection control, this subchapter identifies the content areas to be addressed by the facility's infection control program.

Housekeeping, sanitation, and safety are the subject of the proposed subchapter N.J.A.C. 8:42B-20. The drug treatment facility is required by the proposed rule to maintain a safe, sanitary environment, managed according to policies and procedures which the facility develops regarding housekeeping and laundry.

The proposed subchapter N.J.A.C. 8:42B-21, Volunteer Services, requires facilities to specify qualifications and permitted duties of volunteers, if volunteers participate in patient care.

The requirement for a quality assurance program is established by the proposed subchapter N.J.A.C. 8:42B-22. A written plan specifying a timetable and assignment of responsibility must provide for monitoring of staff and services rendered to patients.

N.J.A.C. 8:42B-23 is being reserved. Construction standards will be proposed at a later date and will comprise subchapter 23.

Social Impact

N.J.S.A. 26:2H-1 et seq., and amendments thereto, gives the Department of Health the responsibility of protecting and promoting the health of the citizens of New Jersey and also gives the Department the authority to establish rules for the licensure of health care facilities. The proposed chapter, N.J.A.C. 8:42B, establishes minimum rules for the licensure of

drug treatment facilities. The intent of the proposed rules is to ensure the quality of care provided to patients who receive drug treatment services.

Drug abuse continues to be a major public health problem in New Jersey, as it is throughout the United States. The grave social consequences of drug abuse are well-known to New Jersey citizens, as a result of almost daily coverage in newspaper and television reports. The causes of, and problems associated with, drug abuse are difficult to overcome. Providers of care in drug treatment facilities and staff from the Division of Narcotic and Drug Abuse Control report, however, that drug treatment facilities in New Jersey have helped some patients to become rehabilitated and to become productive members of society. Adoption of the proposed new rules at N.J.A.C. 8:42B will result in the continuing operation of drug treatment facilities which are licensed and regulated in a manner which promotes the delivery of quality care to patients who may benefit from drug treatment services.

The proposed new rules at N.J.A.C. 8:42B require the use of a multi-disciplinary team of drug treatment professionals who offer individualized services to each patient, with those services integrated through joint treatment planning into a continuum of care. Requirements for a broad range of drug treatment services, including medical, nursing, dietary, drug counseling, pharmaceutical, and recreational services, reflect this multi-disciplinary approach. The proposed rules present the various services as an organized system which includes coordinated, multidisciplinary patient assessment, goal-oriented treatment planning, ongoing reassessment, and discharge planning.

Involvement of the patient and family in patient treatment planning and discharge planning is emphasized. The proposed rules contain provisions for patient and family instruction, education, and, when possible, participation in the patient treatment planning process.

The proposed rules are designed to provide drug treatment facilities with the flexibility to establish policies, procedures, and means of service delivery which are best, given the facilities' individual structures and patient populations.

The proposed rules emphasize patient care evaluation through an organized quality assurance program, intended to lead to improved staff performance and patient care. Quality assurance activities are required for each patient care service as well as for facility-wide functions. The provisions for quality assurance are designed to focus the facility's efforts upon delivery of safe and effective patient care.

Both the Department and the drug treatment facility would benefit from a more objective, measurable set of rules which would support the survey, licensure, and enforcement processes. The Department maintains that adoption of the proposed rules at N.J.A.C. 8:42B would have a beneficial impact upon the individual patients and their families, the providers and professional communities, the broader health care system, and the general public. The proposed rules would support efforts to conserve the human potential of drug treatment patients through restoration of functional abilities which would make them less dependent upon sources of public support and, to the extent possible, would enable them to contribute as productive members of society.

Economic Impact

Drug treatment facilities are currently providing the services covered in the proposed rule. The survey mechanism already in place for drug treatment facilities will continue to function. The proposed rules present updated regulation that reflects many of the current practices already instituted by the facilities.

The rules proposed at N.J.A.C. 8:42B allow the facilities flexibility in management practices, such as in developing policies and procedures best suited to their individual circumstances, and in determining staffing levels to meet patient care needs. This flexibility would allow the facilities to conserve resources by determining the most efficient manner in which to utilize services and personnel. The emphasis upon continuity and coordination of care would reduce duplication and fragmentation of services. Use of a multidisciplinary team approach in patient assessment, treatment planning, and implementation of treatment plans would help to ensure that each patient benefits from a range of professional skills. This approach would foster the efficient marshaling of the facility's resources to serve the patient's total drug treatment needs.

Discharge planning is another requirement of the rules proposed at N.J.A.C. 8:42B which should help to reduce costs. Careful discharge planning, with the participation of various professional disciplines, facilitates the patient's transition, while ensuring that arrangements are made for aftercare so as to avoid potentially costly fragmentation, gaps, or interruption in services.

The rules proposed at N.J.A.C. 8:42B encourage avoidance of unnecessary expenses which result from accidents and injuries by including provisions for infection prevention and control and requirements for effective housekeeping, sanitation, and safety measures. While the primary concern of these rules is the health and safety of patients, they also aim to reduce costs by focusing upon environmental safety in all areas of the drug treatment facility.

The rules proposed at N.J.A.C. 8:42B contain provisions for a quality assurance program which could be used to increase the cost-effectiveness of facility operations. Review and evaluation of patient care services, staffing, maintenance of physical plant and equipment, discharge planning services, and volunteer services are required.

No increase is anticipated in costs related to the licensure and survey process because facilities are now being surveyed under the current rules at N.J.A.C. 8:42B. Adoption of the proposed new rules may ultimately result in a savings, not only of health care dollars, but of human potential, as more drug-addicted individuals who receive care through drug treatment facilities attain a level of functional ability whereby they can make an occupational and economic contribution to society.

Regulatory Flexibility Statement

The Department of Health has determined that compliance with the proposed rule N.J.A.C. 8:42B is necessary for all facilities which provide drug treatment services. The Department acknowledges that all drug treatment facilities presently licensed have fewer than 100 full-time employees and are, therefore, categorized as small businesses, as defined in Section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c. 169). The new rules have been proposed because of the impending expiration of the existing rules. Changes in recordkeeping and reporting requirements should have only minor economic impact, specifically in the area of medical records consultation. Changes in the rules have been designed to minimize adverse economic impact on small businesses, while ensuring the provision of quality care to patients.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:42B.

Full text of the proposed new rules follows.

CHAPTER 42B MANUAL OF STANDARDS FOR LICENSURE OF DRUG TREATMENT FACILITIES

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:42B-1.1 Scope

The rules in this chapter pertain to all facilities which provide inpatient drug treatment services, including hospitals which provide these services as a separate service. These rules constitute the basis for the licensure of drug treatment facilities by the New Jersey State Department of Health.

8:42B-1.2 Purpose

Drug treatment facilities provide specialized, integrated care to chemically dependent or drug-addicted individuals in order to assist these individuals in reaching the maximum functional levels of which they are capable as well as to protect their health and safety. The aim of this chapter is to establish minimum rules to which a drug treatment facility must adhere in order to obtain a license to operate in New Jersey.

8:42B-1.3 Definitions

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

"Acute medical detoxification" means a treatment, prescribed by a physician and conducted under medical supervision, to reduce a patient's chemical dependency, as defined below, which includes observation, monitoring, assessment, treatment, and counseling.

"Ancillary nursing personnel" means unlicensed workers employed to assist licensed nursing personnel.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Bylaws" means a set of rules adopted by the facility for governing its operation. A charter, articles of incorporation, and/or a statement of policies and objectives is an acceptable equivalent.

"Chemical dependency" means a dependence upon, or, by reason of repeated use, the imminent danger of dependence upon, any kind of controlled substance, narcotic drug, or other type of drug as defined in any law of the State of New Jersey or of the United States, including, but not limited to, any drug of either of the following groups:

1. Opium, heroin, morphine, cocaine, or any derivative of such drugs, or

2. Any barbiturate, central nervous system stimulant, tranquilizer or other depressant, hallucinogenic drug or derivative, any other psychotropic drug, or any other drug.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Clinical note" means a written, signed, and dated notation made by a health care professional who renders a service to the patient. Clinical notes are written into the patient's medical record the day service is rendered.

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

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by patients and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970 (N.J.S.A. 24:21-1 et seq.).

"Current" means up-to-date, extending to the present time.

"Daily census" means the number of patients residing in the facility on a given day.

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

"Discharge plan" means a written plan initiated at the time of the patient's admission. The plan for each patient includes an evaluation of the patient's needs, the development of goals for discharge, and referrals to community agencies and resources for aftercare services. The discharge plan of each service is part of the patient treatment plan.

"Disinfection" means the killing of infectious agents outside the body, or of organisms transmitting such agents, by chemical and physical means, directly applied.

"Documented" means written, signed, and dated.

"Drug addiction" means a chemical dependency which, by reason of repeated use, has resulted in a tolerance requiring increased quantity or frequency of dosage, or both, as well as evidencing a predictable syndrome whenever the user undergoes abstinence.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and rules governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the patient, seeing that the patient takes it (if oral), and recording the required information, including the method of administration.

"Drug dispensing" means a procedure entailing the interpretation of the original or direct copy of the prescriber's order for a drug and, pursuant to that order, the proper selection, measuring, labeling, packaging, and issuance of the drug to a patient or a service or unit of the facility, in conformance with all applicable Federal, State, and local rules and regulations.

"Drug treatment facility" means a facility or a distinct part of a facility which is licensed by the New Jersey State Department of Health to provide health care for the prevention and treatment of drug addiction and drug abuse under medical supervision for 24 or more consecutive hours to two or more patients who are not related

to the governing authority or its members by marriage, blood, or adoption.

1. The drug treatment facility may be a designated unit of a licensed health care facility providing any or all of the services specified in these rules.

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

"Family" means persons related by blood, marriage, or commitment.

"Formulary" means a list of all drugs approved for use in the facility. It may also list drugs which are considered appropriate for treating specific illnesses, or may list substitutions of chemically or therapeutically equivalent drugs for trade name prescription drugs.

"Full-time" means relating to a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation and financial viability of the facility.

"Health care facility" means a facility so defined in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

"Hospital" means a health care facility as defined in the Manual of Standards for Hospital Facilities, N.J.A.C. 8:43B.

"Intravenous infusion admixture service" means the preparation by pharmacy personnel of intravenous infusion solutions requiring compounding and/or reconstitution.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties and responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Medical record" means all records in the facility which pertain to the patient, including radiological films.

"Monitor" means to observe, watch, or check.

"Multidisciplinary team" means those persons, representing different professions, disciplines, and services, who work together to provide care to the patient.

"New Jersey Problem Oriented Treatment System" (POTS) means the instrument developed by the Department for documenting observations and information regarding the patient's health, drug abuse, legal, employment/vocational, educational, and psychosocial status.

"Nosocomial infection" means an infection acquired by a patient while in the facility.

"Patient" means any person admitted to a drug treatment facility pursuant to N.J.S.A. 26:2G-21 et seq.

"Patient treatment plan" means a written plan of patient care which contains documentation of joint planning by the multidisciplinary team. The plan is based upon the patient assessments of all services participating in the patient's care and includes care and treatment to be provided and a discharge plan. Each service that the patient receives develops its own portion of the treatment plan.

"Prescriber" means a person who is authorized to write prescriptions in accordance with Federal and State laws.

"Progress note" means a written, signed, and dated notation summarizing information about health care provided and the patient's response to it.

"Reasonable hour" means any time between the hours of 8 A.M. and 8 P.M. daily.

"Restraint" means a physical device or chemical (drug) used to limit, restrict, or control patient movements.

"Self administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed, labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

"Shift" means a time period defined as a full working day by the facility in its policy manual.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O.) of a person, legibly written with his or her own hand.

"Staff education plan" means a written plan developed at least annually and implemented throughout the year which describes a coordinated program for staff education for each service, including inservice programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

1. "Direct supervision" means supervision on the premises within view of the supervisor.

"Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number, and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.

8:42B-1.4 Qualifications of the administrator of the drug treatment facility

The administrator shall have a baccalaureate degree in administration, a social science, or a related field and two years of full-time, or full-time equivalent, administrative or supervisory experience in the field of substance abuse/chemical dependency. Two years of full-time, or full-time equivalent, administrative or supervisory experience in the field of substance abuse/chemical dependency may be substituted for each year of the four-year degree requirement. Eight years of such administrative or supervisory experience may be used to satisfy the entire degree requirement.

8:42B-1.5 Qualifications of dietitians

(a) Each dietitian shall:

1. Be registered or eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association; or

2. Have a bachelor's degree from a college or university with a major in foods, nutrition, food service or institution management, or the equivalent course work for a major in the subject area; and have completed a dietetic internship accredited by the American Dietetic Association or a dietetic traineeship approved by the American Dietetic Association or have one year of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care facility; or

3. Have a master's degree plus six months of full-time, or full-time equivalent, experience in nutrition and/or food service management in a health care facility.

8:42B-1.6 Qualifications of the director of drug counseling services

The director of drug counseling services shall have a master's degree in social work, psychology, guidance and counseling, or a related field and one year of full-time, or full-time equivalent, supervisory experience in the provision of counseling services.

8:42B-1.7 Qualifications of the director of nursing services

The director of nursing services shall be a registered professional nurse and shall have at least one year of full-time, or full-time equivalent, experience in nursing supervision and/or nursing administration in a health care facility.

8:42B-1.8 Qualifications of drug counselors

Each drug counselor shall be certified by the New Jersey Substance Abuse Counselor Certification Board as a Certified Substance Abuse Counselor; or shall have a baccalaureate degree in a social science and one year of full-time, or full-time equivalent, counseling experience.

8:42B-1.9 Qualifications of food service supervisors

(a) Each food service supervisor shall:

1. Be a dietitian; or

2. Be a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association; or

3. Be a graduate of a course, approved by the New Jersey State Department of Education, providing 90 or more hours of classroom instruction in food service supervision and have one year of full-time, or full-time equivalent, experience as food service supervisor in a health care facility, with consultation from a dietitian; or

4. Have training and experience in food service supervision and management in a military service equivalent to the programs listed in 2. or 3. above.

8:42B-1.10 Qualifications of licensed practical nurses

Each licensed practical nurse shall be so licensed by the New Jersey State Board of Nursing.

8:42B-1.11 Qualifications of the medical director

The medical director shall be a physician, as defined in N.J.A.C.

8:42B-1.16.

8:42B-1.12 Qualifications of medical record practitioners

(a) Each medical record practitioner shall:

1. Be eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART) by the American Medical Record Association; or

2. Be a graduate of a program in medical record science accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the Council on Education of the American Medical Record Association.

8:42B-1.13 Qualification of pharmacists

Each pharmacist shall be so registered, as defined in N.J.A.C. 13:39-1.1, by the New Jersey State Board of Pharmacy.

8:42B-1.14 Qualifications of psychiatrists

Each psychiatrist shall be a physician who is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc., or the American Osteopathic Board of Neurology and Psychiatry, or who has been granted privileges by the facility to provide services equal to or higher than those provided by a Board-certified or Board-eligible physician.

8:42B-1.15 Qualifications of psychologists

Each psychologist shall be so licensed by the New Jersey State Board of Psychological Examiners.

8:42B-1.16 Qualifications of physicians

Each physician shall be so licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

8:42B-1.7. Qualifications of registered professional nurses

Each registered professional nurse shall be so licensed by the New Jersey State Board of Nursing.

8:42B-1.18 Qualifications of social workers

Each social worker shall have a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:42B-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate, except upon application for, and receipt of, a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:42B-2.2 Application for licensure

(a) Following receipt of a Certificate of Need, any person, organization, or corporation desiring to operate a drug treatment 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
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625

(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 drug treatment facility and for the annual renewal of the license. If drug treatment services are offered by a licensed hospital as a separate service, the hospital shall be charged \$150.00 for the filing of an application for licensure of the service and \$150.00 for the annual renewal of the license.

(c) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program and:

Division of Narcotic and Drug Abuse Control
New Jersey State Department of Health
CN 362
Trenton, New Jersey 08625

8:42B-2.3 Newly constructed or expanded facilities

(a) The licensure application for a newly constructed or expanded facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 360
Trenton, New Jersey 08625

(b) An on-site inspection of the construction of the physical plant shall be made by representatives of the Health Facilities Construction Services and the Health Facilities Inspection Program to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

(c) Any health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

8:42B-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to 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. 8:42B-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 amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

4. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this chapter; and

5. Professional personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:42B-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or requirements are not met.

8:42B-2.6 Surrender of license

The facility shall notify each patient, the patient's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:42B-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure patient safety; and
4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:42B-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary license and facilities with a full license.

8:42B-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:42B-3.1 Services provided

(a) The facility shall provide preventive, diagnostic, therapeutic, and rehabilitative services to patients in accordance with the rules in this chapter.

(b) The facility shall provide at least medical, nursing, and drug counseling services directly in the facility.

(c) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

(d) If a hospital facility licensed by the Department provides drug treatment services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the Manual of Standards for Hospital Facilities, N.J.A.C. 8:43B.

8:42B-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Licensing, Certification and Standards Program of the Department in writing at least 30 days prior to the change and in conformance with requirements for Certificate of Need applications.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:42B-3.3 Submission and availability of documents

The facility shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing, Certification and Standards Program of the Department.

8:42B-3.4 Personnel

(a) The facility shall develop written job descriptions and ensure that personnel are assigned duties based upon their education, training, and competencies and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide patient care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

(c) The facility shall maintain written staffing patterns. Provision shall be made for substitute staff with equivalent qualifications to replace absent staff members. Staffing patterns shall be implemented

to ensure continuity of care and the provision of services consistent with the patients' rehabilitation goals.

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training.

1. All personnel shall receive orientation at the time of employment and continuing in-service education regarding emergency plans and procedures, discharge planning, and the infection prevention and control program.

(e) At least one person trained in cardiopulmonary resuscitation in an approved course, as defined in the facility's policy and procedure manual, shall be in each nursing unit at all times and in all patient areas when patients are present.

(f) The facility shall have awake and on duty at all times in each building at least two staff members, as defined in the facility's policies and procedures, for 50 or fewer patients, and at least one additional staff member for each additional 50 or fewer patients, based on the daily census.

8:42B-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement of the program's treatment philosophy, mission, and objectives, which shall include at least the following:

i. Methods for providing patients with a foundation for recovery and rehabilitation, based on personal responsibility;

ii. The concept of drug dependency having multiple causes and effects; and

iii. Provision of services for the management of physical and mental signs and symptoms of withdrawal from drugs;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and patient care services of the facility;

3. A description of the modalities of treatment provided, including a listing of services and procedures which may and may not be performed in the facility;

4. A description of the quality assurance program for patient care and staff performance;

5. Specification of business hours and visiting hours;

6. Policies and procedures for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq., including, but not limited to, the following:

i. The designation of a staff member(s) to be responsible for coordinating the reporting of diagnosed and/or suspected cases of child abuse and/or neglect, recording the notification to the Division of Youth and Family Services on the medical record, and serving as a liaison between the facility and the Division of Youth and Family Services;

ii. The development of written protocols for the identification and treatment of abused and/or neglected children; and

iii. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures on at least an annual basis;

7. Policies and procedures for the maintenance of confidential personnel records for each employee, including at least his or her name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, and evaluations of job performance;

8. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and persons providing direct patient care services through contractual arrangements or written agreement. Such policies and procedures shall ensure that:

i. Each employee who cannot document the result of a previous rubella screening test shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test approved by the Department. Each new employee who cannot document the result of a previous rubella screening test shall be given the rubella screening test upon employment. An employee who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine shall not be required to have a rubella screening test;

(1) Each employee tested shall be informed in writing by the facility of the results of his or her rubella screening test;

(2) Each employee's personnel record shall contain documentation of all tests performed and the results; and

(3) A list shall be maintained of all employees who are seronegative and unvaccinated, to be used in the event that an employee is exposed to rubella and a determination is needed as to whether or not the employee may continue to work;

9. A written plan for outreach services, including, but not limited to, the following:

i. Methods of informing persons in need of drug treatment services, the public, and health care providers of the availability of the facility's services;

ii. Methods of assisting persons in making use of the facility's services; and

iii. Designation of staff responsible for outreach services; and

10. Policies and procedures for making information about drug use and misuse available to the public.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

8:42B-3.6 Patient transportation

The facility shall develop and implement a method of patient transportation for services provided outside the facility which shall include plans for security and accountability for the patient and his or her personal possessions, as well as transfer of patient information to and from the provider of the service.

8:42B-3.7 Written agreements

The facility shall have a written agreement, or its equivalent, for services not provided directly by the facility. The written agreement, or its equivalent, shall specify that the facility retain administrative responsibility for services rendered and require that services be provided in accordance with the rules in this chapter.

8:42B-3.8 Reportable events

(a) The facility shall notify the Department immediately by telephone at 609-588-7725 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption or cessation of services listed in the rules in this chapter;

2. Termination of employment of the administrator, and the name and qualifications of his or her replacement;

3. Occurrence of epidemic disease in the facility;

*Copies of the law can be obtained from the local district office of the Division of Youth and Family Services (DYFS) or from the Office of Program Support, Division of Youth and Family Services, New Jersey State Department of Human Services, CN 717, Trenton, New Jersey 08625.

4. All fires, all disasters, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to patients and/or personnel, disruption of services, and extent of damages; and

5. All alleged or suspected crimes committed by or against patients, which shall also be reported at the time of occurrence to the local police department in accordance with federal laws regarding confidentiality (42 CFR §2.1).

(b) All patients admitted to the facility pursuant to N.J.S.A. 26:2G-21 et seq. shall be reported to the Division of Narcotic and Drug Abuse Control of the Department on the Client Oriented Data Acquisition Process (CODAP) form.

(c) In the event that children of patients remain in the facility as boarders, the facility shall notify the Licensing, Certification and

Standards Program of the Department and adhere to the criteria established by the Division of Narcotic and Drug Abuse Control.

8:42B-3.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility between 8:00 A.M. and 8:00 P.M. daily to patients and the public:

1. All waivers granted by the Department;

2. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding patient rights;

4. Visiting hours (including at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily) and business hours of the facility, including the policies of the facility regarding limitations and activities during these times; and

5. The names and addresses of the members of the governing authority.

8:42B-3.10 Information reportable to State Board of Medical Examiners

(a) In compliance with N.J.S.A. 26:2H-12.2, the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing, on forms provided by the Department, within 30 days of the proceeding or action, request, settlement, judgment or award. Forms shall be submitted to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. (Questions may be directed to the Board office at (609) 292-4843.) The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing authority action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board;

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgment or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgment, or award; and

vi. Other information relating to the settlement, judgment, or arbitration award as may be required by the Board.

8:42B-3.11 Maintenance of records

(a) The following records shall be maintained by the facility:

1. A chronological listing of patients admitted and discharged, including the destination of patients who are discharged; and

2. Statistical data as required by the Department.

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8:42B-3.12 Financial reports

(a) Upon development of a uniform cost reporting system approved by the Health Care Administration Board, the facility shall adopt and maintain the uniform system of cost reporting from which reports will be prepared to meet the requirements of the Commissioner as stated in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(b) An annual financial report shall be submitted to the Department and shall include a statement of income and expenditure by unit of service.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:42B-4.1 Responsibility of the governing authority

(a) The facility shall have a governing authority which shall assume legal responsibility for the management, operation, and financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;
2. Provision of a safe physical plant equipped and staffed to maintain the facility and services;
3. Adoption and documented review of written bylaws, or their equivalent, according to a schedule established by the governing authority;
4. Appointment, reappointment, assignment of privileges, and curtailment of privileges, and written confirmation of such actions;
5. Development and documented review of all policies and procedures, according to a schedule established by the governing authority;
6. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified within the facility. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;
7. Determination of the frequency of meetings of the governing authority and its committees, or their equivalents, holding such meetings, and documenting them through minutes;
8. Delineation of the duties of the officers of any committees, or their equivalents, of the governing authority. When the governing authority establishes committees or their equivalents, their purpose, structure, responsibilities, and authority, and the relationship of the committee or its equivalent to other entities within the facility shall be documented;
9. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or their equivalents; and
10. Approval of the medical staff bylaws or their equivalent.

SUBCHAPTER 5. ADMINISTRATION

8:42B-5.1 Appointment of administrator

(a) The governing authority shall appoint a full-time administrator who shall be available on the premises of the facility at all times. An alternate shall be designated in writing to act in the absence of the administrator.

(b) If an administrator has both administrative and other functions, written documentation of the administrator's time in the other functions shall be maintained.

(c) The administrator's hours shall not be included in computation of staffing ratios for nursing or counseling services.

8:42B-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;
2. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the facility;
3. Participating in the quality assurance program for patient care;
4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;

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5. Ensuring the provision of staff orientation and staff education; and

6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families.

SUBCHAPTER 6. PATIENT CARE POLICIES

8:42B-6.1 Patient care policies and procedures

(a) Written patient care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures regarding the following:

1. Patient rights;
2. The determination of staffing levels on the basis of patient need;
3. The referral of patients to other health care providers, including medical consultants and specialists, in order to provide a continuum of patient care, and to law enforcement agencies;
4. Emergency care of patients, including notification of the patient's family; care of patients during an episode of communicable disease; and care of patients with tuberculosis which is not communicable following initiation of chemotherapy, or is nonpulmonary and therefore not transmissible;
5. Obtaining written informed consent and the circumstances under which written informed consent shall be obtained;
6. Patient instruction and health education, including the provision of printed and/or written instructions and information for patients, with multilingual instructions as indicated;
7. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and N.J.S.A. 26:3D-7 et seq.;
8. Discharge, termination by the facility, transfer, and readmission of patients, including criteria for each;
9. The care and control of pets if the facility permits pets in the facility or on its premises;
10. Patients leaving the facility, including delineation of the person(s) who shall accompany the patient and permitted destinations;
11. Provision of clothing suitable for the climate and weather conditions, of proper size, and compatible with that worn by the patient's peers, in the event that clothing is provided by the facility;
12. The housekeeping activities which a patient may perform as part of his or her patient treatment plan, as documented in the patient's medical record; and
13. Care of deceased patients, including, but not limited to, policies and procedures regarding the following:
 - i. Pronouncement of death. The patient's family shall be notified at the time of death. The deceased shall not be discharged from the facility until pronounced dead and the death documented in the patient's medical record;
 - ii. Removal of the deceased from rooms occupied by other patients; and
 - iii. Transportation of the deceased in the facility, and removal from the facility, in a dignified manner.

8:42B-6.2 Financial arrangements

(a) The facility shall:

1. Inform patients of the fees for services and supplies (where a fee is charged);
2. Maintain a written record of all financial arrangements with the patient and/or his or her family, with copies furnished to the patient;
3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:
 - i. Upon written approval and authority of the patient and/or his or her family, who shall be given a copy of the written approval; or
 - ii. Upon written orders of the patient's physician, stipulating specific services not included in the admission agreement; or
 - iii. Upon 15 days' prior written notice to the patient and/or his or her family of additional charges, expenses, or other financial liabilities due to the increased cost of maintenance and/or operation of the facility; or

iv. In the event of a health emergency involving the patient and requiring immediate, special services or supplies to be furnished during the period of the emergency;

4. Describe for the patient agreements with third-party payors and/or other payors and referral systems for patients' financial assistance; and

5. Describe sliding fee scales and any special payment plans established by the facility.

8:42B-6.3 Admission and retention of patients

(a) The administrator or his or her designee shall conduct an interview with the patient and his or her family prior to or at the time of the patient's admission. The interview shall include at least orientation of the patient to the facility's policies, business hours, fee schedule, services provided, patient rights, and criteria for admission, treatment, and discharge. A summary of the interview shall be documented in the patient's medical record.

(b) Each patient admitted shall be placed under the supervision of a physician.

(c) Each patient, upon admission, shall be certified by a physician to be free of communicable disease, mobile under his or her own power with or without assistive devices, and able to leave the building by himself or herself, except in a facility licensed by the Department to provide acute medical detoxification services.

(d) Unconscious persons shall not be admitted to the facility, unless the facility is licensed by the Department to provide acute medical detoxification services. Such persons who are not admitted shall be immediately transferred to a hospital.

(e) Patients requiring acute medical detoxification shall be admitted only to facilities licensed by the Department to provide acute medical detoxification services.

(f) A patient who manifests such a degree of behavioral disorder that he or she is a danger to himself or herself or others, or whose behavior interferes with the health or safety of other patients, shall not be admitted or retained.

(g) If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or his or her family shall be given the reason for such denial in writing, signed by the administrator, within 15 days.

(h) Each patient shall be admitted or retained only upon his or her own volition.

8:24B-6.4 Involuntary discharge

(a) Written notification by the administrator shall be provided to a patient of a decision to involuntarily discharge the patient from the facility. The notice shall include the reason for discharge and the patient's right to appeal. A copy of the notice shall be entered in the patient's medical record.

1. The patient shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing and a copy shall be included in the patient's medical record with the disposition or resolution of the appeal.

8:42B-6.5 Evaluation for drug usage

(a) In facilities dispensing methadone, each patient shall be evaluated for drug usage by monthly urinalysis for opiates, methadone, amphetamines, cocaine, and barbiturates, as well as for other drugs, as indicated.

(b) In facilities which do not dispense methadone, each patient shall be evaluated upon admission and periodically thereafter for drug usage by urine surveillance in accordance with a schedule approved by the Department.

8:42B-6.6 Services and practices

(a) Verbal and telephone orders shall be written into the patient's medical record by the person accepting them and countersigned by the prescriber within 24 hours. Verbal and telephone orders shall be limited to emergency situations, as defined in the facility's policies and procedures.

(b) The patient's family shall be notified in the event that the patient sustains any injury requiring medical care, any accident or incident occurs, or the patient expires, in accordance with the facility's policies and procedures. Such notification shall be given and

then documented in the patient's medical record, at the time of occurrence.

(c) The facility shall not use any physical, chemical, or other type of restraint, unless the facility is licensed by the Department to provide acute medical detoxification services.

1. If restraints are used, the facility shall develop and implement policies and procedures regarding their use including, as a minimum:

i. Specification of the uses of restraints and types of restraints permitted, specification of the frequency with which a patient placed in restraint shall be monitored and of the personnel responsible for monitoring the patient, and specification of the required documentation;

ii. Prohibition of the use of locked restraints and confinement of a patient in a locked or barricaded room, and prohibition of the use of restraints for punishment or for the convenience of facility personnel;

iii. Specification that restraints be used so as not to cause physical injury or discomfort to the patient. Opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two-hour period in which a physical restraint is employed, to ensure opportunity for elimination of body wastes, good body alignment, circulation, and change of position; and

iv. A requirement that a physical restraint be used only when authorized in writing by a physician for a specified period of time except when necessitated by an emergency, in which case it shall be approved by the medical director or the director of nursing services or his or her designee.

(d) All instruments of measurement shall be calibrated in accordance with manufacturers' instructions.

(e) The facility shall provide interpretation services, if the patient population is non-English-speaking, and for patients who are blind or deaf.

SUBCHAPTER 7. MEDICAL SERVICES

8:42B-7.1 Provision of medical services

Medical services shall be available to all patients at all times.

8:42B-7.2 Appointment of medical director

(a) The governing authority shall appoint a physician to serve as medical director.

(b) The medical director or his or her alternate, who shall be a physician, shall be available to patients 24 hours a day, seven days a week. Available, in this instance, means capable of being reached and able to be present at the facility within 30 minutes.

(c) If the facility is licensed to provide acute medical detoxification services, the medical director or his or her alternate shall be on the facility's premises daily, seven days a week.

8:42B-7.3 Medical director's responsibilities

(a) The medical director shall be responsible for the direction, provision, and quality of medical services provided to patients. He or she shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the medical service;

2. Participating in planning and budgeting for the medical service;

3. Coordinating and integrating the medical service with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for the medical staff, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Developing, implementing, and reviewing written medical policies in cooperation with the medical staff, including, but not limited to, the following:

i. Medical staff bylaws or their equivalent;

ii. A plan for medical staff meetings and their documentation through minutes; and

iii. A mechanism for establishing and implementing procedures relating to credentials review, delineation of qualifications, medical staff appointments and reappointments, evaluation of medical care, and the granting, denial, curtailment, suspension, or revocation of medical staff privileges.

8:42B-7.4 Responsibilities of physicians

(a) The physician responsible for providing care to the patient shall document in the patient's medical record:

1. An admission, medical, drug, and alcoholism history and a report of a physical examination upon the patient's admission;
2. Certification that the patient requires the level of care provided by the facility;
3. Orders for laboratory tests including at least the following:
 - i. Complete blood count and differential;
 - ii. Serological test for syphilis;
 - iii. Routine and microscopic urinalysis;
 - iv. Australian antigen (HbAg testing [HAA testing]) as appropriate;
 - v. Smear and culture for gonorrhea as appropriate; and
 - vi. A Mantoux tuberculin skin test with five tuberculin units of purified protein derivative;

(1) If the Mantoux tuberculin skin test reaction is less than 10 mm of induration (negative), the test shall be repeated one to three weeks later;

(2) If the first or second Mantoux tuberculin skin test reaction is 10 or more mm of induration (positive), a chest X-ray shall be performed, followed by chemoprophylaxis therapy, when prescribed by a physician;

4. The medical portion of the patient treatment plan;
5. Progress notes; and
6. All initial and subsequent orders for services to be provided to the patient, including frequency and modality of treatment.

(b) The physician shall participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

8:42B-7.5 Availability of a psychiatrist

A psychiatrist shall be available to the facility.

SUBCHAPTER 8. NURSING SERVICES**8:42B-8.1 Provision of nursing services**

(a) Nursing services shall be available to all patients 24 hours a day, seven days a week.

(b) The facility shall have at least one registered professional nurse available at all times. Available in this instance means capable of being reached and able to be present at the facility within 30 minutes. Additional licensed nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

(c) A facility providing acute medical detoxification services shall provide at least one registered professional nurse on each nursing unit 24 hours a day, seven days a week. Additional licensed nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

8:42B-8.2 Appointment of director of nursing services

A registered professional nurse shall be appointed in writing as the director of nursing services. A registered professional nurse shall be designated in writing to act in the director's absence.

8:42B-8.3 Responsibilities of director of nursing services

(a) The director of nursing services shall be responsible for the direction, provision, and quality of nursing services provided to patients. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, philosophy, policies, a procedure manual, an organizational plan, and a quality assurance program for the nursing service;
2. Participating in planning and budgeting for the nursing service;
3. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;
4. Assisting in developing and maintaining written job descriptions for nursing and ancillary nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions; and
5. Ensuring that nursing services are provided to the patient as specified in the nursing portion of the patient treatment plan, which

shall be initiated upon the patient's admission, and that nursing personnel are assigned to patients in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

8:42B-8.4 Responsibilities of licensed nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., as interpreted by the New Jersey State Board of Nursing, and written job descriptions, licensed nursing personnel shall be responsible for providing nursing care, including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;
2. Care toward prevention of infection, accident, and injury;
3. Assessing the nursing care needs of the patient, preparing the nursing portion of the patient treatment plan based upon the assessment, providing nursing care services as specified in the nursing portion of the patient treatment plan, reassessing the patient, and revising the nursing portion of the patient treatment plan. The initial assessment shall be performed by a registered professional nurse. Each of these activities shall be documented in the patient's medical record;
4. Teaching, supervising, and counseling the patient, family and staff regarding nursing care and the patient's needs. Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel;
5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and
6. Writing clinical notes and progress notes.

8:42B-8.5 Nursing care services related to pharmaceutical services

(a) Nursing personnel shall be responsible for, but not limited to, ensuring the following:

1. All drugs administered are prescribed in writing and the order signed and dated by the prescriber. ("Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-1.1.) Drugs shall be administered in accordance with all Federal and State laws and rules by the following licensed or authorized nursing personnel:
 - i. Registered professional nurses;
 - ii. Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing;
 - iii. Nurses with a valid temporary work permit issued by the New Jersey State Board of Nursing; and
 - iv. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing, under the supervision of a nurse faculty member;
2. Vital signs, as defined in the facility's policies and procedures, are measured prior to drug administration;
3. Drugs are not prepped. Drugs shall be administered promptly after the dose has been prepared, and by the individual who prepared the dose, except when a unit dose drug distribution system is used;
4. The patient is identified prior to drug administration. Drugs prescribed for one patient shall not be administered to another patient;
5. A record of drugs administered is maintained. After each drug administration, the following shall be documented by the nurse who administered the drug: name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the nurse who administered the drug;
6. All drugs are kept in locked storage areas, except intravenous infusion solutions which shall be stored according to a system of accountability, as specified in the facility's policies and procedures. Drug storage and preparation areas shall be kept locked when not in use. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room. The refrigeration shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements;
7. Drugs for external use are kept separate from drugs for internal use;

8. Needles and syringes are procured, stored, used, and disposed of in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal; and

9. Drugs are stored and verified according to the following:

i. Drugs in Schedules III and IV of the Controlled Dangerous Substances Acts and amendments thereto shall be stored under lock and key. Drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs (except that drugs in Schedule II in a unit dose drug distribution system shall be kept under double lock and key, but may be stored with other controlled drugs);

ii. The keys for the storage compartments for drugs in Schedules II, III, and IV shall be kept on a person who meets the criteria listed in 1 above; and

iii. Except in a unit dose drug distribution system, a declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be made at the termination of each tour of duty wherever these drugs are maintained. This record shall be signed by both the outgoing and incoming nurses who shall meet the criteria listed in 1 above. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered, method of administration, signature of the licensed nurse who administered the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the nurse who witnessed the destruction or wasting of the drug (when appropriate).

(b) Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing may calculate and administer drug doses in accordance with facility policy, N.J.A.C. 8:42B-13.2(a)3vii, and the rules and policies of the New Jersey State Board of Nursing.

SUBCHAPTER 9. PATIENT ASSESSMENTS AND TREATMENT PLAN

8:42B-9.1 Patient assessment

(a) Each patient shall have a written patient treatment plan. The patient treatment plan shall be developed from the assessments of each service participating in the patient's care and shall be entered in the patient's medical record. Treatment planning shall be initiated upon the patient's admission.

1. The patient assessment shall include, but not be limited to, assessment of the medical, psychological, social, legal, and vocational and educational needs of the patient, including the following:

i. A medical, drug, and alcoholism history, including current physiological dependence on drugs and duration of the addiction or abuse, and a record of a physical examination;

ii. A psychological assessment, including, but not limited to, a history of psychological problems or treatment and a determination of the patient's current psychological status;

iii. A psychiatric assessment, if ordered by a physician;

iv. A social assessment of the patient's family circumstances and relationships and the patient's current living situation;

v. A legal assessment, as indicated by the New Jersey Problem Oriented Treatment System, including at least the following:

(1) Legal history and current legal situation;

(2) Estimation of the effect which the patient's legal situation will have upon his or her progress in treatment. (Note: No part of this rule is intended to contravene any established laws or rules of court or any principle of ethics related to the practice of law. Where a conflict exists between this rule and the laws or rules of court or ethical principles, said laws, rules, or principles shall prevail.)

vi. A vocational and educational assessment, including assessment of at least the following:

(1) Current work skills and potential for improving those skills or developing new ones;

(2) Educational background;

(3) Aptitudes, interests, and motivation;

(4) Physical abilities and any handicaps or disabilities; and

(5) Relationship with co-workers and supervisors.

2. Health care practitioners in each of the services participating in the patient's care shall develop the portion of the patient treatment plan which pertains to that service. Each portion of the patient treatment plan shall include care to be provided based upon the patient assessment.

3. The patient treatment plan shall be coordinated and maintained by the patient's assigned drug counselor. The patient treatment plan shall include, but not be limited to, the following:

i. Orders for treatment or services, medications, and diet;

ii. The patient's goals for himself or herself;

iii. The specific goals of treatment or services;

iv. The time intervals at which the patient's response to treatment or services will be reviewed;

v. Anticipated time frame(s) for the accomplishment of the rehabilitation goals;

vi. The measures to be used to assess the effects of treatment or services;

vii. Plans for discharge; and

viii. The person(s) responsible for implementation of the plan.

4. The patient and, if indicated, family members shall participate in the development of the patient treatment plan, including the discharge plan. Participation shall be documented in the patient's medical record.

i. If the patient's participation in the development of the patient treatment plan is medically contraindicated, as documented by a physician in the patient's medical record, a designated member of the multidisciplinary team shall review the treatment plan with the patient prior to implementation, and the family shall be informed of the treatment plan.

8:42B-9.2 Implementation of treatment plans

(a) Each health care practitioner participating in the patient's care shall provide services in accordance with the patient treatment plan.

(b) Health care practitioners providing services to the patient shall establish criteria to measure the effectiveness and outcome of services provided and shall assess and reassess the patient to determine if services provided meet the established criteria. Assessment and reassessment shall be documented in the patient's medical record.

(c) Health care practitioners providing services to the patient shall participate as members of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

1. The multidisciplinary team shall review and revise the patient treatment plan based upon the patient's response to the care provided by each of the participating services and upon the patient's abilities and disabilities. The patient's medical record shall indicate review and revision of the patient treatment plan.

SUBCHAPTER 10. DRUG COUNSELING SERVICES AND SUPPORTIVE SERVICES

8:42B-10.1 Provision of drug counseling and supportive services

(a) Drug counseling services shall be provided on the premises to meet the needs of patients.

(b) Staffing, equipment, and space for the provision of drug counseling and supportive services shall be provided.

(c) Each patient shall be assigned to a drug counselor who shall be responsible for ensuring that drug counseling services and supportive services are provided in accordance with the patient treatment plan.

8:42B-10.2 Staffing

(a) There shall be a ratio of at least one drug counselor for every 12 patients, calculated on the basis of the daily census.

(b) The facility shall provide to each patient at least 10 hours of formalized counseling per week, utilizing individual, family, and group counseling techniques. Formalized counseling may be

provided by the director of drug counseling services, drug counselors, nurses, psychologists, or physicians, including psychiatrists.

(c) A facility providing acute medical detoxification services shall provide drug counseling as ordered by a physician, who shall specify in the patient's medical record when to initiate counseling and the frequency of counseling.

8:42B-10.3 Appointment of director of drug counseling services

(a) The facility shall appoint a director of drug counseling services who shall be responsible for the direction, provision, and quality of drug counseling services. He or she shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the drug counseling service;
2. Participating in planning and budgeting for the drug counseling service;
3. Ensuring that services are provided as specified in the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient;
4. Assisting in developing and maintaining written job descriptions for drug counseling personnel, and assigning duties based upon education, training, competencies, and job descriptions; and
5. Participating in staff education activities and providing consultation to facility personnel.

8:42B-10.4 Responsibilities of drug counseling personnel

(a) In accordance with written job descriptions, each drug counselor shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the counseling needs of the patient, preparing the counseling portion of the patient treatment plan based on the assessment, providing services as specified in the counseling portion of the patient treatment plan, reassessing the patient, and revising the counseling portion of the patient treatment plan. Each of these activities shall be documented in the patient's medical record;
2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and
3. Writing clinical notes and progress notes.

8:42B-10.5 Supportive services

(a) The following supportive services shall be available to patients:

1. Vocational and educational counseling; and
2. Legal services by an attorney, who practices law pursuant to Article 6, Section 2, and Paragraph 3 of the Constitution of the State of New Jersey, and New Jersey Court Rule 1:21-1 et seq., when such services are related to the patient's treatment, as determined by the legal assessment.

(b) The administrator shall assign responsibility for the coordination and delivery of supportive services to one or more persons, in accordance with written job descriptions, the written organizational plan, and the facility's policies and procedures.

(c) All supportive services shall be provided in accordance with the patient treatment plan.

1. All supportive services shall be documented in the patient's medical record by the person(s) providing the service(s).

(d) Each patient and his or her family shall be informed of the desirability of participating in support groups. The facility shall further ensure that literature and representatives of support groups are available to patients and their families. Patients and their families shall have access to meetings of support groups.

SUBCHAPTER 11. RECREATIONAL SERVICES

8:42B-11.1 Provision of recreational services

(a) A planned, diversified program of recreational activities shall be provided for patients, including individual and/or group activities.

(b) Diverse physical, social, intellectual, religious, cultural, and recreational activities shall be available.

(c) Indoor and outdoor recreational activities shall be provided.

8:42B-11.2 Administrator's responsibilities

(a) The administrator or his or her designee shall be responsible for the direction, provision, and quality of the recreational service. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the recreational service;
2. Ensuring that recreational services are provided as specified in the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient. All recreational services shall be documented in the patient's medical record;
3. Assisting in developing and maintaining written job descriptions for recreational service personnel, and assigning duties based upon education, training, competencies, and job descriptions; and
4. Posting a current weekly recreational activities schedule where it can be read by patients and staff.

SUBCHAPTER 12. LABORATORY AND RADIOLOGICAL SERVICES

8:42B-12.1 Provision of laboratory and radiological services

(a) The facility shall make available laboratory and radiological services directly or through written agreement.

(b) All laboratory services shall be provided by facilities licensed or approved by the Department.

(c) Radiological services shall be provided by facilities licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of Radiation Protection.

SUBCHAPTER 13. PHARMACEUTICAL SERVICES

8:42B-13.1 Provision of pharmaceutical services

(a) Pharmaceutical services shall be available to patients at all times. If the facility has an institutional pharmacy, the pharmacy shall be licensed by, and operated in accordance with, the New Jersey State Board of Pharmacy and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the Department in accordance with the Controlled Dangerous Substances Acts.

(b) If a patient requires medication, as documented by a physician in the patient's medical record, the medication shall be kept in a locked storage area. (The word "medication" is used interchangeably with the word "drug" in this subchapter. "Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-1.1.)

8:42B-13.2 Facilities providing acute medical detoxification services

(a) Facilities providing acute medical detoxification services shall adhere to the following:

1. A pharmacist shall be appointed as director of pharmaceutical services or as consultant pharmacist and shall be responsible for the direction, provision, and quality of pharmaceutical services. He or she shall be responsible for, but not limited to, the following:

- i. Together with the Pharmacy and Therapeutics Committee, developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the pharmaceutical service;
- ii. Participating in planning and budgeting for the pharmaceutical service;
- iii. Coordinating and integrating the pharmaceutical service with other patient care services to provide a continuum of care for the patient;
- iv. Assisting in developing and maintaining written job descriptions for pharmacy personnel, if any, and assigning duties based upon education, training, competencies, and job descriptions;
- v. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;
- vi. Providing a report at least twice a year to the Pharmacy and Therapeutics Committee of the facility's pharmaceutical service, including at least an analysis of any incident reports relating to drug therapy, and results of the pharmacist's inspection of all areas in the facility where drugs are dispensed, administered, or stored;

vii. Maintaining a means of identifying the signatures of all prescribers authorized to use the pharmaceutical service for prescriptions; and

viii. Maintaining records of the transactions of the pharmaceutical service, as required by Federal, State, and local laws, to ensure control and accountability of all drugs. This shall include a system of controls and records for the requisitioning and dispensing of pharmaceutical supplies to all services of the facility;

2. A multidisciplinary Pharmacy and Therapeutics Committee shall be appointed by, and accountable to, the governing authority. The committee shall meet at least twice a year as specified in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-7.15. The committee shall be responsible for, but not limited to, the following:

i. Development of policies and procedures, approved by the governing authority, and documentation of their review. These policies and procedures shall govern evaluation, selection, obtaining, dispensing, storage, distribution, administration, use, control, accountability, and safe practices pertaining to all drugs used in the treatment of patients;

ii. Development and at least annual review and approval of a current formulary; and

iii. Approval of the minimal pharmaceutical reference materials to be retained at each nursing unit, those to be kept in the pharmacy and made available to at least nursing personnel and the medical staff, and methods for communicating product information to at least nursing personnel and the medical staff;

3. The facility's policies and procedures shall ensure that the right drug is administered to the right patient in the right amount through the right route of administration and at the right time. Policies and procedures shall include, but not be limited to, the following:

i. Policies and procedures for the implementation of a unit dose drug distribution system;

(1) The facility shall have a unit dose drug distribution system. At least one exchange of patient medications shall occur every three days. The number of doses for each patient shall be sufficient for a maximum of 72 hours. No more than a 72-hour supply of doses shall be delivered to or available in the patient care area at any time;

(2) Cautionary instructions and additional information, such as special times of administration, regarding dispensed medications shall be transmitted to the personnel responsible for the administration of the medications;

(3) If the facility repackages medications in single unit packages, the facility's policies and procedures shall indicate how such packages shall be labeled to identify the lot number or reference code and the manufacturer's or distributor's name; and

(4) Policies and procedures shall specify the drugs which will not be obtained from manufacturers or distributors in single unit packages and will not be repackaged as single units in the facility;

ii. Methods for procuring drugs on a routine basis, in emergencies, and in the event of disaster;

iii. Policies and procedures, approved by the Pharmacy and Therapeutics Committee and in accordance with these rules, regarding emergency kits and emergency carts, include the following:

(1) Approval of their locations and contents;

(2) Determination of the frequency of checking contents, including expiration dates;

(3) Approval of the assignment of responsibility for checking contents; and

(4) A requirement that emergency kits be secure but not be kept under lock and key;

iv. Policies and procedures, approved by the medical staff of the facility, to ensure that all drugs are ordered in writing, that the written order specifies the name of the drug, dose, frequency, and route of administration, that the order is signed and dated by the prescriber, and that all drugs are administered in accordance with the laws of the State of New Jersey;

v. Policies and procedures regarding the clarification of drug orders, including a definition of "clarification";

vi. A policy that only a pharmacist, or other pharmacy personnel under the direction and supervision of a pharmacist (in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C.

13:39-2.1), shall compound, prepare, label, or dispense drugs, make labeling changes, or transfer drugs to different containers;

vii. Policies and procedures for doses of drugs that may be calculated and administered by licensed practical nurses. A licensed practical nurse may:

(1) Administer drugs orally, subcutaneously, and intramuscularly, according to the unit dosage labeling;

(2) Administer drugs that require uncomplicated calculations. An uncomplicated calculated dose means a drug dose that requires mathematical computation because the amount of drug to be given differs from the dose that has been supplied for administration. The amount of drug prescribed may be: smaller than that supplied, requiring administration of a fractional part of the drug; or larger than that supplied, requiring administration of more than one tablet, milliliter, or other measurement; and

(3) Administer fractional doses that have been precalculated when the dose to be administered is noted on the vial or container;

viii. Policies and procedures for drug administration, including, but not limited to, establishment of the times for administration of drugs prescribed;

ix. If facility policy permits, policies and procedures regarding self-administration of drugs, including, but not limited to, the following:

(1) A requirement that self-administration be permitted only upon a written order of the prescriber;

(2) Storage of drugs;

(3) Labeling of drugs;

(4) Methods for documentation in the patient's medical record of self-administered drugs;

(5) Training and education of patients in self-administration and the safe use of drugs; and

(6) Establishment of precautions so that patients do not share their drugs or take the drugs of another patient;

x. If facility policy permits, policies and procedures regarding the previously acquired drugs of patients. A written order signed by the prescriber shall be required for the administration of such drugs. The drugs shall be given to the pharmacist for identification of contents and dispensing origin, and for labeling for use in the facility;

xi. Policies and procedures regarding drugs brought into the facility by a patient and not authorized in writing by the prescriber;

xii. Policies and procedures for documenting and reviewing adverse drug reactions, medication errors, and drug defects;

(1) Allergies shall be documented in the patient's medical record and on its outside front cover; and

(2) Drug product defects shall be reported in accordance with the USP-FDA (United States Pharmacopoeia, Food and Drug Administration) Drug Product Defect Reporting System;

xiii. Policies and procedures for unused controlled and noncontrolled drugs. Drugs in opened containers, in containers with broken seals, or in containers missing drug source and exact identification (for example, control lot number) shall be returned to the pharmacy to be replaced, disposed of, or immediately destroyed, in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39;

xiv. Policies and procedures for ensuring the immediate delivery of stat. doses. (Stat. (statim) means immediately);

xv. In the event that a pharmacist is not present in the facility, policies and procedures to ensure that drugs are removed as needed from the pharmacy in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-7.12;

xvi. If facility policy permits, policies and procedures for the use of floor stock drugs. "Floor stock" means a supply of drugs provided by the pharmacist to a service or unit in a labeled container in limited quantities, as approved by the Pharmacy and Therapeutics Committee of the facility. A list shall be maintained of floor stock drugs and their amounts stored throughout the facility;

xvii. Policies and procedures for discontinuing drug orders, including, but not limited to, policies and procedures for the following:

(1) The length of time drug orders may be in effect, for drugs not specifically limited as to duration of use or number of doses when ordered, including intravenous infusion solutions; and

(2) Notification of the prescriber by specified personnel and within a specified period of time prior to the expiration of a drug order to ensure that the drug is discontinued if no specific renewal is ordered;

xviii. Policies and procedures for the use of intravenous infusion solutions. The facility shall have an intravenous infusion admixture service operated by the pharmaceutical service. If the preparation, sterilization, and labeling of parenteral medications and solutions are performed in the exempt areas within the facility, as specified by facility policy, but not under direct supervision of a pharmacist, the pharmacist shall be responsible for providing written guidelines and for approving the procedures. Policies and procedures for the use of intravenous infusion solutions shall include, but not be limited to, the following:

(1) Safety measures for the preparation, sterilization, and admixture of intravenous infusion solutions. These shall be prepared only by a pharmacist or by pharmacy personnel under the direction and supervision of a pharmacist (in accordance with the New Jersey Board of Pharmacy Rules, N.J.A.C. 13:39-2.1), and under a laminar air flow hood, except in patient care areas specified by facility policy;

(2) Quality control procedures for laminar air flow hoods, including cleaning of the equipment used on each shift, microbiological monitoring as required by the infection prevention and control policies and procedures of the facility, and documented checks at least every 12 months for operational efficiency; and

(3) Policies and procedures for the labeling of intravenous infusion solutions, such that a supplementary label is affixed to the container of any intravenous infusion solution to which drugs are added. The label shall include the patient's first and last name and room number; the name of the solution; the name and amount of the drug(s) added; the date and time of the addition; the date, time, and rate of administration; the name or initials of the pharmacy personnel who prepared the admixture; the name, initials, or identifying code of the pharmacist who prepared or supervised preparation of the admixture; supplemental instructions, including storage requirements; and the expiration date of the solution;

xix. Policies and procedures regarding the use of initials or identifying codes of pharmacy personnel, if any. If facility policy permits the use of initials or identifying codes by pharmacy personnel, a list shall be maintained of these initials or identifying codes and the corresponding printed or typed names and signatures. Each entry shall be retained for a period of at least five years after the date of termination of the person's employment;

xx. If facility policy permits, policies and procedures for drug research and the use of investigational drugs, in accordance with Federal and State rules and regulations, including, but not limited to, the following:

(1) Policies and procedures for the use, storage, control, and distribution of investigational drugs. The pharmacy shall be accountable for drug storage, control, and distribution;

(2) Authorization of personnel who shall administer investigational drugs;

(3) Procedures for notification of personnel who administer investigational drugs, or who have patients receiving them, that the drugs are approved for investigational purposes;

(4) Procedures for the provision of information to personnel concerning investigational drugs, including their side effects, actions, uses, and symptoms of toxicity;

(5) Establishment of a central location, such as the pharmacy, for the maintenance of information on investigational drugs; and

(6) Authorization of personnel who shall have access to information concerning investigational drugs;

xxi. If drug dispensing devices are used in the facility, policies and procedures for their limited and restricted use, in accordance with N.J.A.C. 13:39-7.20 of the New Jersey State Board of Pharmacy Rules;

xxii. Policies and procedures regarding the purchase, storage, safeguarding, accountability, use, and disposition of drugs, in accordance with New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and the Controlled Dangerous Substances Acts and amendments thereto;

xxiii. Policies and procedures for the procurement, storage, use, and disposition of needles and syringes, in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the purchase, storage, and distribution of needles and syringes. There shall be a system of accountability

for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal;

xxiv. Policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and all other Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. Such policies and procedures shall include, but not be limited to, the following:

(1) Provision for a verifiable record system for controlled drugs;

(2) Policies and procedures to be followed in the event that the inventories of controlled drugs cannot be verified or drugs are lost, contaminated, unintentionally wasted, or destroyed. A report of any such incident shall be written and signed by the persons involved and any witnesses present; and

(3) In all areas of the facility where drugs are dispensed, administered, or stored, procedures for the intentional wasting of controlled drugs, including the disposition of partial doses, and for documentation. A second person shall witness the disposition;

xxv. Policies and procedures for the maintenance of records of prescribers' Drug Enforcement Administration numbers for New Jersey;

xxvi. Policies and procedures to ensure that all drugs are kept in locked storage areas, except intravenous infusion solutions, which shall be stored according to a system of accountability specified in the facility's policies and procedures;

xxvii. Specification of the information on drugs, their indications, contraindications, actions, reactions, interactions, cautions, precautions, toxicity, and dosage to be provided in the pharmacy and in each nursing unit. Authoritative, current antidote information and the telephone number of the regional poison control center shall also be provided in the pharmacy and in each nursing unit. Current Federal and State drug law information shall be available to the pharmaceutical service;

xxviii. A list of abbreviations, metric apothecary conversion charts, and chemical symbols, approved by the medical staff, to be kept in each nursing unit; and

xxix. Policies and procedures concerning the activities of medical and pharmaceutical sales representatives in the facility. Drug samples shall not be accepted, placed or maintained in stock, distributed, or used in the facility;

4. If the facility operates a decentralized pharmaceutical service, a pharmacist shall be assigned to each satellite pharmacy or separate organizational element during its hours of operation;

5. At intervals specified in the policy and procedure manual, a pharmacist shall inspect all areas in the facility where drugs are dispensed, administered, or stored and shall maintain a record of such inspections;

6. All drugs, except intravenous infusion solutions, shall be kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use;

7. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room, at or near the nursing unit. All drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements; and

8. Drugs for external use shall be kept separate from drugs for internal use.

SUBCHAPTER 14. DIETARY SERVICES

8:42B-14.1 Provision of dietary services

The facility shall provide dietary services to meet the daily nutritional needs of patients.

8:42B-14.2 Appointment of dietitian

(a) The facility shall appoint a dietitian who shall be responsible for the direction, provision, and quality of the dietary service. If a dietitian is appointed on a consultant basis, his or her hours shall be scheduled at different hours of the day for successive visits. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual; an organizational plan, and a quality assurance program for the dietary service;

2. Participating in planning and budgeting for the dietary service;

3. Ensuring that dietary services are provided as specified in the dietary portion of the patient treatment plan and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:42B-14.3 Food service supervisor

The facility shall appoint a full-time food service supervisor who functions under the direction of a dietitian. A dietitian and/or food service supervisor shall be on duty seven days a week.

8:42B-14.4 Responsibilities of dietary personnel

(a) In accordance with written job descriptions, dietary personnel shall be responsible for providing dietary care, including, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary portion of the patient treatment plan based on the assessment, providing dietary services to the patient as specified in the dietary portion of the patient treatment plan, reassessing the patient, and revising the dietary portion of the patient treatment plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

3. Writing clinical notes and progress notes.

8:42B-14.5 Requirements for dietary services

(a) Dietary personnel shall be scheduled for a continuous period of at least 12 hours daily.

(b) The dietary service shall adhere to the provisions of N.J.A.C. 8:24.

(c) A current diet manual shall be available in the dietary service and in each nursing unit.

(d) Meals shall be planned, prepared, and served in accordance with, but not limited to, the following:

1. Menus shall be prepared with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of patients;

2. Written, dated menus shall be planned at least 14 days in advance for all diets. The same menu shall not be used more than once in one week;

3. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus, with changes, shall be kept on file in the dietary service for at least 30 days;

4. Diets served shall be consistent with the diet manual and in accordance with physicians' orders;

5. Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each patient;

6. At least three meals or their equivalent shall be prepared and served daily to patients. At least two meals shall contain three or more menu items, one of which shall be or shall include a high quality protein food such as meat, fish, eggs, or cheese. Each meal shall represent no less than 20 percent of the day's total calories, and at least 10 percent of the day's total calories shall be provided by protein;

7. Nutrients and calories shall be provided for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National

Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the patient;

8. Between-meal nourishments shall be provided and beverages shall be available at all times for each patient, unless medically contraindicated as documented by a physician in the patient's medical record;

9. Substitute foods and beverages of equivalent nutritional value shall be available to all patients;

10. No more than 14 hours shall elapse between an evening meal and breakfast the next morning; and

11. Designated staff shall be responsible for observing meals refused or missed and documenting the name of the patient and the meal refused or missed.

SUBCHAPTER 15. PATIENT RIGHTS

8:42B-15.1 Establishment of policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients. These policies and procedures shall be available to patients, staff, and the public and shall be conspicuously posted in the facility.

(b) The staff of the facility shall be trained to implement policies and procedures regarding patient rights.

(c) The facility shall adhere to all applicable State and Federal statutes and rules concerning patient rights.

8:42B-15.2 Content of patient rights

(a) Patient rights, policies, and procedures shall ensure that, at a minimum, each patient admitted to the facility:

1. Is informed of these rights, as evidenced by his or her written acknowledgment prior to or at the time of admission, and receives an explanation, in terms that he or she can understand, and a copy of the patient rights;

2. Is informed of services available in the facility, of the names and professional status of the personnel providing and/or responsible for his or her care, and of fees and related charges, including the payment, fee, deposit, and refund policy of the facility and any charges for services not covered by sources of third-party payment or not covered by the facility's basic rate;

3. Is assured of treatment and medical care in accordance with the patient treatment plan, is informed of the plan for treatment and of his or her condition, unless medically contraindicated as documented by a physician in the patient's medical record, is informed of the risks associated with the use of any drugs and/or procedures, and has the opportunity to participate in the planning of his or her treatment, to refuse medication and treatment, and to refuse to participate in experimental research;

4. Is informed of the alternatives for care and treatment;

5. Is transferred or discharged only for medical reasons or for his or her welfare or that of other patients, upon the written order of a physician, or for nonpayment for the patient's stay (except as prohibited by sources of third-party payment), and such actions are documented in the patient's medical record, except in an emergency situation, in which case the administrator shall notify the physician and the family immediately and document the reason for the transfer in the patient's medical record. If a transfer or discharge on a nonemergency basis is requested by the facility, the patient and his or her family shall be given at least 10 days advance notice of such transfer or discharge;

6. Has access to and/or may obtain a copy of his or her medical record, in accordance with the facility's policies and procedures and with applicable Federal and State laws and rules;

7. Is free from mental and physical abuse and free from the use of chemical and physical restraints, except those restraints authorized by a physician. Drugs and other medications shall not be used for punishment, for convenience of facility personnel, or in quantities that interfere with a patient's rehabilitation or living activities;

8. Is assured confidential treatment of his or her records and disclosures, in accordance with State and Federal statutes and rules;

9. Is treated with courtesy, consideration, respect, and recognition of his or her dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality

concerning patient treatment and disclosures. Privacy of the patient's body shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for patient safety or assistance;

10. Is not required to perform work for the facility unless the work is part of the patient treatment plan. Such work shall be in accordance with local, State, and Federal laws and rules;

11. May associate and communicate privately with persons of his or her choice, in accordance with the patient treatment plan, may send and receive personal mail, and, upon his or her request, is given assistance in the reading and writing of correspondence;

12. May participate in facility activities and meet with, and participate in activities of, social, religious, and community groups, in accordance with the patient treatment plan. Arrangements shall be made, at the patient's expense, for attendance at religious services of his or her choice, when requested;

13. Is allowed to leave the facility in accordance with the patient treatment plan. A signout sheet shall record the patient's whereabouts at these times;

14. Is assured security in retaining and using personal clothing and possessions as space permits, unless to do so would be unsafe or would infringe upon the rights of other patients. If the patient has property on deposit with the facility, he or she shall have daily access to such property during specific periods established by the facility;

15. Is allowed visiting time at reasonable hours in accordance with the patient treatment plan and, if critically ill, is allowed visits from his or her family at any time, unless medically contraindicated (as documented by a physician in the patient's medical record). Members of the clergy shall be notified by the facility at the patient's request and shall be admitted at the request of the patient and/or family at any time;

16. Is allowed to conduct private telephone conversations at a reasonable hour in accordance with the patient treatment plan;

17. Is assured that if restrictions are placed on visitations, telephone calls, and/or other communications, as documented in the patient's medical record, such restrictions shall be evaluated at least every seven days by the director of counseling services, who shall document the evaluation in the patient's medical record;

18. Is assured of civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any patient;

19. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions because of age, race, religion, sex, nationality, or ability to pay. The patient's participation may be restricted or prohibited if recommended by a physician in the patient's medical record and consented to by the patient;

20. Is not deprived of any constitutional, civil, and/or legal rights solely because of admission to the facility; and

21. Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, may voice grievances on behalf of himself or herself or others, and has the right to recommend changes in policies and services to facility personnel and/or to outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination, or reprisal. The administrator shall provide all patients and/or their families with the name, address, and telephone number of the following office where complaints may be lodged:

Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625
Telephone: (800) 792-9770

This telephone number shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices.

SUBCHAPTER 16. EMERGENCY SERVICES AND PROCEDURES

8:42B-16.1 Emergency plans and procedures

(a) The facility shall have a written emergency plan which shall include plans and procedures to be followed in case of medical emergencies, equipment breakdown, fire, or other disaster.

(b) Emergency medical services shall be provided on the premises at all times to patients requiring these services. The facility shall have a written plan for emergency transportation of patients to another facility for care.

(c) Procedures for emergencies shall specify persons to be notified, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating patients, frequency of fire drills, and tasks and responsibilities assigned to all personnel.

(d) The emergency plans and all emergency procedures shall be conspicuously posted throughout the facility. Personnel shall be trained in the location and use of emergency equipment in the facility.

8:42B-16.2 Drills and tests

(a) Simulated drills of emergency plans shall be conducted on each shift at least four times a year (a total of 12 drills) and documented, including the date, hour, description of the drill, participating staff, and signature of the person in charge. The four drills on each shift shall include at least one drill for emergencies due to fire and one drill for emergencies due to another type of disaster, such as storm, flood, other natural disaster, bomb threat, or nuclear accident.

(b) The facility shall test at least one manual pull alarm each week of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(c) Fire extinguishers shall be examined annually and maintained in accordance with manufacturers' and National Fire Protection Association (N.F.P.A.) requirements.

8:42B-16.3 Emergency care policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding the provision of emergency care, which shall include, but not be limited to, the following:

1. Criteria for determining a patient's need for emergency care, based upon an assessment of physical, psychological, and social needs;

2. Assignment of responsibility for assessing a patient's need for emergency care and determining the services to be provided; and

3. Criteria, approved by a physician, for determining a patient's need for a medical evaluation in the event of an emergency.

SUBCHAPTER 17. DISCHARGE PLANNING SERVICES

8:42B-17.1 Discharge plan

(a) The facility shall provide discharge planning services to patients.

(b) Each patient shall have a discharge plan. Discharge planning shall be initiated upon admission. Plans for discharge shall be reviewed and revised.

(c) The patient and, if indicated, family members, shall participate in developing the patient discharge plan. Participation shall be documented in the patient medical record.

8:42B-17.2 Discharge planning policies and procedures

(a) Written policies and procedures shall be established and implemented for discharge planning services, which shall describe:

1. The functions of the person or persons responsible for planning, providing, and/or coordinating discharge planning services;

2. The time period for completing each patient's discharge plan;

3. The time period that may elapse before a reevaluation of each patient's discharge plan is performed;

4. Use of the multidisciplinary team in discharge planning;

5. Criteria for patient discharge;

6. Methods of patient and family involvement in developing the discharge plan; and

7. Criteria for termination of aftercare services.

8:42B-17.3 Patient and family education

(a) Discharge planning services shall include education of the patient and his or her family. The facility shall provide information regarding at least the following:

1. Drug addiction and drug abuse, and the symptoms, effects, and treatment of drug addiction and drug abuse;
2. Implementation of self-care and rehabilitation measures following discharge;
3. Community agencies and resources available for aftercare services, including health care facilities, vocational rehabilitation centers, legal and social agencies, and rehabilitation programs; and
4. Drug abuse support groups and their availability.

SUBCHAPTER 18. MEDICAL RECORDS**8:42B-18.1 Maintenance of medical records**

(a) A current medical record shall be maintained for each patient and shall contain documentation of all services provided.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for medical record services shall be developed and implemented.

(c) A unit record system shall be maintained, in which the patient's complete medical record is filed as one unit in one location within the facility.

(d) The facility shall implement and maintain for each patient the New Jersey Problem Oriented Treatment System (POTS).

8:42B-18.2 Assignment of responsibility

Responsibility for the medical record service shall be assigned to a full-time employee who, if not a medical record practitioner, functions in consultation with a person so qualified.

8:42B-18.3 Contents of medical records

(a) The patient medical record shall include, but not be limited to, the following:

1. Patient identification data, including name, date of admission, address, date of birth, race and religion (optional), sex, referral source, marital status, and the name, address, and telephone number of the person to be notified in an emergency;
2. A copy of the Client Oriented Data Acquisition Process (CODAP) form;
3. The patient's signed acknowledgment that he or she has been informed of, and given a copy of, patient rights;
4. A summary of the admission interview;
5. Documentation of the medical history and physical examination, signed and dated by the physician;
6. A patient treatment plan, signed and dated by the physician;
7. Clinical notes;
8. Progress notes;
9. Documentation of the patient's participation in the development of his or her treatment plan, or documentation by a physician that the patient's participation is medically contraindicated;
10. A record of medications administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug;
11. A record of self-administered medications, if the patient self-administers medications, in accordance with the facility's policies and procedures;
12. Documentation of allergies in the medical record and on its outside front cover;
13. The results of laboratory, radiological, diagnostic, and/or screening tests performed;
14. Reports of accidents;
15. A record of referrals to other health care providers;
16. Summaries of consultations;
17. A record of the clothing, personal effects, valuables, funds, and other property deposited by the patient with the facility for safekeeping, signed by the patient or his or her family and substantiated by receipts given to the patient or his or her family;
18. Any signed written informed consent forms;
19. A record of any treatment, drug, or service offered by personnel of the facility and refused by the patient;

20. Instructions given to the patient and/or his or her family for care following discharge;

21. The discharge plan; and

22. The discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

8:42B-18.4 Requirements for entries

(a) All orders for patient care shall be prescribed in writing and signed and dated by the prescriber, in accordance with the laws of the State of New Jersey.

(b) All entries in the patient medical record shall be legible and signed and dated by the persons entering them.

(c) The patient medical record shall be completed within 15 days following the patient's discharge.

8:42B-18.5 Medical records policies and procedures

(a) The facility shall establish and implement written policies and procedures regarding medical records including, but not limited to, policies and procedures for the following:

1. The protection of medical record information against loss, tampering, alteration, destruction, or unauthorized use. The patient's consent shall be obtained for release of medical record information;

2. The transfer of patient information when the patient is transferred to another health care facility, or if the patient becomes an outpatient at the same facility; and

3. The provision of copies of the patient's medical record to the patient and/or the patient's authorized representative. Such written policies and procedures shall include, but not be limited to, the following:

i. Establishment of a fee schedule for obtaining copies of the patient's medical record;

ii. Policies and procedures regarding the patient's access to his or her medical record during business hours;

iii. Policies and procedures regarding availability of the patient's medical record to the patient's authorized representative if it is medically contraindicated, as documented by a physician in the patient's medical record, for the patient to have access to or obtain copies of the record; and

iv. Procedures to ensure that a copy of the patient's medical record is provided within 30 calendar days of a written request.

8:42B-18.6 Preservation, storage, and retrieval of medical records

(a) All medical records shall be preserved in accordance with N.J.S.A. 26:8-5 et seq.

(b) If the facility plans to cease operations, it shall notify the Department in writing, at least 14 days before cessation of operation, of the location where medical records will be stored and of methods for their retrieval.

SUBCHAPTER 19. INFECTION PREVENTION AND CONTROL**8:42B-19.1 Administrator's responsibility**

The administrator shall ensure the development and implementation of an infection prevention and control program.

8:42B-19.2 Infection prevention and control policies and procedures

(a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures for the following:

1. A definition of nosocomial infection;

2. In accordance with N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;

3. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;

4. Surveillance techniques to minimize sources and transmission of infection;

5. Techniques to be used during each patient contact, including hand-washing before and after caring for a patient;

6. The prevention of decubitus ulcers;

7. Isolation of patients, including criteria for isolation;

8. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and non-disposable patient care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged, labeled, processed, transported, and stored to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

9. The collection, storage, handling, and disposition of all pathological and infectious wastes within the facility, and for the collection, storage, handling, and disposition of all pathological and infectious wastes to be removed from the facility;

i. Needles and syringes shall be destroyed in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto;

ii. Solid, sharp, or rigid items shall be placed in a puncture-resistant container and incinerated or compacted prior to disposal;

iii. In facilities licensed to provide acute medical detoxification services, all solid waste shall be collected in three mil plastic bags or equivalent and disposed of in a sanitary landfill approved by the New Jersey State Department of Environmental Protection; and

iv. Fecal matter and liquid waste, such as blood and blood products, shall be flushed into the sewerage system.

(b) Each service in the facility shall develop written infection prevention and control policies and procedures for that service.

SUBCHAPTER 20. HOUSEKEEPING, SANITATION, AND SAFETY

8:42B-20.1 Provision of services

(a) The facility shall provide and maintain a sanitary and safe environment for patients.

(b) The facility shall provide housekeeping, laundry, and pest control services.

(c) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for housekeeping, sanitation, and safety services shall be developed and implemented.

8:42B-20.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures, including the use, cleaning, and care of housekeeping and cleaning equipment.

(d) The following housekeeping conditions shall be met:

1. The facility and its contents shall be free of dirt, debris, and insect and rodent harborages;

2. Nonskid wax shall be used on all waxed floors;

3. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

4. All patient areas shall be free of noxious odors;

5. Throw rugs or scatter rugs shall not be used in the facility;

6. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Equipment shall be kept covered to protect from contamination and accessible for cleaning and inspection. Broken or worn items shall be repaired, replaced, or removed promptly;

7. All equipment shall have unobstructed space provided for operation;

8. All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be provided;

9. Thermometers shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

10. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

11. Articles in storage shall be elevated from the floor and away from walls;

12. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose;

13. Unobstructed aisles shall be provided in storage areas;

14. A program shall be implemented and maintained to keep rodents, insects, vermin, and birds out of the facility;

15. Toilet tissue, soap, and towels or air dryers shall be provided in each bathroom at all times;

16. Solid or liquid waste, garbage, and trash shall be stored or disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24;

17. Draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;

18. Wastebaskets and ashtrays shall be made of noncombustible materials;

19. Latex foam pillows shall be prohibited;

20. The temperature of the hot water supply at each water outlet shall be regulated and shall not exceed 110 degrees Fahrenheit (43 degrees Celsius), except as specified in N.J.A.C. 8:24 for dishwashing purposes; and

21. The temperature in the facility shall be kept at a minimum of 70 degrees Fahrenheit (21 degrees Celsius) during the day and at a minimum of 65 degrees Fahrenheit (18 degrees Celsius) at night. "Day" means the time between sunrise and sunset.

8:42B-20.3 Linen and laundry services

(a) Written policies and procedures shall be established and implemented for linen and laundry services, including, but not limited to, policies and procedures regarding the following:

1. The storage, transportation, and laundering of linen and personal laundry. Such policies shall not interfere with the patient's right to personal choice regarding dress;

2. Accessibility of a laundry room which patients may use for washing their clothes;

3. The frequency of laundering linen and personal laundry;

4. The frequency of changing bed linen, towels, and washcloths;

5. Provision of a supply of clean linen, including at least sheets, pillow cases, blankets, towels, and washcloths;

6. Collection of soiled linen and laundry so as to avoid microbial dissemination into the environment, and placement in impervious bags or containers that are closed at the site of collection. Separate containers shall be used for transporting clean linen and laundry and for transporting soiled linen and laundry;

7. Storage of soiled linen and laundry in a ventilated area separate from any other supplies. Soiled linen and laundry shall not be stored, sorted, rinsed, or laundered in patient rooms, bathrooms, areas of food preparation and/or storage, or areas in which clean linen, material, and/or equipment are stored; and

8. Protection of clean linen from contamination during processing, transporting, and storage.

SUBCHAPTER 21. VOLUNTEER SERVICES

8:42B-21.1 Provision of volunteer services

(a) The facility may provide volunteer services as an integral part of the facility's services.

(b) Volunteers shall not provide services in lieu of staff.

(c) Volunteers shall not administer medications.

(d) Volunteers shall receive orientation at the time of employment and continuing in-service education regarding at least emergency plans and procedures, discharge planning, and the infection prevention and control program.

(e) If volunteers have access to patient medical records, confidentiality shall be maintained, in accordance with the facility's policies and with all applicable laws and regulations.

(f) Volunteers shall not receive gifts or gratuities from patients.

8:42B-21.2 Volunteer policies and procedures

(a) If the facility provides volunteer services, the facility shall establish and implement written policies and procedures including, but not limited to, policies and procedures regarding the following:

1. Acceptance and retention in, and exclusion from, the volunteer service, including at least the following criteria:

i. Minimum age and physical examination requirements for volunteers; and

ii. The minimum period of time during which former substance abusers (alcohol and/or drugs) shall be continuously substance free before serving as volunteers;

2. Methods for obtaining information regarding each volunteer, including at least education, work experience, and arrests or convictions, if any;

3. Assignment of volunteers to patients, including criteria for assignment; and

4. Functions which volunteers may perform. Volunteer services shall be provided under the supervision of staff and in accordance with patient treatment plans, so as to ensure continuity of care.

8:42B-21.3 Administrator's duties

(a) The administrator or his or her designee shall be responsible for the direction, provision, and quality of the volunteer services provided. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the volunteer service;

2. Participating in planning and budgeting for the volunteer service;

3. Coordinating and integrating the volunteer service with other patient care services to provide a continuum of care for the patient; and

4. Assisting in developing and maintaining written job descriptions for all paid staff of the volunteer service and volunteers, and assigning duties based upon education, training, competencies, and job descriptions.

SUBCHAPTER 22. QUALITY ASSURANCE PROGRAM

8:42B-22.1 Quality assurance plan

The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall specify a timetable and the person(s) responsible for the quality assurance program and shall provide for ongoing monitoring of staff and patient services.

8:42B-22.2 Quality assurance activities

(a) Quality assurance activities shall include, but not be limited to, the following:

1. At least annual review of staff and physician qualifications and credentials;

2. At least annual review of staff orientation and staff education;

3. Evaluation of patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, discharge planning services, and volunteer services;

4. Evaluation by patients of care and services provided by the facility;

5. Audit of patient medical records (including those of both active and discharged patients) on an ongoing basis to determine if care provided conforms to criteria established by each patient care service for the maintenance of quality of care; and

6. Establishment of a patient care outcome assessment system for evaluation of the patient care provided by each service.

8:42B-22.3 Measures for corrections and improvements

(a) The results of the quality assurance program shall be submitted to the governing authority at least annually and shall include at least deficiencies found and recommendations for corrections or improvements. Deficiencies which jeopardize patient safety shall be reported to the governing authority immediately. The administrator shall, with the approval of the governing authority, implement measures to ensure that corrections or improvements are made.

(b) The administrator shall evaluate written reports of State and local sanitary inspections, including results of cultures taken of food, equipment, and people, and shall take necessary corrective action.

SUBCHAPTER 23. (RESERVED)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

For the following proposals, submit comments by April 20, 1988 to:

John Calabria, Chief
Health Systems Review Program
New Jersey Department of Health
CN 360, Room 604
Trenton, N.J. 08625

(a)

Certificate of Need: Psychiatric Inpatient Beds Adult Open Acute Psychiatric Bed Standards

Proposed Amendments: N.J.A.C. 8:43E-2.4 and 2.5
Proposed New Rules: N.J.A.C. 8:43E-2.19 and 2.20

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1988-140.

The agency proposal follows:

Summary

The Department of Health is responsible for establishing rules governing the planning and certificate of need review for hospitals and related health care facilities. Planning rules, N.J.A.C. 8:43E-2, specifically address Certificate of Need applications for Adult Open Acute Psychiatric Beds.

The purpose of these rules is to provide criteria for the review of Certificate of Need applications for the addition of adult open acute psychiatric beds. These rules contain a methodology for estimating bed need on a county and statewide basis, and establish standards and guidelines regarding planning concerns such as cost effectiveness, continuity of care, accessibility, quality, and endorsements by local and State mental health authorities.

These rules were approved for readoption by the Health Care Administration Board on December 10, 1987, and were published in the January 4, 1988 New Jersey Register. In originally developing and readopting these rules, the Commissioner obtained the recommendations of the Statewide Health Coordinating Council (SHCC), as well as the Division of Mental Health and Hospitals of the Department of Human Services.

However, in order to accommodate comments made by the Division of Mental Health and Hospitals in response to the published proposed readoption of these rules, substantive changes would have been necessary, requiring reproposal. Since the proposed readoption had to be effectuated by January 17, 1988 in order to avoid expiration under Executive Order No. 66(1978), the rules were readopted as proposed and the amendments requested by the Division of Mental Health and Hospitals are being proposed at this time.

The rules need to be amended in order to assure continued cost effectiveness, continuity of care with other mental health service providers, and improved accessibility to integrated mental health services. The amendments proposed will require that the development of additional adult open acute psychiatric beds must be in conjunction with adult closed acute psychiatric beds where the need for such beds exists. In addition, to help ensure cost effectiveness and increased access opportunities, a new section regarding competitive review is proposed. This section identifies criteria that will be used to evaluate applications for adult open acute psychiatric beds, submitted as part of a competitive certificate of need batching cycle.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . ."

The rules were originally developed to promote the provision of inpatient psychiatric care in a cost effective manner at a level appropriate to the needs of the patient. The objectives of these amendments are to further improve the continuity and accessibility of care by assuring that

providers will deliver services in a more integrated system of mental health care. The competitive review of applications will help assure the approval of applications that most closely correspond to the criteria and standards identified in these rules.

Economic Impact

Current utilization levels of existing licensed psychiatric units in New Jersey as well as county based population projections indicate the need for expansion of adult open acute psychiatric capacity by 1992. There is a simultaneous and more urgent need to expand adult closed acute psychiatric capacity. The proposed amendments will require that these needs be met in a linked fashion, thereby preventing the development of more costly and less effective separate units. The competitive review criteria will encourage the conversion of existing underutilized hospital capacity, the prudent planning for low capital expenditures, and the assurance of improved access to services for indigent patients.

Regulatory Flexibility Statement

Since only hospitals, having by nature well over 100 employees, would be capable of qualifying for a certificate of need for Adult Open Acute Psychiatric beds or Adult Closed Acute Psychiatric beds, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed rules and therefore, no regulatory flexibility analysis is required.

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

8:43E-2.4 Bed Need

(a) Each applicant for Adult Open Acute Psychiatric Beds shall demonstrate the need for additional bed capacity through application of the adult open acute bed need methodology, attached herein as Appendix A. **The applicant must also develop Adult Closed Acute Psychiatric beds, unless that need has been satisfied in the proposed service area.**

(b) (No change.)

8:43E-2.5 Continuity of Care

(a) Linkages with community mental health agencies and State or county hospitals for purposes of referral and follow-up must be adequately documented by the facility. Evidence should be attached indicating that formal transfer and/or program linkages agreements will be adopted **with existing Adult Open Acute, Adult Closed Acute and Inpatient Screening Units**, with State and/or county hospitals, each community mental health center, and with other State or county-funded mental health resources within the facility's service area particularly including:

1. Partial hospitalization;
2. Emergency/screening;
3. Outpatient care programs; [and]
4. Residential care programs[.];
5. **Adult Closed Acute Psychiatric Units.**

(b) The facility should assure that patients for whom an application for involuntary commitment is sought shall be referred for admission to a facility which accepts involuntary commitments through the appropriate channel for the sending facility's service area. **Where the New Jersey Division of Mental Health and Hospitals has identified an unmet need for Adult Closed Acute Beds, the direct provision of such beds by the applicant is required.**

8:43E-2.19 Submission of certificate of need applications

Applications for the establishment of new Adult Open Acute Psychiatric Beds will be competitively reviewed pursuant to batching procedures set forth in N.J.A.C. 8:33. The following batching schedule will apply for the submission of Certificate of Need applications for Adult Open Acute Psychiatric Beds:

Deadline for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15

8:43E-2.20 Competitive review

(a) **Where the need in a service area for additional Adult Open Acute Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Depart-**

ment may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all the standards and guidelines in this rule;
2. The highest level of access to services by the medically indigent and by persons under cost based insurance;
3. Projects which can be implemented in the most cost effective and efficient manner, measured by capital costs, projected per diem charges, and reduction of excess acute care bed capacity in the area;
4. The most effective integration of services with Adult Closed Acute Psychiatric Beds and with Inpatient Screening Psychiatric Beds;
5. Closest conformity to the need for Adult Open Acute Psychiatric Beds and Adult Closed Acute Psychiatric Beds;
6. Provision of the highest level of quality in the proposed clinical programs; and
7. The endorsement of the Health Systems agencies, County Mental Health Board(s), and mental health providers in the proposed service area.

(a)

Certificate of Need: Psychiatric Inpatient Beds Inpatient Screening Psychiatric Bed Standards Proposed New Rules: N.J.A.C. 8:43E-3.19 and 3.20

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1988-136.

The agency proposal follows:

Summary

The Department of Health is responsible for establishing rules governing planning and certificate of need review for hospitals and related health care facilities. Planning rules, N.J.A.C. 8:43E-3, specifically address Certificate of Need applications for Inpatient Screening Psychiatric Beds.

The purpose of these rules is to provide criteria for the review of Certificate of Need applications for the addition of inpatient screening psychiatric beds. These rules contain a methodology for estimating bed need on a county and statewide basis, and establish standards and guidelines regarding planning concerns such as cost effectiveness, continuity of care, accessibility, quality, and endorsements by local and state mental health authorities.

These rules were approved for readoption by the Health Care Administration Board on December 10, 1987, and were published in the January 4, 1988 New Jersey Register. In originally developing and readopting these rules, the Commissioner obtained the recommendations of the Statewide Health Coordinating Council (SHCC), as well as the Division of Mental Health and Hospitals of the Department of Human Services.

However, in order to accommodate comments made by the Division of Mental Health and Hospitals in response to the published proposed readoption of these rules, substantive changes would have been necessary, requiring reproposal. Since the proposed readoption had to be effectuated by January 17, 1988, in order to avoid expiration under Executive Order No. 66(1978), the rules were readopted as proposed and the amendments requested by the Division of Mental Health and Hospitals are being proposed at this time.

The rules need to be amended in order to assure continued cost effectiveness, a continuum of care with other mental health services and improved accessibility to integrated mental health services. The amendments proposed will require the improved integration of new Inpatient Screening Psychiatric Beds with other outpatient and inpatient psychiatric services. In addition, to help assure cost effectiveness and increased access opportunities, a new section regarding competitive review is proposed. This section identifies criteria that will be used to evaluate applications for inpatient screening psychiatric beds, submitted as part of a competitive certificate of need batching cycle.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide

for the protection and promotion of the health of the inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . ."

The rules were originally developed to promote the provision of inpatient psychiatric care in a cost effective manner at a level appropriate to the needs of the patient. The objectives of this proposal are to further improve continuity and accessibility of care by assuring that providers will deliver services in a more integrated system of mental health care. The competitive review of applications will help assure the approval of applications that most clearly correspond to the criteria and standards identified in these rules.

Economic Impact

The proposed new rules are not expected to add any additional financial burden on patients, providers, the State or Federal government. Costs of treating patients admitted on an involuntary commitment order continue to be higher per case than those incurred for patients seeking care on a voluntary basis. The early evaluation of such patients will allow them to be placed in the most appropriate modality of treatment, thereby promoting cost effectiveness and quality of care.

Capital costs of establishing inpatient screening beds are not generally significant. Most units are of minimal size (2 to 4 beds) and all units are contained within, or contiguous to, existing adult open acute psychiatric units.

Regulatory Flexibility Statement

Since only hospitals, having by nature well over 100 employees, would be capable of qualifying for a certificate of need for Inpatient Screening Psychiatric Beds, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed rules and therefore, no regulatory flexibility analysis is required.

Full text of the proposal follows.

8:43E-3.19 Submission of certificate of need applications

Applications for the establishment of new Inpatient Screening Psychiatric Beds will be competitively reviewed pursuant to batching procedures set forth in N.J.A.C. 8:33. The following batching schedule will apply for the Certificate of Need applications for Inpatient Screening Psychiatric Beds:

Deadline for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15

8:43E-3.20 Competitive review

(a) Where the need in a service area for additional Inpatient Screening Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need application to establish such services, the Department may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all the standards and guidelines in this rule;
2. The highest level of access to services by the medically indigent and by persons covered by cost based insurance;
3. Projects which can be implemented in the most cost effective and efficient manner, measured by capital costs, projected per diem charges, and reduction of excess acute care bed capacity in the area;
4. The most effective integration of services with Adult Open Acute and with Adult Closed Acute Psychiatric Beds;
5. Closest conformity to the need for Inpatient Screening Psychiatric Beds;
6. Provision of the highest level of quality in the proposed clinical programs; and
7. The endorsement of the Health Systems Agencies, County Mental Health Board(s), and mental health providers in the proposed service area.

(a)

Certificate of Need: Psychiatric Inpatient Beds Intermediate Adult and Special Psychiatric Bed Standards

Proposed Amendment: N.J.A.C. 8:43E-5.20

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1988-139.

The agency proposal follows:

Summary

The Department of Health is responsible for establishing rules governing planning and certificate of need review for hospitals and related health care facilities. Planning rules, N.J.A.C. 8:43E-5, specifically address Certificate of Need applications for Intermediate Adult and Special Psychiatric Beds.

The purpose of these rules is to provide criteria for the review of Certificate of Need applications for the addition of intermediate adult and special psychiatric beds. These rules contain a methodology for estimating bed need on a county and statewide basis, and establish standards and guidelines regarding planning concerns such as cost effectiveness, continuity of care, accessibility, quality, and endorsements by local and state mental health authorities.

These rules were approved for readoption by the Health Care Administration Board on December 10, 1987, and were published in the January 4, 1988 New Jersey Register. In originally developing and readopting these rules, the Commissioner obtained the recommendations of the Statewide Health Coordinating Council (SHCC), as well as the Division of Mental Health and Hospitals of the Department of Human Services.

However, in order to accommodate comments made by the Division of Mental Health and Hospitals in response to the published proposed readoption of these rules, substantive changes would have been necessary, requiring reproposal. Since the proposed readoption had to be effectuated by January 17, 1988, in order to avoid expiration under Executive Order No. 66(1978), the rules were readopted as proposed and the amendment requested by the Division of Mental Health and Hospitals is being proposed at this time.

The rules need to be amended in order to assure a continuum of care with other mental health services. The amendment proposed will require the improved integration of new Intermediate Adult and Special Psychiatric Beds with other outpatient and inpatient psychiatric services.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . ."

The rules were originally developed to promote the provision of inpatient psychiatric care in a cost effective manner at a level appropriate to the needs of the patient. The objectives of this amendment are to further improve continuity and accessibility of care by assuring that providers will deliver services in a more integrated system of mental health care.

Economic Impact

The proposed amendment of this rule is not expected to add any additional financial burden on patients, providers, the State or Federal government. The effective linking of services will allow patients to be placed in the most appropriate modality of treatment, thereby promoting cost effectiveness and quality of care.

Capital costs and operating costs for providing linkages are not significant.

Regulatory Flexibility Statement

Since only hospitals, having by nature well over 100 employees, would be capable of qualifying for a certificate of need for Intermediate Adult and Special Psychiatric Beds, no recordkeeping, reporting or other com-

HEALTH

pliance requirements are placed upon small businesses by the proposed rules and therefore, no regulatory flexibility analysis is required.

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

8:43E-5.20 Competitive Review

(a) Where the need in a service area for additional Intermediate Adult and/or Special Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applications necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, most clearly demonstrate the fullest level of compliance with the following criteria:

1.-6. (No change.)

7. Development of or most effective linkage with Adult Closed Acute and Adult Open Acute Psychiatric Units.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Voluntary Restricted Payments

Proposed Amendment: N.J.A.C. 10:81-4.5

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 234.60.

Proposal Number: PRN 1988-143.

Submit comments by April 20, 1988 to:

Marion E. Reitz, Acting Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment extends the provision governing voluntary restricted payments to include payments made directly to the provider for transportation costs to and from training or educational sites. In the Aid to Families with Dependent Children program, direct payments would be made to persons or facilities providing transportation to participants enrolled in educational or training-related activities.

N.J.A.C. 10:81-4.5 currently provides that voluntary restricted payments, at the request of the client, be made to child care providers only.

New language added at N.J.A.C. 10:81-4.5 states that voluntary restricted payments, made directly to providers, include payments for transportation expenses incident to education and/or training.

Social Impact

The proposed amendment would have a positive impact on the client in that it allows clients to authorize payment for the cost of transportation to the provider of that service and thereby take advantage of educational or training-related programs.

Economic Impact

Little or no economic impact is expected since the proposed amendment merely enables payments for transportation costs incident to authorized training or education to be directed to the provider on behalf of the client.

Regulatory Flexibility Statement

This proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This rulemaking imposes no compliance requirements on small businesses, therefore, a regulatory flexibility analysis is not required.

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

PROPOSALS

10:81-4.5 Payees in AFDC

(a) (No change.)

(b) Vendor payments may be made directly to a person or facility for providing goods and services to or for the client representing payment for such goods or services. Vendor payments are limited to the following situations only:

1. (No change.)

2. Payments directly to day care providers or providers of transportation incident to authorized training or education when requested by the client as a voluntary restricted payment (see (c) below).

(c) Voluntary restricted payments may be made in the form of a vendor payment, at the request of the recipient, to day care providers [only] (see N.J.A.C. 10:82-5.3 regarding payment limitations) and transportation providers only. Such vendor payments shall not be extended to any other providers of goods or services.

1.-2. (No change.)

LABOR

(a)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Legal Authority; Administration; Advisory Councils; Services; Appeals

Proposed Readoption with Amendments: N.J.A.C. 12:45 through 12:49

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:16-20 et seq., Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), and 34 CFR §361.1 et seq.

Proposal Number: PRN 1988-110.

Submit comments by April 20, 1988 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
New Jersey Department of Labor
CN 381
Trenton, New Jersey 08625-0381

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:45 through 12:49 expire on May 2, 1988. The Division of Vocational Rehabilitation Services ("Division" or "DVR") has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order.

Rules concerning vocational rehabilitation services were initially adopted by the Department of Labor in 1969.

In 1983, the Department adopted amendments to the 1969 rules to conform to changes made to the Federal laws and regulations governing vocational rehabilitation services, and also to the 1972 Reorganization Plan of the New Jersey Department of Labor. See: 14 N.J.R. 1438(b) and 15 N.J.R. 693(a).

The purpose of the vocational rehabilitation rules was to implement the intent of N.J.S.A. 34:16-20 et seq., and to comply with Federal requirements set forth in 29 U.S.C. §701 et seq. and 34 CFR §361.1 et seq. The rules set forth the rehabilitation services available to handicapped individuals and the criteria used by the Division to determine eligibility for services including order of client selection when funds are limited. The rules also protect the confidentiality of handicapped individuals by restricting public access to Division records. Finally, the rules set forth appeal procedures for handicapped individuals who believe they have been aggrieved by any action or inaction of the Division.

The proposed amendments to the current rules are necessitated by changes made to the Federal law and regulations regarding confidentiality of records, appeal procedures and programs for the severely disabled.

N.J.A.C. 12:46-5.8 is amended to require the Division to release confidential information concerning clients in response to investigations in connection with law enforcement, fraud or abuse and in response to judicial order. Also, the Division is required to release confidential information to protect clients from harming themselves or others.

N.J.A.C. 12:46-5.9 is amended to require written consent of the client's physician or psychologist to release medical records to the client or his or her representative.

N.J.A.C. 12:48-1 is amended to include vocational programs (supported employment and independent living) for severely disabled individuals.

N.J.A.C. 12:48-1.7 is amended to set forth that the Division may add to the list of services for which no "need" test will be applied.

N.J.A.C. 12:49-1.1 is amended to require the Director of the Division to provide written notice of his or her intent to review an impartial hearing officer's decision and to afford aggrieved individuals the opportunity to provide additional evidence relevant to a final decision.

N.J.A.C. 12:49-1.2 and 1.3 are deleted because a hearing pursuant to the Administrative Procedure Act would conflict with the Federal requirements.

The Division is considering further organizational changes to N.J.A.C. 12:45 through 12:49. However, to avoid any regulatory hiatus, these changes will appear in a future New Jersey Register.

Social Impact

The readoption of the vocational rehabilitation rules will benefit handicapped individuals by providing them with notice of the types of services available through the Division. The rules also will protect a client's right to privacy and due process rights.

The proposed amendments to the current confidentiality section will protect society by allowing confidential client records to be released to law enforcement agencies under certain conditions. The amendments also will serve to protect a client from receiving harmful information by requiring prior approval of the client's physician or psychologist to release medical records.

The proposed amendments to the services chapter will benefit severely disabled individuals by adding vocational programs which will aid the severely disabled in achieving their vocational goals.

The amendments to the appeals subchapter will benefit clients by strengthening their due process rights.

Economic Impact

The readoption of the vocational rehabilitation rules will benefit handicapped individuals by enabling them to obtain services that will aid them in achieving their vocational goals.

The proposed amendments to the confidentiality section will not negatively impact the Department of Labor since it routinely handles requests for confidential information.

The proposed amendments to the services subchapter will benefit severely disabled individuals since the added programs will create employment and living opportunities where none existed before. The amendment to the economic need section will benefit handicapped individuals since the Division may exempt more services from the "economic need" test. This may result in more free services for the handicapped.

The amendments to the appeals subchapter will require additional work and expenditures by the Department. However, the added work and expenditures will be absorbed by existing personnel and the current operating budget.

Regulatory Flexibility Statement

The proposed regulation and amendments will have no reporting, recording or compliance requirements for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:45 through 12:49.

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

12:46-5.8 Release of confidential information

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

(d) **D.V.R.S. must release information in response to investigations in connection with law enforcement, fraud or abuse (except where expressly prohibited by Federal or State laws or regulations) and in response to judicial order.**

(e) **D.V.R.S. may release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or the safety of others.**

12:46-5.9 Express written consent; forms

(a) In all instances other than those listed in N.J.A.C. 12:46-[4.10] **5.10** (consent by "necessary implication"), where information concerning a client of the Division is requested, such information shall not be released without the written consent of the client.

(b) **When requested in writing by the individual, D.V.R.S. may release a summary of the case record to the client or his representative.**

(c) **Counselor's notes are not considered part of the case record. Copies of medical or psychological reports may not be released to the individual or his representative without the written consent of the physician or psychologist who wrote the report. Medical, psychological or other information which the agency believes may be harmful to the individual may only be provided to a physician or licensed psychologist.**

12:48-1.1 Establishment of rehabilitation potential defined

"Vocational rehabilitation services" (for the purpose of determination of rehabilitation potential) means any goods or services which are provided to an individual, who has a physical or mental disability which constitutes a substantial handicap to employment during the period (extended evaluation) specified to be necessary for, and which (services) are provided for, the purpose of ascertaining whether it may reasonably be expected that such individual will be rendered fit to engage in a gainful occupation (rehabilitation potential), **supported employment or independent living.**

12:48-1.2 through 1.5 (No change.)

12:48-1.6 Eligibility for rehabilitation services

(a) Applicants will be found eligible for rehabilitation services only after:

1. Full consideration of medical reports sufficient in all respects to provide a knowledge of the physical and mental conditions of the individual;

2. There is found to exist a physical or mental condition which makes it difficult for the individual to secure or maintain gainful employment;

3. There is evidence that, through the provision of rehabilitation services, the individual will be able to enter gainful **or supported** employment within a reasonable period of time **or will benefit from independent living services.**

12:48-1.7 Economic need

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

(c) The economic need of **an** applicant for vocational rehabilitation services is considered for determining participation in the cost of all vocational rehabilitation services other than:

1. Evaluation of [R]rehabilitation potential;

2. Counseling, guidance, and referral services;

3. Placement;

4. On-the-job training; **and**

5. **Other services as determined by the Director.**

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

12:49-1.1 Appeal of vocational rehabilitation applicant or recipient

(a) [Administrative] Review **procedure**: Applicants/clients for vocational rehabilitation shall be advised of their right to a[n Administrative R]review in the event that they are dissatisfied with any action with regard to the furnishing or denial of VR services.

1. A[n Administrative R]review must be requested in writing by the applicant or client. This written request should be submitted to the Office Manager.

2. The [Administrative R]review shall be held at a time and place convenient for the applicant or client.

3. The applicant or client will be notified of the date, time, place of the [R]review. The Notification will be sent in advance of the [R]review and provide enough time for the applicant or client to prepare for the [R]review.

4. The applicant or client may be represented by counsel, friend, Client Assistance Program located in the Department of the Public Advocate, parent, guardian or self. If he or she chooses to represent himself or herself, he or she must be an adult, 18 years of age or older.

5. The applicant or client and his or her representative, if he or she desires to have one, will be given an adequate opportunity for cross examination and to present evidence on his or her behalf during the [R]review.

6. The [R]review shall be held before [the District Supervisor or his designee] an impartial hearing officer within 45 days of the request by the applicant or client for a review. [(Complaints should be resolved at the lowest possible level. However, the Review Officer must be a person who was not involved in the decision that is the basis for the complaint.)]

[7. DVR 35 will be completed after the Review by the District Supervisor or his designee, and it will contain his decision in the matter.

8. DVR together with copies of papers and reports presented during the Review constitutes a record and one copy will be kept in the case record and one copy shall be given to the applicant or client.]

7. The impartial hearing officer shall render a decision in writing and provide a full written report of his or her findings and the grounds for the decision to the client or his or her representative and to the DVRS Director within 30 days of the completion of the review.

8. Within 20 days of the mailing of the impartial hearing officer's decision to the applicant or client and the Director, the Director shall notify the applicant or client in writing of his or her intention to review the initial decision.

9. If the Director fails to notify such individuals within 20 days, the decision of the impartial hearing officer will be considered final.

10. If the Director decides to review the decision, such individuals may submit to the Director additional evidence and information relevant to a final decision within 15 days of the receipt of the Director's notice of intention to review.

11. A final decision shall be made in writing by the Director within 30 days of the mailing of the notice of intention to review and shall include a full report of the findings and the grounds for such decision. A copy of such decision shall be provided to such individuals.

12:49-1.2 [Fair Hearing] (Reserved)

[(a) A Fair Hearing follows an Administrative Review if the applicant or client is dissatisfied with the decision of the Review and requests a Fair Hearing in writing.

1. The request for a Fair Hearing must be submitted to the District Supervisor.

2. A Fair Hearing is held pursuant to the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1) and may be conducted by the Division Director or an administrative law judge of the Office of Administrative Law.

3. DVR 35 will be completed after the hearing and it will contain the final decision in the matter.

4. DVR 35 together with copies of papers and reports presented during the Fair Hearing constitutes a record and one copy shall be kept in the case record and one copy will be given to the applicant or client.]

12:49-1.3 [Opportunity for fair hearing] (Reserved)

[An opportunity for a fair hearing before the State Agency or the Director or before the Central Office staff member to whom such responsibility is assigned will be granted to any individual whose application for vocational rehabilitation services under the plan is denied, or is not acted upon with reasonable promptness.]

12:49-1.4 (Reserved)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE POLICE TRAINING COMMISSION

Police Training Commission Rules

Proposed Repeal and New Rules: N.J.A.C. 13:1

Authorized By: Donald R. Belsole, Director, Division of Criminal Justice and Chairman, Police Training Commission.

Authority: N.J.S.A. 52:17B-71(h).

Proposal Number: PRN 1988-130.

A public hearing concerning the proposals will be held on:

Tuesday, April 12, 1988 at 10:00 A.M.

Police Training Commission

Hughes Justice Complex

Trenton, New Jersey

Interested persons should contact Leo A. Culloo at (609) 984-2140 to reserve time to speak.

Submit written comments by April 20, 1988 to:

Leo A. Culloo

Administrator of Police Services

Police Training Commission

CN 085

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Police Training Commission was created in 1961. It now has the responsibility for supervising 23 schools throughout the State. These schools provide basic police training, in service training and specialized training for virtually every kind of law enforcement agency with the exception of the Division of State Police. The Commission's curriculum consists of approximately 120 subjects. It annually approves and utilizes the services of almost 1700 certified instructors, and certifies the satisfactory completion of required courses by 2300 police officers, investigators, special law enforcement officers, corrections officers, campus police officers, sheriffs' deputies and arson investigators. In 1985, the Commission was legislatively allocated to the Division of Criminal Justice. Full time staff have been assigned by the Division's Director to administer the operations of the Commission.

The present Rules of the Police Training Commission will expire pursuant to Executive Order No. 66 on July 19, 1988. This proposed repeal and new rules are authorized for adoption to coincide with that expiration date. The new rules reflect necessary changes in language, procedures and policies resulting from the expansion of training law enforcement officers and in the number of trainees, schools and subject matter, and in the increased role of the Commission itself in supervising this constantly growing area of education.

Proposed subchapter 1 defines the terms employed in the chapter. Subchapter 2 provides for relaxation of the rules and the authority of the Chairman to act on behalf of the Commission in certain situations.

Proposed subchapter 3 sets forth the procedures for a school to be certified and recertified by the Commission. Certified schools in existence when these rules are adopted are grandfathered for three years from the date of the adoption of these rules, and then such schools must apply for recertification. This subchapter also includes the grounds for suspension or revocation of a school's certification.

Subchapter 4 contains provisions for the certification as an instructor at a Commission-approved school, and special certifications for a firearm instructor, range master and radar instructor. The requirements for certification of trainees in basic and other courses together with the Commission's authority to revoke certification are set forth in subchapter 5. Commission approval of curriculum and courses is provided in subchapter 6.

Subchapter 7 governs the administration of Commission-approved schools. It sets forth the responsibilities of the agency which administers the school and the school director and details such responsibilities with respect to compliance with Commission practices and policies. Subchapter 8 sets forth the procedures to be undertaken by an employing law enforcement agency prior to the acceptance of an officer into a basic course. Procedures for appeals to the Commission from actions of its staff or a school director are set forth in subchapter 9.

Social Impact

The proposed new rules are intended to more accurately reflect changes in policy and procedures of the Police Training Commission and laws affecting the training of law enforcement officers since the adoption of the Commission's original rules. The public will benefit from those changes in that the new rules will improve the quality of such training. The proposed new rules will have a positive impact upon all law enforcement agencies which will enure to the communities served by them.

Economic Impact

The proposed new rules should not have any economic impact of consequence. The schools approved by the Police Training Commission are financially supported by various governmental agencies. Additionally, each school may establish reasonable tuition schedules and a trainee's fees are usually borne by the appointing law enforcement agency. The Commission is staffed by employees of the Division of Criminal Justice who are assigned as needed by the Director. No significant increase in the cost of administering or conducting police training is anticipated as the result of the adoption of this proposal.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required inasmuch as this proposal will have no effect upon small businesses.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:1.

Full text of the proposed new rules follows:

CHAPTER 1 POLICE TRAINING COMMISSION

SUBCHAPTER 1. DEFINITIONS

13:1-1.1 Definitions

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

"Administrator of Police Services" means the person designated by the Attorney General with the advice and consent of the Commission to perform its general administrative functions.

"Appointing authority" means a person or group of persons having the power of appointment to or removal from offices, positions or employment as law enforcement officers.

"Basic Course" means an entry-level police training course at a Commission-approved school designed for trainees who are required by law to be trained under Commission jurisdiction.

"Certification" means a written statement issued by the Commission attesting that a school or individual has complied with Commission requirements.

"Commission" means the Police Training Commission.

"Commission staff" means those employees of the Division of Criminal Justice assigned by the Director to administer the Police Training Act.

"Curriculum" means a specific course or the aggregate of courses of study at a Commission-approved school.

"In-service course" means any course of study which a police officer shall attend after completion of the basic course.

"Institution of higher learning" means any college or university accredited by the New Jersey Department of Higher Education.

"Law enforcement agency" means any police force or organization functioning within this State, except for the Division of State Police, which has by statute or ordinance the responsibility of detecting crime and enforcing the criminal laws of this State.

"Medical examination" means a fitness evaluation of an individual by a licensed physician.

"Police instructor" means an individual certified by the Commission to teach at a Commission-approved school.

"Police officer" means any employee of a law enforcement agency, other than a civilian employee, and any member of a fire department or force who is assigned to an arson investigation unit pursuant to Public Law 1981, Chapter 409.

"Range master" means an individual certified by the Commission and designated by a school director to control and supervise all activities at a firearms range.

"Scholarship recipient" means a police officer who has been awarded financial support by the Commission to attend college.

"School" means an institution approved by the Commission to provide basic and/or in-service courses of study.

"School director" means an individual designated as having the responsibility for the administrative and day-to-day operations of a Commission-approved school.

"Subject" means a component of a curriculum dealing with a specific matter.

"Trainee" means an individual attending a Commission-approved school.

SUBCHAPTER 2. GENERAL PROVISIONS

13:1-2.1 Relaxation of rules

The rules in this chapter shall be considered as general rules for the operation of the Commission and the administration of the Police Training Act. These rules have been designed to facilitate the education and training of police officers. The rules may be relaxed or dispensed with by the Commission in any instance where it shall be manifest to the Commission that strict adherence would result in an injustice to an individual or a law enforcement agency.

13:1-2.2 Authority of the Commission Chairman

In any matter not expressly controlled by this chapter or by statute or in any urgent or emergent matter, the Commission Chairman, acting on behalf of the other Commissioners, shall exercise his or her discretion in Commission matters. When it become necessary for the Commission Chairman to exercise such discretion, he or she shall report on his or her actions to the other Commissioners as soon thereafter as practical.

SUBCHAPTER 3. SCHOOL CERTIFICATION

13:1-3.1 Eligibility for certification

A law enforcement agency, a combination of law enforcement agencies, an institution of higher learning or a recognized governmental entity is eligible to apply to the Commission for certification to operate a school.

13:1-3.2 Application for certification

An application for certification shall be submitted on a form prescribed by the Commission. The application shall require the applicant to demonstrate a need for the school and the availability of necessary resources to operate the school. The application shall conform with the Commission's requirements with respect to buildings, facilities, firearms ranges, equipment, personnel and insurance.

13:1-3.3 Notice of application

The applicant shall send a written notice, on a form prescribed by the Commission, to every law enforcement agency within the county wherein certification for a school is sought, indicating the applicant's intent to seek Commission certification to operate a school. A written notice shall be forwarded to the Commission stating that this section has been complied with.

13:1-3.4 Hearing on application

In the event a law enforcement agency interposes an objection with respect to school certification, the Administrator of Police Services may, for good cause, schedule a hearing on the matter after due notice to the affected parties.

13:1-3.5 Application review

The Commission staff shall review the application to determine if the applicant has demonstrated a need for the school, shall inspect the facility where the training is to be conducted and determine if the applicant has the necessary resources to operate the school. The Administrator of Police Services shall submit a written report to the Commission which shall contain a recommendation with respect to the request. The Commission shall approve or disapprove the certification request with any conditions it believes to be appropriate.

13:1-3.6 School recertification

Initial certification or recertification of a school by the Commission shall be for a period of three years. An application for

recertification shall be the same as that provided in N.J.A.C. 13:1-3.2 through 3.5 together with a Commission staff determination that a school has complied with all Commission requirements. Schools which are currently certified shall apply for recertification within three years of (the effective date of these rules).

13:1-3.7 Suspension or revocation of certification

(a) School certification may be temporarily suspended or revoked by the Commission for:

1. Failure to comply with Commission requirements;
2. Failure to substantiate that the school reasonably serves the needs of the law enforcement agencies within the locale where the school is situated;
3. Failure to operate a basic course for a period exceeding 18 months;
4. Failure to maintain the school's facilities, including any buildings, equipment and firearms range in a reasonably clean, safe and efficient condition in accordance with Commission standards; or
5. Other good cause.

(b) In the event of suspension or revocation, the school director shall be notified in writing as to the reasons(s) for the action and may request a hearing before the Commission in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Commission may restore certification when the conditions for the suspension or revocation have been corrected.

SUBCHAPTER 4. INSTRUCTOR CERTIFICATION

13:1-4.1 Certification requirement

All instructors participating in a course authorized by the Commission must be certified before they are permitted to teach except as set forth in this subchapter.

13:1-4.2 Eligibility for certification

An individual who has completed two years of college, who has a minimum of three years of experience in his or her teaching specialty or career and who can demonstrate knowledge and/or skill in a subject contained in a Commission-approved curriculum is eligible for consideration for instructor certification. The Commission may waive the educational and/or work experience requirement for a compelling reason.

13:1-4.3 Certification process

An individual seeking instructor certification shall complete the Commission-prescribed application and shall have his or her law enforcement agency's endorsement where applicable. The school director shall interview the applicant and, if there is an intention to utilize the services of the individual, shall then endorse the application and forward it to the Commission. The Commission staff shall review the application and either approve or disapprove the request for certification as an instructor.

13:1-4.4 Types of certification

Police officers who have completed or will subsequently complete a Commission-recognized instructor training course shall be entitled to a police instructor certificate. Individuals other than police officers shall be entitled to a special instructor certificate.

13:1-4.5 Certification

(a) Initial certifications and renewals thereof shall expire on December 31 of the granting or renewal year.

(b) The Commission may impose conditions with respect to any certification and may withdraw certification at any time, or deny renewal, for good cause.

(c) An instructor denied certification or renewal, or whose certification was withdrawn by the Commission, may request a hearing before the Commission in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:1-4.6 Certification requirements for instructors of certain subjects

(a) Applicants who seek certification to instruct in certain subjects must be certified as an instructor and also comply with the following requirements:

1. An individual seeking certification as a firearms instructor must successfully complete a Commission-recognized firearms instructor course. Under the immediate supervision of a school's range master, the individual must successfully:

- i. Demonstrate knowledge of the established range safety rules;
- ii. Identify the major parts of the handguns and shotguns used in the training program;
- iii. Demonstrate the ability to handle handguns and shotguns safely under conditions such as the following:
 - (1) Loading and unloading;
 - (2) Using loading devices;
 - (3) Clearing ammunition and weapon malfunctions; and
 - (4) Cleaning and maintaining weapons properly;
- iv. Demonstrate the knowledge and skills required to teach the techniques of marksmanship and be able to identify the reasons that may be leading a trainee to possible failure; and
- v. Score no less than 95 in the Commission-required firearms course.

2. In order to be eligible for recertification, firearms instructors must annually satisfy the range master of their ability to perform the requirements as set forth in (a)1 above and comply with an appropriate firearms requalification program.

3. An individual seeking certification as a Range Master must be certified by the Commission as a firearms instructor and:

- i. Possess a minimum of five years active experience as a certified firearms instructor at a Commission-approved school. The Commission may waive this requirement for compelling reasons;
- ii. Have served in the capacity of a certified firearms instructor under the supervision of a certified range master during at least six basic firearms courses at a Commission-approved school; and
- iii. Be recommended to the Commission by both the school director and the range master at the school where the applicant will serve that the applicant is competent to perform the duties and responsibilities of range master.

4. An individual seeking certification as a radar instructor at a Commission approved school or at a law enforcement agency must meet the following requirements:

- i. Prior completion of a course for radar operators, which shall have included a minimum of eight hours of training consisting of four hours of classroom instruction and four hours of supervised practice training;
- ii. Two years of experience as a radar operator, with a minimum of 80 hours of hands-on experience; and
- iii. Successful completion of a Commission-recognized course for radar instructors.

13:1-4.7 Appeal of certification denial

An individual seeking instructor certification who is denied certification as a result of the Commission staff review may appeal this decision to the Commission.

SUBCHAPTER 5. LAW ENFORCEMENT OFFICER CERTIFICATION

13:1-5.1 Certification requirements; basic courses

(a) A trainee shall be eligible for certification when the school director affirms that:

1. The trainee has achieved the minimum requirements set forth in the Basic Course for Police Officers, the Basic Course for Investigators or the Basic Course for Special Law Enforcement Officers, and has demonstrated an acceptable degree of proficiency in the performance objectives contained therein;
2. The trainee has participated in no less than 90 percent of the total instructional time assigned to those performance objectives designated by the Commission; and
3. The trainee has successfully completed the training required by the Commission to be conducted by the employing law enforcement agency.

13:1-5.2 Certification requirements; other courses

A trainee shall be eligible for certification in other courses when the School Director affirms that the trainee has successfully com-

pleted a curriculum and course requirements approved by the Commission.

13:1-5.3 Revocation of certification

The Commission may revoke the certification conferred upon a trainee if the Commission ascertains that the certification would not have been issued had certain facts concerning inappropriate conduct of the trainee been known to the Commission at the time the certification was issued. The Commission may also revoke a certification which was issued as the result of administrative error. The individual shall be notified in writing as to the reasons for revocation and shall be required to return the certification to the Commission. The individual may request a hearing 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.

SUBCHAPTER 6. CURRICULUM

13:1-6.1 Curriculum and courses

A curriculum promulgated by the Commission shall be the required curriculum at a Commission-approved school. The Commission curricula are incorporated herein by reference and are available from the Commission at the Richard J. Hughes Justice Complex, CN-085, Trenton, New Jersey 08625. An approved school shall conduct all basic courses and those other courses as shall be required by the Commission. In addition to the required curriculum, a school may also offer, with Commission staff approval, additional instruction.

SUBCHAPTER 7. SCHOOL ADMINISTRATION

13:1-7.1 School directors

Each Commission-approved school shall be under the immediate control of an individual who is designated for the purposes of these rules by the title "school director". The school director shall perform general administrative functions and shall be responsible for the day-to-day operations of the school. The Commission shall have the authority to suspend or dismiss a school director for good cause. A school director suspended or dismissed by the Commission may request a hearing before the Commission 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.

13:1-7.2 Operating entity responsibilities

(a) The law enforcement agency, combination of law enforcement agencies, institution of higher learning, or recognized governmental entity certified to operate a school is vested with the power, responsibility and duty:

1. To comply with all Commission rules, standards and directives governing the operation of the school;
2. To devise a curriculum, in conjunction with appropriate law enforcement officials and such other advisors that may be appropriate, that conforms to Commission requirements and submit same to the Commission staff for approval;
3. To promulgate, subsequent to Commission approval, and enforce rules governing the conduct of trainees and the use of the school's facilities. Each trainee shall be furnished a printed copy of the rules at the commencement of the course and a copy of the rules shall be posted in a conspicuous place on the school bulletin board and remain there for the duration of the course. These rules shall explicitly state which rule(s), the violation of which, may result in the trainee's suspension or dismissal from school;
4. To verify that the requirements for admission of an individual into the school have been complied with;
5. To maintain appropriate records for each trainee which shall include, but not be limited to, attendance, written examination grades, firearms qualification scores, behavior and counselling;
6. To report immediately the unauthorized absence of a trainee to an appropriate official in the trainee's law enforcement agency;
7. To report immediately the illness or injury of a trainee or an instructor to an appropriate official in the trainee's law enforcement agency and to the Commission staff;

8. To suspend or dismiss a trainee who has demonstrated that he or she will be ineligible for Commission certification, for unacceptable behavior or for other good cause. In such cases:

- i. The trainee shall be informed immediately of the reason(s) for the action;
- ii. As soon as possible thereafter a written statement of the reason(s) for the action shall be provided to the trainee, the appropriate official in the trainee's law enforcement agency and the Commission;
- iii. The suspension or dismissal of a trainee for misconduct may take effect immediately when, in the opinion of the school director, the continued presence of the trainee would be disruptive of or detrimental to the conduct of the class;
- iv. Upon the written request of a trainee, the Commission Chairman may, after consultation with the school director and for good cause, permit a trainee to remain in school pending the appeal of a suspension or dismissal pursuant to N.J.A.C. 13:1-9;
- v. A trainee who is dismissed from a school for misconduct shall not receive credit for any subjects completed up to the time of dismissal;

9. To inform the Commission whether a trainee has complied with the certification requirements set forth herein;

10. To submit records and forms to the Commission as required in accordance with a written schedule prepared by the Commission;

11. To maintain, for a period of three years, a master copy of each written examination conducted by the school, together with the correct answers. The individual written examination papers of trainees who are academic failures and the targets of those who are firearms failures are also to be maintained for a period of three years;

12. To forward to the Commission, on the appropriate form, any request for the certification of an individual seeking to become a certified instructor;

13. To forward to the Commission, two months in advance of the beginning of a class, a request for Commission Staff to conduct a training course for instructors;

14. To verify that all instructors have Commission certification. In an emergency or compelling circumstances, a non-certified instructor may be used. In such event, the Commission staff shall be notified as soon as possible and informed of the reason for this exception;

15. To designate a range master for the school who shall be qualified in accordance with Commission standards;

16. To maintain and safeguard all Commission equipment on loan to the school and to notify the Commission immediately if any of the equipment is damaged or missing;

17. To provide the Commission with class time for purposes of conducting orientation sessions for trainees and with bulletin board space for the posting of appropriate Commission rules and notices;

18. To charge a reasonable fee for each trainee enrolled at the school;

19. To appoint a school director and such assistants as may be required to implement this subchapter;

20. To conduct drug screening of all trainees so as to provide for the safety and welfare of all trainees, instructors and other school persons in accordance with the following procedures:

- i. All trainees will be requested to sign a waiver in a form prescribed by the Commission consenting to the sampling and testing of urine during the course. This waiver will include notification that a positive confirmation of the presence of illegal drugs in the trainee's urine will result in dismissal from the school;
- ii. Although criminal proceedings would not ordinarily be justified in the case of a positive drug test obtained as a result of mandatory, unannounced testing, the school director may report positive drug test results to the county prosecutor in appropriate circumstances;
- iii. The Commission shall designate the facility for both the initial screening and confirmation analysis of urine
- iv. Prior to the submission of a urine sample, the trainee will complete a medical questionnaire in a form prescribed by the Commission which shall clearly describe all drugs, both prescription and non-prescription, ingested during the past 30 days;
- v. Trainees will be required to submit a urine sample at any time during the course;

vi. A staff member of the school will serve as the official monitor and, as such, will be responsible for ensuring that all required forms, such as waivers, laboratory request forms and medical questionnaires have been thoroughly and accurately completed by the trainee. Prior to the submission of the sample, both the staff member and the trainee will inspect the specimen bottle for indications of pre-void tampering;

vii. Generally, the trainee will submit the urine sample in the presence of the official monitor. On those rare occasions where the trainee is not able to provide a sample in the presence of the official monitor, the school director may choose to permit the trainee to provide a sample without the witness, so long as the trainee removes his or her clothing in the presence of the official monitor prior to entering a room where he or she has no access to water or any other additive;

viii. The official monitor shall always be of the same sex as the trainee being tested. If there are no female staff members available who can serve as the official monitor for female applicants, the appointing authority may request that a female member of the prosecutor's office serve as the official monitor;

ix. Urine samples will be processed in accordance with accepted chain of evidence procedures. Throughout the urine acquisition process, the identity of the trainee shall be preserved through social security number. No forms forwarded to the laboratory will contain the trainee's name;

x. The trainee will complete the information requested on the specimen bottle label and the laboratory chain of request form;

xi. After the official monitor has inspected the information for accuracy, the trainee will void at least 50 milliliters of urine into the specimen bottle. The trainee will then secure the cap of the specimen bottle and initial and wrap evidence tape along the top of the bottle beginning on one side of the bottle, along the cap and down the other side. The trainee will place the specimen bottle and the original copy of the laboratory chain of custody form in a plastic evidence bag and initial and seal the bag with evidence tape prior to surrendering the specimen to the official monitor. The trainee and the school director shall also maintain a copy of the laboratory chain of custody form;

xii. After ascertaining that all forms have been completed accurately by the trainee and the person serving as a witness to the void, the official monitor shall take possession of the sample and place it in a controlled access refrigerated storage area until it is delivered to the designated laboratory. This delivery shall occur within 24 hours of acquisition;

xiii. The school director shall request that the designated laboratory provide oral notification of any urinalysis resulting in a positive test result. A sample shall be considered positive for the presence of drugs only when resulting from a confirmatory test procedure. A written laboratory report shall be obtained for all positive samples. All trainees who are found positive for drugs will be orally notified by the school director of the positive confirmation result as soon after the oral notification from the laboratory as possible. A copy of the laboratory report may be provided to the trainee by the school director if requested;

21. To employ aides, with the written approval of the Commission, to assist instructors, provided that no aide shall act in any instructional capacity;

22. To immediately report to the Commission any allegation of misconduct, improper instruction or other actions of an instructor or school staff; and

23. To cooperate with the Commission in any investigation or inquiry.

SUBCHAPTER 8. RESPONSIBILITIES OF LAW ENFORCEMENT AGENCIES AND OTHER AGENCIES

13:1-8.1 Investigation of police officers prior to acceptance into a basic course

(a) Prior to the acceptance of a police officer into a basic course, the employing law enforcement agency shall:

1. Fingerprint the individual and forward copies of the fingerprints to the New Jersey State Police and the Federal Bureau of Investigation in order to ascertain if the individual has been convicted of an offense which would disqualify an appointment of a police officer. The results obtained from the State Police and the Federal Bureau of Investigation shall be made known and available to the appropriate appointing authority;

2. Investigate the individual to ascertain if he or she is eligible for permanent appointment in a law enforcement position. The results of this investigation shall be made known and available to the appropriate appointing authority;

3. Require that an individual must undergo a medical examination given by a licensed physician, to determine if the individual is fit to undergo training. The physician shall state, on a form prescribed by the Commission, that the individual is fit to undergo the training for which the individual is enrolled; and

4. Provide training at the employing law enforcement agency in those performance objectives designated by the Commission.

13:1-8.2 Notification to school director

An appropriate official from the employing law enforcement agency seeking to enroll an individual in a Basic Course shall notify the school director in writing, 10 days prior to the commencement of the course, that the agency has complied with its responsibilities as provided in this subchapter. In the event an agency is unable to comply with this section, the agency shall forward a written request to the Commission for an extension of time and shall indicate the reason(s) for the request. Failure to comply with respect to this notification may result in the affected individual being denied admittance into the basic course.

13:1-8.3 Other agencies

Individuals who are not police officers may enroll in a Basic Course or other courses when so approved in advance by the Commission and in compliance with N.J.A.C. 13:1-8.1 and 8.2.

13:1-8.4 Waivers

(a) The Commission may, in its discretion, waive all or portions of any required training for an individual who has successfully completed a course conducted by any Federal, State or other public or private agency which is substantially equivalent to the Commission course.

(b) A request to waive training shall be submitted by the appointing authority to the Commission on a form prescribed by the Commission.

(c) In order to maintain uniformity, the Commission shall, from time to time consistent with existing law, establish criteria for granting a waiver of training by the Commission staff. These criteria shall be available at any time to an appointing authority upon request.

(d) Employing agencies shall be informed of the requirements utilized by the Commission in evaluating a request for a waiver.

SUBCHAPTER 9. APPEALS

13:1-9.1 Notice of appeal

All appeals to the Commission shall be by a notice of appeal to the Commission Chairman setting forth the subject matter of the appeal, the relief sought and the grounds therefor.

13:1-9.2 Service of notice

The appellant shall serve a copy of the notice of appeal upon the respondent. The notice of appeal, together with proof of service, shall be filed with the Commission Chairman within 30 days from the date of the action appealed.

13:1-9.3 Answer

Within 10 days after service of the notice the respondent shall file an answer with the Commission Chairman and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent shall include a statement of the grounds for its action.

13:1-9.4 Notice of hearing

Upon the filing of the notice and petition of appeal, at least five days' notice of the time and place fixed for the hearing of the appeal by the Commission shall be given to the parties. If the matter con-

stitutes a contested case, the Commission may refer the appeal to the Office of Administrative Law for a hearing 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.

13:1-9.5 Conduct of hearing

All hearings held pursuant to this subchapter shall be 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.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL AMUSEMENT GAMES CONTROL BUREAU

Amusement Games Control

Proposed Readoption: N.J.A.C. 13:3-1, 2, 3, 4, 7

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

13:3-1.1, 1.8, 1.13, 1.16, 2.3, 3.4, 3.5, 3.6, 3.7, 3.9, 4.3, 7.2 and 7.6.

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control and Amusement Games Control Commissioner.

Authority: N.J.S.A. 5:8-79, 5:8-79.1, 5:8-85, 5:8-107.

Proposal Number: PRN 1988-146.

Submit comments by April 20, 1988 to:

John F. Vassallo, Jr.
Amusement Games Control Commissioner
Division of Alcoholic Beverage Control
CN-087
Trenton, NJ 08625-0087

The agency proposal follows.

Summary

The Bureau of Amusement Games Control is responsible for the licensing and regulating of the amusement games, located at New Jersey's seashore resorts, amusement parks, and agricultural fairs.

N.J.A.C. 13:3 was originally adopted in 1966 and is scheduled to expire on August 1, 1988. The Bureau of Amusement Games Control has reviewed the rules proposed for readoption and determined them to be necessary, reasonable and proper for the purpose for which they were originally adopted, the licensing and regulation of amusement games. The Bureau is proposing the readoption of these rules, some with amendments, in compliance with Executive Order No. 66 (1978) and thereby seeks to establish a new five-year expiration date.

N.J.A.C. 13:3-1.1 through 1.19 deal with the municipal issuance of amusement games licenses, including where the games can be held, who is eligible to hold a license, the amending of a license and the municipal responsibilities in issuing a license.

N.J.A.C. 13:3-2.1 through 2.6 discuss the State's issuance of amusement games licenses, including the license fees and duration of a license.

N.J.A.C. 13:3-3.1 through 3.17 deal with the conduct of the licensees and the operation of the game. This subchapter contains the rules that specify the maximum price to play, prize values, and types of prizes that may be awarded.

N.J.A.C. 13:3-4.1 through 4.5 deal with the financial reporting obligations of the licensees, as well as what records must be available for inspection.

The Bureau is reviewing the current rules at N.J.A.C. 13:3-5, Disciplinary Proceedings, and 13:3-6, Appeals, with respect to their compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. These subchapters are not proposed for readoption at this time. A subsequent proposal amending the current rules will be published in a future New Jersey Register.

N.J.A.C. 13:3-7.1 through 7.9 deal with the certification process, criteria for certification, information that must be supplied, the amendment and decertification process, and details the different types of certifications.

The proposed amendments to the Amusement Games Control rules will clear up some problem areas that have existed within these provisions, as well as to review the price to play and prize values, so as to encourage

the continued viability of the amusement games industry, while at the same time assuring that amusement games remain a family-oriented amusement activity.

The amendment to N.J.A.C. 13:3-1.1 proposes working definitions that will help resolve the questions that have existed as to what is an amusement park, an arcade, a resort and a seashore resort. These are terms that are referenced many times in both the statute and rules without being defined. The proposed definitions reflect the understanding of these terms since the advent of the Amusement Games Licensing Law in 1959.

The proposed amendments to N.J.A.C. 13:3-1.8 and 2.3 make clear that each coin-operated arcade game does not require a separate license.

The proposed amendment to N.J.A.C. 13:3-1.13 conforms the language of the rule with N.J.S.A. 5:8-101.

The proposed amendment to N.J.A.C. 13:3-1.16 specifies that a licensee can amend a license so as to be able to switch from one game to another, as long as certain guidelines are followed. This proposed amendment also establishes a minimal fee of \$25.00 to defray the Bureau's expenses in processing the license amendment.

The proposed amendment to N.J.A.C. 13:3-3.9 eliminates the burdensome questionnaire forms, which is a duplication of the employee list, and which has often times resulted in lengthy delays in the employment of a new employee. At the same time the amendment enables the licensee to have an employee swear to his eligibility of employment.

The proposed amendment to N.J.A.C. 13:3-4.3 simplifies the language in this rule, making it easier for the layperson to understand.

The proposed amendment to N.J.A.C. 13:3-7.2 will raise the certification fee from \$50.00 to \$100.00. This fee is used to defray the Amusement Game Control Bureau's costs in reviewing a game and issuing the amusement game certification.

The proposed amendment to N.J.A.C. 13:3-7.6 establishes a time frame for any certification modifications to take place, and a fair and equitable system by which games can be decertified. It further adds due process protection to licensees who are operating games under a certification proposed to be decertified.

In November 1981, an affirmative referendum on P.L. 1981, c. 219 amended N.J.S.A. 5:8-107 to provide that the maximum charges which can be accepted by an amusement games licensee and the maximum value of a merchandise prize to be offered and given for the playing of an amusement game or games shall be determined by the Amusement Games Control Commissioner following a public hearing. In November 1987, the New Jersey Amusement Association requested that a public hearing be held with a view to increasing the amount to be charged per game and the value of the prizes. In response, the Commissioner scheduled (see 20 N.J.R. 44(a)) Preproposal Hearings on possible amendments to N.J.A.C. 13:3-3.4 through 3.6 for January 20, 1988. The hearing was held on that date and a transcript thereof is available for review at the offices of the Bureau of Amusement Games Control, in the Division of Alcoholic Beverage Control, 3rd Floor, Richard J. Hughes Justice Complex, Trenton, New Jersey. At the hearing the Executive Director and three game-operator members of the New Jersey Amusement Association testified.

Based upon the testimony presented at the hearing, the Commissioner proposes that N.J.A.C. 13:3-3.4 be amended to permit skill games and games of chance licensees to offer the customer a multiple play opportunity at a price not to exceed \$2.00. This is designed to give the player a greater opportunity to win at a lower price. The arcade game price to play will be established in each game's individual certification, based on criteria which are outlined in the proposal. The maximum charge, however, may not exceed \$1.00 unless it has an enhanced mode requiring multiple coins, in which case the price can be permitted to go to \$1.25. Where such increase is permitted, the prize, tickets or tokens awarded will be required to at least proportionately also increase. Group games will be permitted to offer a time period special which is designed to give the player more plays or opportunities to win for his money. The maximum that will be allowed to be collected for a time period special will be \$5.00 and the number of games must exceed the number of games that would be played at the per game price. The addition of N.J.A.C. 13:3-3.4(g) will allow licensees to pre-sell ticket books for game plays at a maximum cost of \$10.00 for the book, provided that the cost-per-play is thereby reduced below the single play price. This concept is recognized as a standard practice in amusement areas with ride tickets, and this addition will allow this concept to be expanded. Many ride operators are also amusement games operators.

The amendments to N.J.A.C. 13:3-3.5 and 3.6 deal with the type of prizes that can be offered and the maximum value of the prizes that can be offered. In consonance with the Bureau's efforts to keep the amuse-

ment games family entertainment, contraceptives and items classified as weapons have been added to the list of prizes that licensees are prohibited from offering.

Based upon the evidence that was presented at the public hearing, it appears that the persons who play the games in the arcades have a tendency to accumulate tickets and tokens for large prizes. The current \$500.00 prize limit in an arcade situation does not seem to offer the licensee the opportunity to continue to attract customers. Thus the Commissioner proposes that the maximum prize value limit in an arcade be increased to \$999.99. All other game certifications prize limits will remain at \$500.00. The proposal also permits non-arcade games operated by licensees in conjunction with an arcade to award tickets that can be accumulated and redeemed for prizes offered in the arcade, provided that the single game award cannot exceed the value of \$500.00. The proposal further limits the pyramiding of prizes.

It has been generally understood that tickets or tokens which have been won cannot be redeemed for cash or be used to replay a game; the proposed amendment to N.J.A.C. 13:3-3.7 expressly states this prohibition.

The text of N.J.A.C. 13:3-3.5(c) is reproduced in this proposal although no changes are proposed. The subsection was previously adopted and is currently in effect but due to a printing error the text was inadvertently omitted. The text at subsection (d), however, is currently being proposed as new.

Social Impact

Amusement games have been a part of New Jersey's tourism industry since the first boardwalk was built in the late 1800's. Since the legalization of this industry in 1959, it has grown to an over \$50 million a year business. With the passage of the public referendum in November 1981 on P.L. 1981, C. 291 (N.J.S.A. 5:8-107), the industry has gone through a metamorphosis, in that the industry is more electronic and the accumulation of tickets or tokens for prizes is much more prevalent. The proposed amendments to N.J.A.C. 13:3-3.4 allow the licensees a certain degree of flexibility in the operation of the games in that they may offer fees that will allow multiple entries for specified amounts. The proposed amendment to N.J.A.C. 13:3-3.5(a) will help to assure that this family-oriented entertainment industry remains free of dangerous and harmful prizes. At the same time, the proposed amendments to N.J.A.C. 13:3-3.5(b) and 13:3-3.6(a) will allow those players who wish to accumulate tickets or tokens to be able to do so for bigger and better prizes. The effect on the public of these proposed amendments should be a more diversified and attractive amusement games industry, offering better value for the entertainment dollar of the citizens of New Jersey, as well as its visitors and tourists.

Economic Impact

N.J.A.C. 13:3 has provided effective procedures for licensing and regulation of amusement games in the State, which has encouraged the continued viability of that industry.

The proposed amendments which will have a significant economic impact on the State, industry and public are the changes in N.J.A.C. 13:3-3.4 to 3.6. Although these amendments at first glance appear to enable the licensee to collect more money, the amendments will have an opposite effect in that the player will be afforded a greater opportunity to win a prize for less than the individual game price. Likewise, the player will now be afforded the opportunity, in an arcade situation, to save tickets or tokens so as to receive better and more valuable prizes.

The proposed amendment to N.J.A.C. 13:3-1.16 requires a \$25.00 license amendment fee which is designed to defray the expenses of the Bureau of Amusement Games Control in amending a license. This is a minimal amount to a licensee but will serve to reimburse the State for the administrative cost involved in processing a change to a license.

The proposed amendment to N.J.A.C. 13:3-7.2 increases the cost of having a game certified from \$50.00 to \$100.00. Again, this is designed to defray the expenses in issuing an Amusement Games Certification. It will also discourage certifications where there is no intent to introduce the game into the New Jersey amusement games industry, a situation which has occasionally occurred.

Regulatory Flexibility Statement

When each license is looked at individually, all of the more than 1,200 licenses come within the Regulatory Flexibility Act's definition of small business, as defined in N.J.S.A. 52:14B-17. However, the reporting, recordkeeping, and other compliance requirements imposed uniformly on all licensees are prerequisite to effective licensing and regulation of amusement games in the State pursuant to N.J.S.A. 5:8-78 et seq. and 5:8-100

et seq. The proposed elimination of the questionnaires in N.J.A.C. 13:3-3.9 will lessen compliance requirements in that it eliminates for the small business a duplicative and unnecessary piece of paperwork. The proposed amendments to the readoption will not adversely impact on any licensee.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:3.

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

13:3-1.1 Definitions: Location of games

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

"Arcade" means a place where a single player may play any one of a number of machines or devices, upon payment of a fee, to attempt to obtain a prize or tickets or tokens redeemable for a prize, or to attempt to attain a score or result upon the basis of which a prize, ticket or token is awarded.

"Recognized amusement park" means a commercially operated permanent business, open to the public at least 31 consecutive days annually, whose acreage is designed and themed for the primary purpose of providing participatory amusements incorporating rides or water slides licensed in accordance with N.J.S.A. 5:3-31, et seq., and food and merchandise concessions in permanent structures. Nothing in this definition shall prevent a license from being issued in any location which has had a license issued prior to (the effective date of this amendment).

"Resort" means a place providing recreation and entertainment especially to visitors.

"Seashore resort" means a "resort" as defined in this subsection that borders tidal waters.

[(a)](b) (No change in text.)

13:3-1.8 Separate license required for each game and premises

A separate license shall be issued for each specific kind of game authorized to be held, operated and conducted on the licensed premises by the licensee, and a separate license shall be issued for each place at which the licensee is authorized to hold, operate and conduct such game[.], **except that a single license may be issued for all games classified under Certification No. 2 pursuant to N.J.A.C. 13:3-7.9(a)2. and operated in an arcade at a single location.**

13:3-1.13 Municipal resolution to authorize licenses

(a) No license shall be issued in any municipality unless and until the issuance thereof has been authorized by a resolution duly adopted by the municipal governing body which resolution shall, among other things, specifically recite:

1. That the premises to be licensed are located in a recognized amusement park in the municipality; or

2. That the municipality is a seashore or other resort[;] and **that the**

[3. The] premises to be licensed are located in an amusement or entertainment area in such resort according to the customary understanding of such terms in the municipality; or

[4.]3. That the municipality contains a place where an agricultural fair and exhibition is held by an association organized for the purpose of holding agricultural fairs and exhibitions which is approved by the State Department of Agriculture.

(b) (No change.)

13:3-1.16 Amendment to license; notice

(a) Any license may be amended, upon application to the municipal governing body, a copy of which application must be submitted to the Commissioner, if the subject matter of the proposed amendment could lawfully and properly have been included in the original license, **including amendments between all certifications**, and upon payment of such additional license fee, if any, as would have been payable, if it had been so included.

(b) Notice of any such amendment shall be certified to the Commissioner by the municipal governing body within 10 days[.], **along with a \$25.00 amendment fee, payable by the licensee to the Amusement Games Control Bureau.**

13:3-2.3 Separate application and fee for [special] specific games and separate premises

(a) A separate application shall be made, and separate fee paid, for each specific kind of game to be authorized to be held, operated and conducted by the applicant pursuant to municipal and State license and for each place at which the applicant seeks authorization to hold, operate and conduct such game or games[.], **except that a single license may be issued for all games classified under Certification No. 2 pursuant to N.J.A.C. 13:3-7.9(a)2. and operated in an arcade at a single location.**

13:3-3.4 Maximum fee for participation in game

(a) **Except as set forth in this section [No] no licensee shall charge or accept, or allow, permit or suffer, directly or indirectly, the charging or accepting of more than \$1.00 from any one player or participant in any one amusement game for each single or multiple entry fee or payment for the privilege of participating in the game[.], except that the maximum charge for participation in any arcade game certified in Subchapter 7 (Certification of Permissible Games) under Certification No. 2 shall not exceed \$0.50 for any one game or play[.]**

(b) **The maximum charge for participation in any skill game certified in N.J.A.C. 13:3-7.9(a)1. under Certification No. 1 shall not exceed \$1.00 for any one game or play, except that a charge not to exceed \$2.00 may be made for multiple plays, the aggregate number of which must be greater than the sum of the plays available at the single play price.**

(c) **The maximum charge for participation in any game of chance certified in N.J.A.C. 13:3-7.9(a)5. or (a)9. under Certifications No. 5 or No. 9 shall not exceed \$1.00 for any one game or play, except that a charge not to exceed \$2.00 may be made for multiple chances, the aggregate number of which must be greater than the sum of the chances available at the single play price.**

(d) **The maximum charge for participation in any arcade game certified in N.J.A.C. 13:3-7.9(a)2. under Certification No. 2 shall not exceed the maximum charge specified in the original or amended certification, but in no event shall the amount exceed \$1.00, except that where a machine or device permits an enhanced mode of play when additional coins are inserted, and provided that the number of tickets or tokens awarded are at least proportionately increased, the maximum denomination coin shall not exceed \$0.25, and the cumulative total shall not exceed \$1.25 when the maximum number of coins are inserted. In establishing the maximum charge for an arcade machine or device, the Commissioner shall consider but is not limited to, the following:**

1. The type and nature of the machine or device;
2. The type of prize it is designed to award;
3. The number of coins required or permitted for play; and
4. The time required to complete a game or play.

(e) **The maximum charge for participation in any group game certified in N.J.A.C. 13:3-7.9(a)4. under Certification No. 4 shall not exceed \$1.00 for any one game or play, except that an increased charge not to exceed \$5.00 may be made to allow play for a set period of time, provided that the number of games to be played within that period of time shall exceed the number of games or plays that would be played at the single game or play price.**

(f) **Upon receipt of currency greater than [\$1.00] the charge for the game or play, the licensee must immediately remit the appropriate change to the player [immediately].**

(g) **Nothing in this section shall preclude a licensee from offering a ticket book with tickets good for a number of plays of a game, provided that:**

1. The number of plays shall be greater than the number that would be available at the single game or play price;
2. The total cost of the ticket book shall not exceed \$10.00; and
3. A single game or play price not exceeding the limits set forth in (a) through (e) above is always available.

13:3-3.5 Types of prizes permitted; value of prize

(a) **No licensee shall offer or give, directly or indirectly, any prize in any single amusement game except merchandise other than alcoholic beverages; drug or narcotic paraphernalia; [or] obscene, indecent, filthy, lewd, lascivious or disgusting recordings, printings, writing, pictures or other matter[.]; contraceptives; or weapons as defined in N.J.A.C. 2C:39-1r.**

(b) **The retail value of such merchandise prize or prizes to be so offered and given in any such game or for an accumulation of wins from a series of games or plays shall not exceed an average retail value of \$500.00[.], except that the maximum average retail value of any prize which may be offered and given for accumulation of tickets or tokens in any arcade certified in N.J.A.C. 13:3-7.9(a)2. under Certification No. 2 shall not exceed \$999.99.**

1. **There shall be no limit on the time within which tokens or tickets must be redeemed.**

2. **The transfer of any arcade licensed and certified in N.J.A.C. 13:3-7.9(a)2. under Certification No. 2 shall specifically provide that all tickets and tokens awarded by the transferor shall be honored by the transferee.**

(c) **All winners shall be determined and all prizes or non-transferable tickets or tokens that may be accumulated for a prize shall be awarded in any game forthwith upon the completion of the game and before making or accepting any charge for participation in any subsequent game or play.**

(d) **The maximum number or prize levels for games certified in N.J.A.C. 13:3-7.9(a) under Certification Nos. 1, 3, 5, 6, 7, 8 and 9 shall not exceed five, as follows: small, medium, large, extra large and choice. There shall not be more than two steps for each prize level.**

1. **Where such games are operated in conjunction with an arcade licensed under Certification No. 2, such arcade may also award as prizes tickets redeemable toward merchandise prizes available in the arcade, provided that the value of any single prize ticket shall not permit redemption for a prize valued in excess of an average retail value of \$500.00. Such tickets may be combined with tickets or tokens awarded in the arcade for redemption purposes.**

13:3-3.6 Determination of value of prizes

(a) **No licensee shall offer, give or display any prize on the licensed premises unless its average retail value is not in excess of [\$500.00] the limits established in N.J.A.C. 13:3-3.5(b).**

(b) **(No change.)**

13:3-3.7 Redemption of prize for cash

No licensee shall, directly or indirectly, redeem for money or for the playing of any additional game or games, any prize or ticket or token offered or given[or] nor shall any licensee allow, permit, [or] suffer or participate in such redemption.

13:3-3.9 Employees qualification, [Questionnaires,] list

(a) **No licensee shall employ in any capacity on the licensed premises any person who would fail to qualify as a licensee by reason of conviction of a crime or otherwise [nor any person who refuses or fails to execute under oath a questionnaire, in a form prescribed by the State Commissioner of Amusement Games Control which shall be supplied by and filed with the municipal police department by the licensee within 72 hours of employment].**

[(b) A true copy of such questionnaire, endorsed to indicate that the original has been so filed shall, during the continuance of the employment, be kept on the licensed premises, together with the employee list, both of which must be available for inspection by agents of the municipal governing body and the Commissioner.]

(b)[(c)] **A copy of [the] an employee list shall be kept with each individual license. This list must contain the name and home and seasonal address of every person authorized to operate the licensed game, his date of birth, and the date of commencement and termination of employment. This list must be kept current.**

(c) **The licensee may require employees to complete an application or affidavit certifying the employee's eligibility for employment under the terms of this section.**

13:3-4.3 Report of conduct of game by licensee

(a) **Every licensee shall, not later than the 15th day of January [following the last day of December of each year, or the 15th day of the month following the last day of operation of the game during the license year during which the licensed game is held, operated and conducted], file with the Commissioner a report of the conduct of games [during] for the previous license year or period, in a form prescribed by the Commissioner.**

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

13:3-7.2 Application for certification; contents; fee

(a) (No change.)

(b) Every application for certification shall be accompanied by a non-refundable fee of [\$50.00] **\$100.00** payable to the New Jersey Amusement Games Control Commissioner.

13:3-7.6 Cancellation of certification

(a) Any certification of permissibility may be cancelled and vacated or modified by the Commissioner in his sound discretion at any time, either specifically as to a particular license or licenses, or generally as to all licenses issued on the basis of the particular certification, whereupon such licenses as may be affected, shall, **30 days after the cancellation and vacation**, no longer authorize the holding, operation or conduct of the game which was the subject of the certification [in the event of its cancellation and vacation], or shall authorize the holding, operating and conduct of the game only in such manner as accords with the modified certification in the event of its modification.

(b) **Before any cancellation and vacation of a certification shall occur, any licensee operating a game, machine or device under such certification shall be given notice and afforded a reasonable opportunity to be heard by the Commissioner.**

TRANSPORTATION

TRANSPORTATION OPERATIONS

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by April 20, 1988 to:

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

(a)

Speed Limits

Routes N.J. 13 in Ocean County; N.J. 20 in Passaic County; N.J. 44 in Gloucester County and N.J. 70 in Camden, Burlington, Ocean and Monmouth Counties

Proposed Amendments: N.J.A.C. 16:28-1.13, 1.15, 1.30 and 1.93

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1988-126.

The agency proposal follows:

Summary

The proposed amendments will establish speed limit zones along Routes 13 in Point Pleasant and Bay Head Boroughs, Ocean County; 20 in the City of Paterson, Passaic County; 44 in Greenwich Township, Gloucester County; and 70 in Camden, Burlington, Ocean and Monmouth Counties for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from local officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of speed limit zones along Routes 13 in Ocean County; 20 in Passaic County; 44 in Gloucester County; and 70 in Camden, Burlington, Ocean and Monmouth counties was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.13, 1.15, 1.30 and 1.93 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish speed limit zones along Routes 13 in Point Pleasant and Bay Head Boroughs, Ocean County; 20 in the City of Paterson, Passaic County; 44 in Greenwich Township, Gloucester County; and 70 in Camden, Burlington, Ocean and Monmouth Counties for the safe and efficient flow of traffic, the enhancement

of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate stripings along the roadway. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28-1.13 Route 20 including Route 20 Freeway

(a) The rate of speed designated for the certain part of State highway [r]Route [Number] 20 described in this subsection [shall be and hereby] is established and adopted as the maximum legal rate of speed. [thereat;]

1. (No change.)

[(b) The rate of speed designated for the certain part of State highway Route 20 described in this section shall be and hereby is established and adopted as the maximum legal rate of speed thereat:

i. For both directions of traffic:

i. 50 mph within the corporate limits of the City of Paterson.]

2. **In the City of Paterson, Passaic County:**

i. **For northbound traffic:**

(1) **Zone one: 45 miles per hour between Route U.S. 46 and 530 feet south of Edwards Street (mileposts 9.13 to 10.90); thence**

(2) **Zone two: 35 miles per hour between 530 feet south of Edwards Street and 1060 feet north of Edwards Street (mileposts 10.90 to 11.18); thence**

(3) **Zone three: 45 miles per hour between 1060 feet north of Edwards Street and 36th Street (mileposts 11.18 to 11.54); thence**

(4) **Zone four: 35 miles per hour between 36th Street and 9th Avenue (mileposts 11.94 to 13.21); thence**

(5) **Zone five: 45 miles per hour between 9th Avenue and Madison Avenue (mileposts 11.94 to 13.21); thence**

ii. **For southbound traffic:**

(1) **Zone one: 45 miles per hour between Madison Avenue and 9th Avenue (mileposts 13.21 to 11.94); thence**

(2) **Zone two: 35 miles per hour between 9th Avenue and 36th Street (mileposts 11.94 to 11.54); thence**

(3) **Zone three: 45 miles per hour between 36th Street and 42nd Street (mileposts 11.54 to 11.25); thence**

(4) **Zone four: 35 miles per hour between 42nd Street and 650 feet north of Overlook Avenue (mileposts 11.25 to 10.74); thence**

(5) **Zone five: 45 miles per hour between 650 feet north of Overlook Avenue and Route U.S. 46 (mileposts 10.74 to 9.13);**

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

16:28-1.15 Route 13

(a) The rate of speed designated for State highway Route 13 described in [(a) of] this subsection is established and adopted as the maximum legal rate of speed [thereat]:

[1. Forty mph between milepost 0.0 near Hollywood Boulevard and milepost 0.50 at Bay Avenue.]

1. **For both directions of traffic in the Boroughs of Point Pleasant and Bay Head, Ocean County:**

i. **Thirty-five miles per hour between 300 feet west of Rue Lido Boulevard (milepost 0.0) and 312 feet east of Bay Avenue (milepost 0.58).**

16:28-1.30 Route 70

(a) The rate of speed designated for the certain parts of State highway [r]Route [number] 70 described in this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic in Camden, Burlington, Ocean and Monmouth Counties:

[i. 45 miles per hour from the beginning of Route 70 at the intersection with Route 38 in Pennsauken Township, to the Routes 70 and 41 traffic circle in Cherry Hill Township; thence

ii. 50 miles per hour to a point 1,000 feet east of Springfield Road, Cherry Hill Township; thence

iii. 55 miles per hour to a point 2,000 feet east of milepost 42 in Manchester Township; thence (Repealed by R. 1974 d. 48)

iv. 50 miles per hour to Black Branch Creek bridge (at the westerly Manchester Township-Lakehurst Borough Corporate line); thence

v. 45 miles per hour to a point 500 feet east of milepost 45 in Manchester Township; thence

vi. 55 miles per hour to a point 1,000 feet west of Ocean County Road number 528, thence (Repealed by R. 1974 d. 48)

vii. 45 miles per hour to the Routes 70 and 88 traffic circle at Laurelton in Brick Township; thence

viii. 50 miles per hour to the end of Route 70 at the Routes 70, 34 and 35 traffic circle in Wall Township.]

i. In Cherry Hill Township, Camden County:

(a) Zone one: 45 miles per hour between Route 38 and the Cherry Hill Township-Evesham Township line (mileposts 0.0 to 7.38);

ii. In Burlington County:

(1) Evesham Township:

(A) 45 miles per hour between the Cherry Hill Township-Evesham Township line and Route 70-Route 73 traffic circle (mileposts 7.38 to 8.30); thence

(B) Zone two: 50 miles per hour between Route 70-Route 73 traffic circle and the Evesham Township-Medford Township line (mileposts 8.30 to 11.78).

(2) Medford Township:

(A) 50 miles per hour between the Evesham Township-Medford Township line and Medford-Evesboro Road (County Road 618) (mileposts 11.18 to 12.34); thence

(B) Zone three: 45 miles per hour between Medford-Evesham Road (County Road 618) and Main Street (County Road 541) (mileposts 12.34 to 13.90); thence

(C) Zone four: 50 miles per hour between Main Street (County Road 541) and the Medford Township-Southampton Township line (mileposts 13.90 to 15.91);

(3) Southampton Township, Woodland Township and Pemberton Township:

(A) 50 miles per hour between the Medford Township-Southampton Township line and Pemberton Township-Manchester Township line (mileposts 15.91 to 33.45);

iii. In Ocean County:

(1) Manchester Township:

(A) 50 miles per hour between the Pemberton Township-Manchester Township line and the westernmost Manchester Township-Lakehurst Borough line (mileposts 33.45 to 43.25);

(2) Lakehurst Borough:

(A) 50 miles per hour between the westernmost Manchester Township-Lakehurst Borough line and the Eisenhower traffic circle (mileposts 43.25 to 43.55); thence

(B) Zone five: 45 miles per hour between the Eisenhower traffic circle and the easternmost Lakehurst Borough-Manchester Township line (Routes 70 and 37 traffic circle) (mileposts 43.55 to 44.82); thence

(3) Manchester Township:

(A) Zone six: 50 miles per hour between the easternmost Lakehurst Borough-Manchester Township line (Route 70 and 37 traffic circle) and the Manchester Township-Dover Township line (mileposts 44.82 to 48.02); thence

(4) Dover Township:

(A) 50 miles per hour between the Manchester Township-Dover Township line and the Dover Township-Lakewood Township line (mileposts 48.02 to 49.88); thence

(5) Lakewood Township:

(A) 50 miles per hour between the Dover Township-Lakewood Township line and the Lakewood Township-Brick Township line (mileposts 49.88 to 53.28); thence

(6) Brick Township:

(A) 50 miles per hour between the Lakewood Township-Brick Township line and Duquesne Boulevard (mileposts 53.28 to 53.75); thence

(B) Zone seven: 45 miles per hour between Duquesne Boulevard and Chambers Bridge Road (County Road 549), (mileposts 53.75 to 54.40); thence

(C) Zone eight: 50 miles per hour between Chambers Bridge Road (County Road 549) and 1,170 feet west of Route 88 (mileposts 54.40 to 54.95); thence

(D) Zone nine: 40 miles per hour between 1,170 feet west of Route 88 and 780 feet east of Route 88 (mileposts 54.95 to 55.33); thence

(E) Zone 10: 50 miles per hour between 780 feet east of Route 88 and River Road (mileposts 55.33 to 58.18); thence

(F) Zone 11: 45 miles per hour between River Road and Brick Township-Point Pleasant Borough line (mileposts 58.18 to 58.30); thence

(7) Point Pleasant Borough:

(A) 45 miles per hour between Brick Township-Point Pleasant Borough and the Point Pleasant Borough-Brielle Borough line (center of the Bridge over Manasquan River) (mileposts 58.30 to 58.36); thence

(8) Brielle Borough:

(A) 45 miles per hour between the Point Pleasant Borough-Brielle Borough line (center of the Bridge over Manasquan River) and River View Drive (mileposts 58.36 to 58.87); thence

(B) Zone 12: 50 miles per hour between River View Drive and the Routes 70, 34 and 35 traffic circle (mileposts 58.87 to 59.84);

iv. In Monmouth County:

(1) Wall Township:

(A) Zone 12: 50 miles per hour between River View Drive and the Routes 70, 34 and 35 traffic circle (mileposts 58.87 to 59.84);

16:28-1.93 Route 44

(a) The rate of speed designated for State [H]ighway Route 44 described [herein below] in this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat for both directions of traffic]:

1. For both directions of traffic in Gloucester County:

[1. Zone 1: 50 mph within the corporate limits of Logan Township (mileposts 0.0 to 2.5) and to Willow Drive in Greenwich Township (milepost 3.4); thence

2. Zone 2: 35 mph to Casperson Street in Greenwich Township (milepost 4.5), except:

i. School zone: 25 mph in the Gibbstown Elementary School Zone, during recess or while children are going to or leaving school, during opening or closing hours; thence

3. Zone 3: 45 mph to Swedesboro-Billingsport Road in Greenwich Township (milepost 5.6); thence

4. Zone 4: 35 mph to Paulsboro Borough-West Deptford Township line (milepost 6.6); thence

5. Zone 5: 50 mph to 900 feet south of Church Street in West Deptford Township (milepost 8.9); thence

6. Zone 6: 40 mph to Salem Avenue in West Deptford Township (milepost 9.4); and thence

7. Zone 7: 45 mph to Route US 130 in Deptford Township (milepost 9.9).]

i. Logan Township:

(1) Zone one: 50 miles per hour within corporate limits (mileposts 0.0 to 2.5); thence

ii. Greenwich Township:

(1) 50 miles per hour between the Logan Township-Greenwich Township line and 2,000 feet south of Willow Drive (mileposts 2.17 to 2.74); thence

(2) Zone two: 40 miles per hour between 2,000 feet south of Willow Drive and 200 feet south of Willow Drive (mileposts 2.74 to 3.0); thence

(3) 35 miles per hour between 200 feet south of Willow Drive and Casperson Street, except 25 miles per hour within the Gibbstown Elementary School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 3.0 to 4.09); thence

(4) Zone three: 45 miles per hour between Casperson Street and Swedesboro-Billingsport Road (mileposts 4.5 to 5.6); thence

- iii. Greenwich Township and Paulsboro Borough:
 (1) **Zone four: 35 miles per hour between Swedesboro-Billingsport Road and Berkley Road (mileposts 5.6 to 5.7); thence**
 iv. Paulsboro Borough:
 (1) **35 miles per hour between Berkley Road and the West Deptford Township line (mileposts 5.7 to 6.6); thence**
 v. West Deptford Township:
 (1) **Zone five: 50 miles per hour between the Borough of Paulsboro-West Deptford Township line and 900 feet south of Church Street (mileposts 6.6 to 8.9); thence**
 (2) **Zone six: 40 miles per hour between 900 feet south of Church Street and Salem Avenue (mileposts 8.9 to 9.4); thence**
 (3) **Zone seven: 45 miles per hour between Salem Avenue and Route U.S. 130 (mileposts 9.4 to 9.9).**

(a)**Speed Limits****Route U.S. 9 in Monmouth County and N.J. 185 in Hudson County****Proposed Amendment: N.J.A.C. 16:28-1.41****Proposed New Rule: N.J.A.C. 16:28-1.26**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1988-127.

The agency proposal follows:

Summary

The proposed new rule and amendment, respectively, will establish speed limit zones along Route N.J. 185 in the City of Jersey City, Hudson County and Route U.S. 9 including parts of Route 444 (and excluding Garden State Parkway Authority sections) in Howell Township, Monmouth County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from local officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of speed limit zones along Route N.J. 185 and U.S. 9 were warranted.

The Department therefore proposes new rule N.J.A.C. 16:28-1.26 and an amendment to N.J.A.C. 16:28-1.41 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed new rule and amendment, respectively, will establish speed limit zones along Route N.J. 185 in the City of Jersey City, Hudson County and Route U.S. 9 including parts of Route 444 (and excluding Garden State Parkway Authority sections) in Howell Township, Monmouth County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit zone signing. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed new rule does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28-1.26 [(Reserved)] **Route 185**

(a) **The rate of speed designated for the certain parts of State highway Route 185 described in this subsection shall be established and adopted as the maximum legal rate of speed:**

1. **In the City of Jersey City, Hudson County:**
 - i. **40 miles per hour along the completed part of Route N.J. 185 (vicinity of Harbor Drive to Linden Avenue).**

16:28-1.41 **Route U.S. 9 including Parts of Routes 35 and 444**

(a) **The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed [thereat]:**

1. **(No change.)**

[(b) **The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this section shall be established and adopted as the maximum legal rate of speed thereat:**

1. **For both directions of traffic:]**

Renumber existing i. through xii. from subsection (b) as xiii. through xxiv. in subsection (a) (No change in text.)

[(c)](b) **The rate of speed designated for State highway Route U.S. 9, including parts of Route 444 (and excluding Garden State Parkway Authority sections) described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:**

- 1.-26. **(No change.)**

27. **40 miles per hour in Lakewood Township to Alexander Road, Howell Township (milepost 103.40); thence**

28. **45 miles per hour to Locust Avenue, Howell Township (milepost 105.00); thence**

29. **40 miles per hour to Howell Lane, Howell Township (milepost 106.40); thence**

30. **50 miles per hour to Hulses Corner Road—Georgia Tavern Road, Howell Township (milepost 107.10); thence**

31. **40 miles per hour to White Street, Howell Township (milepost 107.98); thence]**

27. In Howell Township, Monmouth County:

i. **40 miles per hour between the Lakewood Township—Howell Township Line (North Branch Metedeconk River) and Ford Road (mileposts 102.96 to 103.12); thence**

ii. **50 miles per hour between Ford Road and White Street (mileposts 103.12 to 107.98); thence**

Renumber existing 32. through 36. as 28. through 31. (No change in text.)

(b)**Speed Limits****Route N.J. 156 in Mercer County****Proposed Amendment: N.J.A.C. 16:28-1.112**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1988-147.

The agency proposal follows:

Summary

The proposed amendment will establish speed limit zones along Route N.J. 156 in Hamilton Township, Mercer County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local officials, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of speed limit zones was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.112, based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish speed limit zones along Route N.J. 156 in Hamilton Township, Mercer County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regu-

latory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28-1.112 Route 156

(a) The rate of speed designated for the certain parts of State highway Route 156 described in this subsection shall be [and hereby is] established and adopted as the maximum speed; [thereat:]

1. For both directions of traffic[:] in **Hamilton Township, Mercer County.**

[i. Forty-five mph from the southerly terminus of Route 156 to the intersection of the Yardville-Groveville Road; thence

ii. Thirty-five mph to a point 300 feet north of the intersection of Walen Avenue; thence

iii. Forty-five mph to the northerly terminus of Route 156.]

i. **Zone one: 40 miles per hour between the southerly terminus of Route U.S. 130-Route N.J. 156 and 200 feet north of Doctors Creek (mileposts 0.0 to 0.16); thence**

ii. **Zone two: 35 miles per hour between 200 feet north of Doctors Creek and Locust Avenue (mileposts 0.16 to 0.75); thence**

iii. **Zone three: 40 miles per hour between Locust Avenue and the northerly terminus of Route N.J. 156-Route U.S. 130 (mileposts 0.75 to 1.21).**

(a)

Restricted Parking and Stopping Routes U.S. 9 in Ocean County; N.J. 27 in Middlesex County; and U.S. 206 in Burlington County Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.18 and 1.57

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Proposal Number: PRN 1988-128.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Route U.S. 9 in Lakewood Township, Ocean County and Route N.J. 27 in North Brunswick, Middlesex County, and "no stopping or standing" zones along Route U.S. 206 in Springfield and Mansfield Townships, Burlington County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from local officials in the interest of the safety of the populace, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Routes U.S. 9 and N.J. 27, and "no stopping or standing" zones along Route U.S. 206 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.18 and 1.57 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Routes U.S. 9 in Lakewood Township, Ocean County, and N.J. 27 in North Brunswick Township, Middlesex County, and "no stopping or standing" zones along Route U.S. 206 in Springfield and Mansfield Townships, Burlington County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs and the local governments will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-8. (No change.)

9. Along the westerly (southbound) side [of route U.S. 9] in Lakewood Township, **Ocean County:**

i. Near side bus stops: [County Line Road (120 feet);]

(1) **County Line Road (120 feet).**

(2) **Kennedy Boulevard: Beginning at the northerly curb line of Kennedy Boulevard and extending 105 feet northerly therefrom.**

ii. Far side bus stops: [Tenth Street (105 feet);]

(1) **Tenth Street (105 feet);**

(2) **Sherwood Drive (170 feet);**

(3) **Pine Boulevard (100 feet);**

(4) **John Street: Beginning at the prolongation of the southerly curb line of John Street and extending 100 feet southerly therefrom.**

iii. Mid-block bus stop: [beginning at a point 1,000 feet north of the northerly curb line of Kennedy Boulevard to a point 135 feet northerly therefrom.]

(1) **Kennedy Boulevard: Beginning at a point 1,000 feet north of the northerly curb line of Kennedy Boulevard to a point 135 feet northerly therefrom.**

10. Along the easterly (northbound) side in Lakewood Township, **Ocean County:**

1. Far side bus stops:

(1) **Tenth Street (105 feet);**

(2) **County Line road (105 feet);**

ii. Near side bus stops:

(1) **John Street: Beginning at the southerly curb line of John Street and extending 105 feet southerly therefrom.**

iii. Mid-block bus stops:

(1) **Pine Boulevard: Beginning at the prolongation of the southerly curb line of Pine Boulevard and extending 105 feet southerly therefrom;**

(2) **Sherwood Drive: From a point 150 feet south of the southerly curb line of Sherwood Drive and extending 135 feet southerly therefrom;**

Renummer existing 10. through 12. as **11. through 13.** (No change in text.)

[13. Along the easterly (northbound) side of Route U.S. 9 in Lakewood Township:

i. Far side bus stop:

(1) **Tenth Street (105 feet);**

(2) **County Line Road (105 feet);**

ii. Mid-block bus stops:

(1) **Beginning at the prolongation of the southerly curb line of Pine Boulevard and extending 105 feet southerly therefrom;**

(2) **From a point 150 feet south of the southerly curb line of Sherwood Drive and extending 135 feet southerly therefrom.]**

[14. Along the westerly (southbound) side of Route U.S. 9 in Lakewood Township:

i. Near side bus stop: County Line Road (120 feet).

ii. Far side bus stops:

(1) **Tenth Street (105 feet);**

(2) **Sherwood Drive (170 feet);**

(3) **Pine Boulevard (100 feet);**

iii. Mid-block bus stop beginning at a point 1,000 feet north of the northerly curb line of Kennedy Boulevard to a point 135 feet northerly therefrom.]

Renumber existing 15. through 24. as **14. through 23.** (No change in text.)

[25. Along the northbound (easterly) side in Lakewood Township, Ocean County:

i. Far side bus stops:

(1) Tenth Street (105 feet);

(2) County Line Road (105 feet);

ii. Near side bus stop:

(1) John Street—Beginning at the southerly curb line of John Street—and extending 105 feet southerly therefrom.]

[26. Along the southbound (westerly) side in Lakewood Township, Ocean County:

i. Near side bus stop:

(1) County Line Road (120 feet).

ii. Far side bus stop:

(1) John Street—Beginning at the prolongation of the southerly curb line of John Street—and extending 100 feet southerly therefrom.]

Renumber existing 27. through 41. as **24. through 38.** (No change in text.)

16:28A-1.18 Route 27

(a) The certain parts of State [H]highway Route 27 described in this subsection shall be designated and established as ["no parking"] **"no stopping or standing"** zones. [where stopping and standing are prohibited at all times except as provided in N.J.S.A. 39:4-139.]

1.-17. (No change.)

(b) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-22. (No change.)

23. Along the northbound (easterly) side in North Brunswick, Middlesex County.

i. Far side bus stop:

(1) Finnegan Lane: Beginning at the northerly curb line of Finnegan Lane and extending 140 feet northerly therefrom.

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

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as ["no parking"] **"no stopping or standing"** zones. [where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.]

1.-6. (No change.)

7. No stopping or standing in Springfield Township, Burlington County; [along both sides from Springfield Township—Mansfield Township corporate line to a point 380 feet southerly therefrom.]

i. Along both sides:

(1) For the entire length within the corporate limits of Springfield Township including all ramps and connections under the jurisdiction of the Commissioner of the Department of Transportation except at approved bus stops.

8.-14. (No change.)

15. No stopping or standing in Mansfield Township, Burlington County:

i. Along both sides:

(1) [Between the intersection of Old York Road and Spring Hill Brook.] For the entire length within the corporate limits of Mansfield Township including all ramps and connections under the jurisdiction of the Commissioner of the Department of Transportation except at approved bus stops.

16.-25. (No change.)

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

(a)

Restricted Parking and Stopping Route U.S. 130 in Burlington County

Proposed Amendment: N.J.A.C. 16:28A-1.46

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

Proposal Number: PRN 1988-150.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking bus stop" zone along Route U.S. 130 in Edgewater Park Township, Burlington County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local officials, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking bus stop" zone along Route U.S. 130 in Edgewater Park Township, Burlington County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.46 based upon the request from the local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus stop" zone along Route U.S. 130 in Edgewater Park, Burlington County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The local officials will bear the costs for "no parking bus stop" zone signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28A-1.46 Route US 130

(a) The certain parts of State highway Route U.S. 130 described in this subsection are designated and established as ["no parking"] **"no stopping or standing"** zones where stopping or standing is prohibited. [at all times except as provided in N.J.S.A. 39:4-139.]

1.-8. (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect signs at the following established bus stops:

1.-5. (No change.)

6. Along the westerly (southbound) side in Edgewater Park Township, Burlington County:

i. Near side bus stop:

(1) Mount Holly Road—Beginning at the northerly curb line of Mount Holly Road and extending 105 feet northerly therefrom.

(c) (No change.)

(b)

Restricted Parking and Stopping Route U.S. 9W in Bergen County

Proposed Amendment: N.J.A.C. 16:28A-1.61

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

Proposal Number: PRN 1988-148.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking bus stop" zones along Route U.S. 9W in Alpine Borough, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local officials, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking bus stop" zones along Route U.S. 9W in Alpine Borough, Bergen County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.61, based upon the request from the local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus stop" zones along Route U.S. 9W in Alpine Borough, Bergen County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The local officials will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28A-1.61 Route US 9W

(a) The certain parts of State highway Route US 9W described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-5. (No change.)

6. Within Alpine Borough, Bergen County:

i. Along the easterly (northbound) side:

(1) (No change.)

(2) Near side bus stops:

(A)-(B) (No change.)

(C) **Alpine Scout Camp (entrance to Palisades Parkway, southbound)—Beginning at the prolongation of the southerly curb line of the entrance to the Alpine Scout Camp and extending 140 feet southerly therefrom.**

ii. Along the westerly (southbound) side:

(1) (No change.)

(2) Near side bus stops:

(A) (No change.)

(B) **Alpine Scout Camp—Beginning at the northerly curb line of the entrance to the Alpine Scout Camp and extending 140 feet northerly therefrom.**

7.-8. (No change.)

(b) (No change.)

(a)

Restricted Parking and Stopping Route N.J. 439 in Union County

Proposed Amendment: N.J.A.C. 16:28A-1.70

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.l and 39:4-199.

Proposal Number: PRN 1988-149.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking bus stop" zone along Route N.J. 439 in the City of Elizabeth, Union County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local officials, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking bus stop" zone along Route N.J. 439 in the City of Elizabeth, Union County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.70 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus stop" zone along Route N.J. 439 in the City of Elizabeth, Union County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The local officials will bear the costs for "no parking bus stop" zone signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28A-1.70 Route 439

(a) The certain parts of State highway Route 439 described in this subsection are designated and established as ["no parking"] "**no stopping or standing**" zones. [where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.]

1.-3. (No change.)

(b) (No change.)

(c) **The certain parts of State highway Route 439 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:**

1. Along the eastbound (southerly) side in the City of Elizabeth, Union County:

i. Far side bus stop:

(1) North Broad Street—Beginning at the easterly curb line of North Broad Street and extending 100 feet easterly therefrom.

(b)

NEW JERSEY TRANSIT CORPORATION Bus Allocation Guidelines and Procedures Proposed Readoption: N.J.A.C. 16:75

Authorized By: New Jersey Transit Corporation,

Jerome C. Premo, Executive Director.

Authority: N.J.S.A. 27:25-5(e), 5(h) and 5(k)

Proposal Number: PRN 1988-135.

Submit comments by April 20, 1988 to:

Albert R. Hasbrouck, III

Assistant Executive Director

New Jersey Transit Corporation (NJ TRANSIT)

P.O. Box 10009

Market Street and McCarter Highway

Newark, New Jersey 07101

TRANSPORTATION

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 16:75 expires on June 6, 1988. The New Jersey Transit Corporation (NJ TRANSIT) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. NJ TRANSIT proposes to readopt these rules without change.

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State government to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the programs by which NJ TRANSIT fulfills this responsibility is through the leasing of buses purchased with funds provided by the State, the Federal government or the Port Authority of New York and New Jersey. This chapter, N.J.A.C. 16:75, is designed to provide guidelines and procedures pursuant to which NJ TRANSIT will allocate these buses.

In addition, these rules provide guidelines for the establishment of a statewide bus fleet and the leasing of buses for new services. Finally, the rules make it clear that no carrier is entitled to buses merely because it meets the aged-bus criteria.

Social Impact

Once readopted, the rules will continue to provide reasonable standards for the distribution of buses. The general purpose of NJ TRANSIT's bus procurement program is to replace overaged motorbuses used in the State of New Jersey with newer equipment that will provide improved and more reliable mass transit service to the public. The rules are designed to distribute the buses to both public and private carriers, generally based on the age of buses presently in use, so that the buses are made available to riders who will benefit the most from new buses. Most carriers with overaged buses will continue to be allocated buses. In addition, NJ TRANSIT will continue to consider the capabilities and responsibility of carriers requesting buses and to consider whether the leasing of buses to specific carriers would be consistent with an efficient, effective, coordinated and coherent public transportation system. Thus, there may be situations where overaged buses of some carriers will not be replaced because the lease of buses to such carriers is not consistent with sound transportation policy. There are procedures for consideration of the impact of not leasing buses in specific circumstances where NJ TRANSIT staff makes a preliminary determination that a carrier is not eligible to receive buses. The rules also provide guidelines to be followed when a private carrier applies for buses for new services. The public benefit from the replacement of overaged buses is significant. Readoption of the rules will allow this benefit to continue and grow.

Economic Impact

The primary economic impact of these rules would continue to be the improved financial condition of private bus carriers receiving buses from NJ TRANSIT. By reducing the need of carriers to use financial resources for capital requirements and by increasing ridership, the new buses may result in holding fares down. It may also result in lower subsidies, thus benefiting the taxpayers of the State. It is possible that some carriers not receiving buses may be at a disadvantage where they compete with carriers receiving buses.

New Jersey Transit has leased, at no cost to private carriers, 925 buses valued at over 86 million dollars. This program will continue to expand, and when all currently planned purchases are completed, the value of the leased buses will be 130 million dollars. These programs are supplemented by other programs, under which nearly 11 million dollars in capital equipment, such as radios, computers, and service vehicles have been distributed. Individual carriers will benefit from the use of this equipment in accordance with the implementation of the rules at N.J.A.C. 16:75. Specific benefit amounts cannot be calculated at this time.

Regulatory Flexibility Statement

The rule imposes no additional reporting, recordkeeping or other compliance requirements on small businesses. NJ TRANSIT presently leases, pursuant to the rules approximately 441 buses to 117 separate small businesses, as such businesses are defined by the Regulatory Flexibility Act. In addition, NJ TRANSIT leases 423 buses to eight carriers who employ more than 100 people. As set forth above, the rules will continue to have no impact on these businesses as they are designed to assist NJ TRANSIT in administering the bus allocation program, based upon the experience gained by NJ TRANSIT in the operation of the bus leasing program since the rules were promulgated in 1983.

PROPOSALS

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:75.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

General Administration

Proposed Readoption: N.J.A.C. 17:1

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1988-129.

Submit comments by April 20, 1988 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Pensions is constantly reviewing the administrative rules within N.J.A.C. 17:1 concerning the Division's general administration. When the Division becomes aware of a change in the laws or a court decision that possibly could affect the operation of the Division, the administrative rules are reviewed and, if changes therein are mandated, steps are taken to propose changes to those rules to conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division's staff to ascertain if the current rules are necessary and/or cost efficient. After careful scrutiny of the current rules in N.J.A.C. 17:1, the Division is satisfied that they are necessary and needed for the efficient operation of the Division. Accordingly, the Division of Pensions proposes to readopt the current rules within N.J.A.C. 17:1 and extend the June 6, 1988 expiration date for such rules under Executive Order No. 66 to June 6, 1993.

The current rules within N.J.A.C. 17:1 deal with accounting procedures; the Alternate Benefit Program; the Central Pension Fund; claims and credit; administrative hearings; the pension adjustment program; Social Security procedures; unemployment insurance; prescription drug programs; dental expense programs; and administrative practices.

Social Impact

The rules governing the administration of the Division of Pensions affect and benefit all past, present and future members of the State-administered retirement systems within the State of New Jersey. Since public funds are used to fund the benefits and claims to retirees of those systems, the taxpaying public can be affected by these administrative rules.

Economic Impact

While the readoption of the rules in itself will not present any adverse economic impact to the public, the payment of the benefits and claims mandated in the statutes and the operations of the Division of Pensions are funded by public employer contributions and thus indirectly by taxpayers. If the administrative rules are not readopted, the benefits and claims mandated by the statutes must still be paid. Without the administrative rules to provide for the efficient operation of the systems and the Division of Pensions, financial chaos would occur.

Regulatory Flexibility Statement

The rules of the Division of Pensions only affect public employees and employers. Thus, this proposed readoption does not impose any reporting, recordkeeping or other compliance requirement upon small businesses. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:1.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Transfer Inheritance Tax and Estate Tax

Proposed Readoption: N.J.A.C. 18:26

Authorized By: John R. Baldwin, Director, Division of Taxation.

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

Proposal Number: PRN 1988-142.

Submit comments by April 20, 1988 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 18:26 is scheduled to expire on August 12, 1988. The Division has reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The first inheritance tax legislation in New Jersey was passed in 1892 (P.L. 1892, c.122), and imposed a five percent tax on property transferred from a decedent to a beneficiary. In 1909, the present Transfer Inheritance Tax Law (P.L. 1909, c.228) was enacted and in the same year the Transfer Inheritance Tax Bureau was created. In 1934 the Estate Tax Act (P.L. 1934, c.234) was enacted to absorb the maximum credit allowed for estate death taxes under the Federal Estate Tax Law. This Act was retroactive and applied only to the estates of resident decedents. The 1934 Act also gave authority to compromise inheritance taxes due where the matter was in litigation. In 1938 the issuance of a waiver describing real property released from a tax lien was initiated. Tax rates were substantially increased in 1962. In 1963, transfers to, or for the use of, charitable or educational institutions were granted complete exemption in the case of persons dying after June 30, 1963.

The Transfer Inheritance Tax Law, (N.J.S.A. 54:33-1 to N.J.S.A. 54:37-8) imposes a tax on the transfer of real and personal property of a value of \$500.00 or more. The tax is collected on the estates of both resident and nonresident decedents. However, only real property and tangible personal property located in New Jersey are subject to tax in the case of a nonresident decedent.

The Estate Tax Law, N.J.S.A. 54:38-1 to 16, provides for an estate tax in addition to the inheritance tax on the estate of a resident decedent where the inheritance taxes paid to New Jersey, other states, territories or the District of Columbia are not sufficient to fully absorb the credit allowed for payment thereof against any Federal estate taxes payable to the United States. The credit is provided for under Section 2011(b) of the Federal Internal Revenue Code. This tax is the difference, if any, determined by subtracting the amount of the inheritance, legacy and succession taxes actually paid to this state and the other states, etc. from the amount of the allowable credit.

The Transfer Inheritance Tax Act and the Estate Tax Law, as amended and supplemented, are referred to in these rules as the Law, the Act, or the Tax Act.

These rules, among other things, contain tables of rates and exemptions, a description of beneficiary classes and a list of district supervisors. The latter are located in each county for the purpose of providing convenient inheritance tax services to resident representatives of estates. Technical terms such as "blanket waiver" and different classes of transferees are defined. These rules indicate what clear market value is, what estate and property means, what gross estate is, and what a transfer is.

The Act imposes a tax on transfers of the value of \$500.00 or more. The tax rates range from one percent to 16 percent. In the case of nonresident decedents, the tax is on transfers which consist of real or tangible personal property owned by the decedent situated in New Jersey at the time of death. The law at date of death controls. Transferees include all persons and entities, corporate, political, charitable, etc. who share in the estate of a decedent. In the case of a decedent who dies intestate without known heirs, the property escheats to the State of New Jersey.

A testator in a will may dictate whether the tax is to be paid out of the estate or by the beneficiaries. Transfers can be made in a form other

than by will, such as joint ownership of assets with right of survivorship, assets held in trust for or payable on death to another, etc. Property transferred by a decedent within three years prior to date of death must be included in the estate. Life insurance benefits are generally exempt from the tax unless payable to the estate itself.

Annuity contracts are subject to the New Jersey inheritance tax. Property received from the Federal government is ordinarily not subject to the inheritance tax, such as certain Federal pensions.

Deductions from inheritance tax include funeral and administration expenses, executor's expenses and commissions, counsel fees, state, county and local taxes, and transfer taxes paid to other jurisdictions other than the United States.

One-half of a bank account may be withdrawn by the executor or administrator without the obtaining of a waiver from the Transfer Inheritance Tax Bureau. Safe deposit boxes are sealed until the Bureau is advised of the death and an appointment is made to open the safe deposit box with an employee of the Bureau in attendance.

Subject to certain restrictions, there can be a pre-audit payment and issuance of waivers if a Form L-5 is filed with the appropriate inheritance tax return together with full payment of the tax, in cash, a certified check, money order or cashier's check.

All assets includible in a decedent's estate are to be valued at their fair market value as of the date of death. Estates for life or term of years can occur and, in such a case, a vested or remainder interest must be valued.

Civil and criminal penalties may be imposed for failure to file a return, filing a fraudulent return, etc. Returns are confidential and may only be disclosed or copied as provided by statute.

Payment of the tax should be made to New Jersey Inheritance Tax, CN 249, Trenton, NJ 08646 and, together with a bill or letter, should include a reference to the decedent's name, date of death, legal domicile and the Bureau's file number, if known.

Returns are due within eight months from the date of death of decedent and the statutory interest begins to accrue after expiration of the eight month period. The tax is a lien on all the property of the decedent for a period of 15 years unless paid sooner or secured by acceptable bond.

Certain provisions are made for appeals, refunds, compromises and settlements of tax due. Appeals are to the Tax Court.

In estates of nonresident decedents, New Jersey inheritance tax waivers are required only for real property located in the State of New Jersey. However, an executor, administrator or trustee may not turn over other New Jersey property of the decedent to the beneficiary until the tax is paid.

A phase-down of transferees subject to the tax became statutory with the enactment of P.L. 1985, c.57 (Assembly Bill No. 1831) on February 27, 1985 applicable retroactively to January 1, 1985. This legislative change had a direct impact on N.J.A.C. 18:26-2.5, 18:26-2.7, 18:26-6.1, 18:26-6.2 and 18:26-6.3. Briefly, the provisions of the phase-down legislation provide that, effective in estates of decedents dying on and after January 1, 1985, benefits passing to a surviving spouse are totally exempt from the tax, and the exemption granted to all other Class "A" beneficiaries will change as follows: (For Class "A" beneficiaries see N.J.A.C. 18:26-1.1)

Date of death	Amount of exemption
January 1, 1985 through June 30, 1985	\$ 15,000 (No change)
July 1, 1985 through June 30, 1986	50,000
July 1, 1986 through June 30, 1987	150,000
July 1, 1987 through June 30, 1988	250,000
July 1, 1988 and after	Total Exemption

Class "C" beneficiaries will each be entitled to a \$25,000 exemption in estates of decedents having a date of death on or after July 1, 1988. P.L. 1983, c.394 (1982 Assembly Bill No. 1458), regarding fiduciary commissions, was approved December 14, 1983. As a result of this legislative change, it is necessary that N.J.A.C. 18:26-7.10 be amended. Full text of the change along with other amendments, will be included in a future proposal.

Social Impact

N.J.A.C. 18:26 has served to inform and assist taxpayers and their representatives in understanding and meeting the requirements of New Jersey Transfer Inheritance Tax and Estate Tax statutes. The readoption of the rules will, in effect, tend to minimize any inconvenience to the taxpayer while maximizing the efficiency of the Transfer Inheritance Tax Branch, Division of Taxation.

Economic Impact

The State of New Jersey collected \$190,144,434 in fiscal year 1987, \$185,823,355 in fiscal year 1986 and \$194,424,660 in fiscal year 1985. The 1987 fiscal year ended June 30, 1987. Actual revenue substantially exceeded anticipated revenue in each of the fiscal years although phase-down legislation was passed. Revenues are deposited in the State Treasury for general State use.

Since proposed changes are necessitated by legislative changes in the statutes, readoption of the rules, together with proposed changes to be made later, will have no substantial economic impact in and of itself.

Regulatory Flexibility Statement

This proposal is for a readoption of inheritance tax and estate tax rules. These taxes do not apply to the conduct of small businesses in the State. Instead these taxes are imposed on the transfer of property to and among individuals. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:26.

OTHER AGENCIES**CASINO CONTROL COMMISSION**

The following proposals are authorized by the Casino Control Commission, Theron G. Schmidt, Executive Secretary.

For proposed readoptions N.J.A.C. 19:46 and 19:47, submit comments by April 20, 1988 to:

Carole R. Jacobson
Assistant Counsel
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN 208
Trenton, New Jersey 08625

(a)**Gaming Equipment****Proposed Readoption: N.J.A.C. 19:46**

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(f) and (i), and 5:12-100.

Proposal Number: PRN 1988-133.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66 (1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:46 concerning gaming equipment. N.J.A.C. 19:46 originally became effective on June 5, 1978 and expires on May 4, 1988. The rules implement the applicable provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., concerning the Commission's responsibility to regulate: the use and operation of gaming devices (N.J.S.A. 5:12-70(f)) and the manufacture, distribution, sale and servicing of gaming devices and equipment (N.J.S.A. 5:12-70(i)). See also N.J.S.A. 5:12-100.

These rules address the physical characteristics and procedures governing the use of all gaming devices and equipment. The rules provide minimum specifications concerning gaming chips, plaques, tokens, table layouts, slot machines and devices used in the conduct of gaming, for example, cards, dice and dealing shoes. N.J.A.C. 19:46 dictates the floor configuration and spacing of slot machines and table games, and controls noise and light levels so as to prevent the deception or distraction of players.

The staffs of both the Commission and the Division of Gaming Enforcement have continually reviewed, monitored and assessed the merits and viability of the system in operation since the rules were readopted in 1983. This review has included comments received from the industry or other interested persons filed pursuant to section 69(c) of the Act and the applicable provisions of the Administrative Procedure Act. Indeed, such comments have often been the catalyst and inspiration for change. As a result of this review process, the Commission has adopted over fifteen amendments to these rules since the chapter was last readopted.

For example, in October 1984, after receiving input from both the industry and the Division of Gaming Enforcement, the Commission adopted amendments to N.J.A.C. 19:46-1.27 concerning the utilization

of slot stools and their placement on the casino floor. These amendments allow slot stools to be placed in front of slot machines at various locations on the casino floor. Initially, two alternatives were proposed under N.J.A.C. 19:46-1.27(k)2. The first alternative required a minimum of four feet clearance in cross aisles between the back of each slot stool and the slot machine or other obstruction immediately opposite that stool. The second alternative required a minimum of five feet clearance and also required casinos to complete an egress study and submit it to the Commission and Division when seeking approval to use slot stools. After reviewing the comments on the two proposals, the Commission determined that there was no discernible difference in traffic flow between a six foot aisle containing slot stools with four foot clearance, and a six foot aisle without slot stools. Accordingly, the Commission adopted Alternative No. 1, with the inclusion, however, of the Division's recommendation that casino licensees be required to submit an egress study to the Division. These amendments have created a more relaxed playing environment for patrons who wish to play for longer periods at the machines. Through these amendments, patron convenience has been accommodated while maintaining stringent controls on traffic flow so as to maintain a secure and safe gaming atmosphere, and to avoid deception or distraction of players.

In August 1987, N.J.A.C. 19:46-1.16, 1.18 and 1.20 were amended to require a casino licensee to notify the Commission and the Division immediately in the event a licensee detects any evidence of cheating or tampering involving the use of gaming equipment or other devices used in a casino. The amendments also require that casino security departments insure that any evidence is maintained in a secure manner until the arrival of a Division of Gaming Enforcement agent. These amendments have helped to preserve the integrity and fairness of casino gaming.

In making changes, the Commission has always been responsive to changing social and economic conditions, and has exercised its regulatory and review powers in a flexible manner. Because these rules are continually reviewed, they are presently proposed for readoption without any substantive or technical amendments.

N.J.A.C. 19:46 creates minimum specifications and controls regarding gaming equipment which the industry must maintain and which the Commission and Division must monitor. These minimum specifications are essential to assure the fair operation of authorized games and to assure consistency and control over the gaming equipment and devices used in gaming activities. Equipment or devices used in a game that do not meet certain specifications may have a detrimental effect on patrons or the casinos since reduced payoffs or cheating can result from the use of flawed, imperfect or altered equipment. Thus, these rules are responsive to the need to protect the public, the industry and the State from equipment malfunctions or tampering that could result in financial loss to gaming patrons, the industry or the State.

The rules concerning the manufacture and control of gaming chips, plaques and tokens are essential to prevent counterfeiting and to assure proper control over activities conducted with these items. The design, color and size of the plaques and chips permit effective supervision and surveillance over the collection of losing wagers and the payout of winning wagers. The specifications as to design, color and size also prevent the intermingling of chips among different casinos in furtherance of certain illegal types of activities.

These rules provide for the standardization and consistency of all gaming devices and equipment. Without the uniformity provided by these rules, both detection and enforcement would be hampered. The discontinuance of these rules would make it extremely difficult for the State to adequately assure the integrity of gaming operations, the fair operation of the games to the patrons and the vitality of the gaming industry.

Social Impact

The continuation of N.J.A.C. 19:46 will have a positive effect on the industry and the public. The standards and controls over casino equipment have created an orderly gaming atmosphere, adding to the sense of fairness and security felt by the casino patrons. An integral and essential element of the regulation and control of casino gaming by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations (see N.J.S.A. 5:12-1(b)(6)). Through the controls provided by these rules, the public can be assured that State government is fulfilling its regulatory obligations under the Act in such a manner as to promote public confidence and trust.

These rules have had a favorable impact on the relationship between the State regulators, the industry and the gaming equipment manufacturers and distributors. Discussion among the involved parties during the

review and approval process of gaming equipment have made each party more aware of the critical elements associated with the equipment used in the casino. These discussions have provided the thrust for new and improved methods in the design, manufacture and security of gaming equipment. Without these rules, the advantage of standardized equipment would be lost and the possibility of faulty equipment would be increased. Through the review standards and processes which these rules provide, patrons can be assured that the integrity of a particular piece of equipment is not left to the caprice of a casino employee. Through these rules, the industry can continue to maintain a reputation of honesty and integrity and provide a psychologically secure environment for gaming patrons.

Economic Impact

N.J.A.C. 19:46 benefits the industry and the public by assuring control and security over equipment used in the games. In the absence of the present standards and specifications governing gaming equipment, the potential for economic loss to the patrons and the casinos would be enhanced resulting from the greater likelihood of imperfect and tampered equipment being introduced into the gaming process. Equipment that does not meet the present standards can affect the probabilities inherent in the involved game, thereby affecting the win or loss of the patrons and the casinos. By assuring control and security over the equipment used in the games, these rules discourage certain types of cheating activity, thereby preventing the negative economic effects associated with such activity.

Since most of the gaming equipment meeting the standards and specifications has already been developed, no significant increase in developmental or formulation costs is anticipated. Similarly, the costs involved in formulating new procedures should be minimal. Though there are costs involved in continued compliance with the present procedures, these costs are outweighed by the positive economic benefits which inure to the industry resulting from a regulated control and security system.

Regulatory Flexibility Statement

The readoption of these rules will impose reporting obligations on all companies who intend to offer slot machines for use in Atlantic City or transport slot machines within, into and out of the state, which may include some businesses that meet the definition of "small business" in the Regulatory Flexibility Act, P.L. 1986, c.169. Manufacturers proposing to offer slot machines for use in Atlantic City must submit with each model of machine three copies each of prints, schematics, block diagram, circuit analysis and a complete explanation of the method of operation, odds determination and any other pertinent information with respect to such machine. Any company which intends to move slot machines must notify the Commission and provide, in writing, pertinent information concerning the shipment, such as the method of shipment and the name of the carrier or carriers. The Commission has determined that these reporting requirements are tolerable and consistent with the need to maintain the integrity of gaming operations in this State, therefore no exemption is provided for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:46.

(a)

Rules of the Games

Proposed Readoption: N.J.A.C. 19:47

Authority: N.J.S.A. 5:12-63(c), 69, 70(f) and 100.

Proposal Number: PRN 1988-131.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:47 concerning rules of the games. N.J.A.C. 19:47 originally became effective on June 2, 1978 and expires on May 4, 1988. The rules implement the applicable provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., concerning the Commission's responsibility to define and limit the rules of authorized games, odds, and devices permitted, and the method of operation of such games and devices, N.J.S.A. 5:12-70(f) and 100.

These rules are devoted to both the procedural and substantive aspects of all authorized games. These games include craps, blackjack, mini-baccarat, baccarat, roulette, the big six wheel and slot machines. The

staffs of both the Commission and the Division of Gaming Enforcement have continually reviewed, monitored and assessed the merits and viability of the system in operation since the rules were readopted in 1983. This review has included comments received from the industry or other interested persons filed pursuant to section 69(c) of the Act and the applicable provisions of the Administrative Procedure Act. Indeed, such comments have often been the catalyst and inspiration for change. As a result of this review process, the Commission has adopted over eleven amendments to these rules since the chapter was last readopted.

For example, in December 1983 the Commission, in response to research which has shown the effectiveness of certain devices on increasing gaming advantages, adopted amendments to N.J.A.C. 19:47-8.1 concerning the use of certain gaming devices. These amendments prohibit the use of any device which would assist in projecting an outcome at any table game or in keeping track or analyzing either the cards having been dealt, the changing probabilities of any game or the playing strategies to be utilized. The purpose of these amendments is to eliminate the use of devices which would provide an unfair advantage to either patrons or the casinos.

In May 1987, N.J.A.C. 19:47-8.2 was amended to repeal the mandatory \$1.00 minimum wager on Big Six tables. Various alternatives were proposed, all of which would have allowed a casino licensee to increase the minimum wager on all or some of the Big Six tables at various times during casino operations. The proposals differed as to amount of the minimum wager required and the time periods during which the increased minimum wager could be imposed. After consideration of the public comments received, the Commission adopted the alternative which permits each casino licensee to establish its own minimum wager for each Big Six table so long as the minimum wager does not exceed \$5.00. The purpose of this amendment is to provide individual casino managements with more flexibility in attracting gaming patrons. Through this amendment, the business concerns of the individual casinos have been accommodated without adversely affecting the integrity or fairness of the games.

In August 1987 significant amendments were made to the rules to add the game of minibaccarat to the list of games which are authorized for use in New Jersey casinos. This new game, which was introduced by the Legislature, could not be utilized by casino licensees until appropriate implementing rules were promulgated by the Casino Control Commission. These rules establish standards and procedures governing two primary areas: the personnel and equipment required for the conduct of the game; and the manner in which the game is actually presented and played. These rules fulfill the Commission's responsibilities under the Act and further the statutory goals of assuring fairness to the player, while at the same time protecting the viability of the industry.

In making changes, the Commission has always been responsive to changing social and economic conditions, and has exercised its regulatory and review powers in a flexible manner. Because these rules are continually reviewed, they are presently proposed for readoption without any substantive or technical amendments.

These rules provide minimum guidelines regarding the rules of the games and permit the industry maximum flexibility to modify rules in response to patron demand. These rules are representative of the type of entertainment the gaming public desires and of what the industry requires to insure the integrity of casino gambling. The implementation and operation of these rules have offered fair and consistent games to the patrons while protecting the economic viability of the industry and encouraging maximum participation by casino patrons. The failure to readopt these rules would require the State to reexamine the viability of the continued operation of casino gaming within the regulatory vacuum which would thereby be created. Without these rules, State control of gaming would no longer be in compliance with the Casino Control Act, the advantage of standardized rules of the game would be lost and the possibility of unfair odds would be increased.

Social Impact

The continuation of N.J.A.C. 19:47 will have a positive effect on the public and the industry. The guidelines provided by these rules have furthered the statutory goals of assuring fairness to the player while at the same time protecting the viability of casino operations. An integral and essential element of the regulation and control of casino gaming by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations (see N.J.S.A. 5:12-1(b)(6)). Through the readoption of these rules, the public can be assured that the State is fulfilling its regulatory obligations under the Act in such a manner as to promote public confidence.

By covering both procedural and substantive aspects of the games, the rules establish the basic rights and responsibilities of the casinos and patrons in the play of each game. Through their definition and precision, these rules assure fairness to the player while protecting the vitality of the casino industry and encouraging maximum participation by casino patrons. The substantive rules of the games have had a significant effect on the type and mix of players who gamble in the casinos. The rules have contributed to bringing a wide spectrum of people from a variety of socio-economic classes and geographic regions to Atlantic City, thereby promoting the public policy of the Act to revitalize Atlantic City. The procedural rules of the games are designed to prevent different types of cheating activity, and have protected both the casinos and the patrons from unfair play.

The procedural and substantive safeguards provided by these rules have generated a reputation for honesty and integrity for the casino industry in New Jersey. The failure to readopt these rules would enhance the danger of unfair gaming practices which, in turn, would reflect adversely on the image of Atlantic City and the State. Failure to maintain public confidence and trust in the integrity of the gaming industry in Atlantic City could lead to less participation by both operators and the public, thus undermining the basic public policy of the Act to revitalize Atlantic City.

Economic Impact

These rules have been effective in fostering the necessary economic balance among the casinos, patrons and the State. More specifically, the rules have provided a reasonable profit to casino operators, a fair return to the patron and adequate revenue for the State. Without the readoption of these rules, it is likely that the present balance among the parties would be adversely affected.

The economic effect of these rules is significant since they establish the basic financial relationship between the casinos and the patrons. Without these rules, the possibility of unfair odds would be increased. The rules of the games establish the payout odds for each type of bet in the casino, which, ultimately, determines the overall gross revenue derived by the casinos and the overall loss incurred by the patrons during a particular gaming period. The present rules of the games have helped to achieve an equitable economic balance between the casinos and the patrons. The failure to readopt these rules could adversely affect this delicate balance, and, thereby, threaten the financial vitality of casino operations.

Without the procedural controls found in the rules of the games, the possibility of cheating activity would be enhanced. The procedural rules of the games are responsive to the need to protect the public, the industry and the State from falling victim to different methods of cheating that could result in financial loss either to gaming patrons, the industry or the State.

Regulatory Flexibility Statement

These rules do not impose any reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act, since they affect only the operations of casino licensees. A regulatory flexibility analysis is, therefore, not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:47.

(a)

Equal Employment Opportunity and Affirmative Action

Proposed Readoption: N.J.A.C. 19:53

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-134 and 5:12-135.

Proposal Number: PRN 1988-132.

Submit comments by April 20, 1988, to:

David C. Missimer
Senior Assistant Counsel
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN 208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission (Commission)

proposes to readopt N.J.A.C. 19:53 concerning equal employment opportunity and affirmative action. These rules originally became effective on January 23, 1978 and expire on May 4, 1988. The rules implement the applicable provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., concerning equal employment opportunity and affirmative action, N.J.S.A. 5:12-134 and 135, and the Commission's obligation to promulgate rules to enforce these provisions of the Act. The rules are also responsive to the requirements of Federal statutory (42 U.S.C.A. 2000(e) et seq.) and regulatory (29 C.F.R. 1608 et seq.) law and to the State Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

N.J.S.A. 5:12-134 requires all applicants and licensees to agree to afford equal employment opportunity to all employees and prospective employees in accordance with an affirmative action program approved by the Commission. Section 135 of the Act grants the Commission the authority to enforce the equal employment opportunity mandate. These provisions affirm the public policy of the State of New Jersey to promote equal employment opportunity by prohibiting discrimination and by implementing affirmative action programs which are designed to achieve a balanced workforce. The rules embody the Commission's concern with securing compliance in both the casino hotel and the casino construction industries. They address specific guarantees which applicants and licensees must make, including guarantees not to discriminate against any employee, and the requirement to take affirmative action to insure that protected class persons are recruited and employed at all levels of the workforce. Other required guarantees concern the advertisement of available positions, the use of tests and other employment criteria, the use of minority referral agencies, and the inclusion of equal employment opportunity language in employment advertisements. The rules also establish standards for the imposition of sanctions for non-compliance.

Additionally, the rules set forth minimum employment goals which may be used as standards for determining an applicant's or licensee's good faith efforts at compliance. N.J.A.C. 19:53-1.5(e) sets percentage goals for all New Jersey counties, stating that the applicable goals for a licensee shall be those for the county in which it has its principal place of business. Thus, for all casino hotels, the Atlantic County goals of 20 percent minority and 43 percent female apply. N.J.A.C. 19:53-1.5(a)2 imposes the additional obligation to affirmatively recruit and employ protected class persons at all levels of the workforce. The rules also provide guidelines concerning accommodations to handicapped persons.

The rules set certain standards designed to advance equal employment opportunity in the construction workforce. Contractors, subcontractors, applicants and licensees are required to report on the character of their workforce on a regular and continuing basis. They are required to take various actions to achieve the goals of 20 percent minority and 6.9 percent female participation in the construction workforce (see N.J.A.C. 19:53-1.4(c)). Additional sections of the rules address certain equal employment opportunity guarantees which various other elements of the gaming industry, such as casino service industries and gaming schools, are required to meet.

The Commission's Division of Affirmative Action and Planning monitors and enforces these rules. The division is continuously engaged in an analysis of the gaming industry's compliance with the rules. Such analysis includes field investigations, the preparation of statistical reports and the receipt and review of monthly and quarterly reports filed by the industry.

The division also reviews and responds to industry and public comment received through formal and informal means. For example, in July 1987, in response to an inquiry from the Governor's Committee on the Disabled, the Commission published a preproposal concerning the possible establishment of numerical employment goals for disabled persons similar to those presently established by N.J.A.C. 19:53-1.5(e) for women and minorities (see 19 N.J.R. 1182(b)). The Commission also recently proposed amendments concerning the obligation of applicants and licensees to designate an equal employment officer which are intended to enhance the effectiveness of that office (see 19 N.J.R. 1638(b)). Although the Commission is still considering what action, if any, to take with regard to these proposals, they are nonetheless indicative of the Commission's continuing concern with the effectiveness of the rules contained in N.J.A.C. 19:53. Accordingly, the rules are presently proposed for readoption without any substantive or technical amendments.

It is clear that the rules have had a positive impact on increasing opportunities for minorities and females to obtain employment, upward social and economic mobility and fair treatment in the casino industry in this State. It is also clear that minority and female residents of South Jersey have gained economically and socially as a result of expanded job

opportunities in the gaming industry. It is believed that this positive trend will continue, and the Commission will make every effort to assure that the rules are enforced in a manner consistent with the achievement of the significant public policy goals embodied in N.J.S.A. 5:12-134 and N.J.A.C. 19:53.

Social Impact

The social impact of the rules on the casino industry stems from the requirement to establish affirmative action programs in compliance with the rules and the Federal and State laws which they implement. Such programs require the designation of an equal employment officer who serves as a liaison to the Commission respecting all matters which are the concern of these rules. These rules also provide guidelines for the industry to seek compliance with Federal statutes and rules and other State laws concerning equal employment opportunity.

By far the greatest social impact of the rules is upon the minority and female workforce which is the focus of their operation. Based on the latest statistical information compiled by the Commission, the casino industry in New Jersey has achieved substantial compliance with the casino hotel workforce goals for minority and female workers. Copies of these reports may be obtained from the Commission's Division of Affirmative Action and Planning. The maintenance and enforcement of these rules will assure that this level of compliance continues in the future by both existing and future casino operators in New Jersey.

To the extent that these rules increase employment opportunities for minority and female residents of Atlantic City and the rest of South Jersey, these rules promote the general social welfare of the region. These rules also serve the general public interest by effectively implementing Federal and State public policy concerning the promotion of equal employment opportunity and affirmative action (see 42 U.S.C.A. 2000(e) et seq.; N.J.S.A. 5:12-134 and 135; N.J.S.A. 10:5-1 et seq.).

The failure to readopt these rules would greatly impede the social betterment and progress which they have provided for the minority and female workforce, the industry and the region. Readoption of these rules assures the continuation of the positive trend toward increasing employment opportunities for minority and female workers. This trend and the fulfillment of the public policy concerning equal employment opportunity in casinos and related industries could not be realistically guaranteed without the existence of specific and enforceable rules such as those presently contained in N.J.A.C. 19:53. Further, the failure to readopt these rules would be a violation of the Commission's statutory obligation to promote equal employment opportunity and affirmative action within the casino hotel and casino construction industries.

Economic Impact

N.J.A.C. 19:53 requires the industry to expend a degree of money and labor commensurate with the industry's duty and obligation to comply with the rules. This may require the hiring of staff to prepare required reports and to monitor compliance with these rules. The Commission believes, however, that the cost of compliance for the industry is insignificant in comparison to the social and economic benefits which these rules have promoted, and which will continue to be promoted through re-adoption.

The economic impact of these rules on the Commission is the need to maintain a staff to monitor and enforce compliance with the rules, including the review of required submissions and reports from the industry, the preparation of statistical analyses and the development and implementation of effective methods to carry out the provisions of the rules. Consistent with N.J.S.A. 5:12-139 and 143, the casino industry pays the costs associated with the enforcement of these rules, including all costs incurred by the Commission's staff. Therefore, there has been no direct economic impact upon the Commission or the State's General Fund.

The economic impact upon the minority and female workforce depends upon the extent to which the rules provide them with employment opportunities. To the extent that these persons live in Atlantic City or South Jersey, the economic prosperity of the city and region are concomitantly improved.

Regulatory Flexibility Statement

N.J.A.C. 19:53 primarily affects casino licensees, none of which qualify as a small business as defined by the Regulatory Flexibility Act. The rules may, however, impose reporting and other compliance requirements on certain contractors, subcontractors, gaming schools and casino service industry enterprises within the scope of the Act. For example, all contractors and subcontractors are required to submit monthly project manning reports to the Commission (N.J.A.C. 19:53-1.4(d)). Casino service industry enterprises are required to formulate and submit to the Commission for approval an affirmative action program and employee information report (see N.J.A.C. 19:53-1.5). In the Commission's opinion, however, the costs which are incurred by such businesses in complying with these requirements are insignificant, especially when compared to the social and economic benefits which will accrue as a result of the continuation of these rules (see Social and Economic Impact Statements above). Therefore, no exemption is provided for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:53.

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules

Public Hearings; Media Coverage

Adopted Amendment: N.J.A.C. 1:1-14.1

Proposed: January 19, 1988 at 20 N.J.R. 127(a).

Adopted: February 19, 1988 by Ronald I. Parker, Acting
Director, Office of Administrative Law.

Filed: February 22, 1988 as R.1988 d.115, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: March 21, 1988.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

1:1-14.1 Public hearings; records as public; sealing a record; media coverage

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

(d) All public hearings may be filmed, photographed and recorded, subject to reasonable restrictions established by the judge to avoid disruption of the hearing process. The number of cameras and lights in the hearing room at any one time may be limited. Technical crews and equipment may be prohibited from moving except during recesses and after the proceedings are concluded for the day. To protect the attorney/client privilege and the effective right to counsel, there shall be no recording of conferences between attorneys and their clients or between counsel and the judge at the bench.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF PARKS AND FORESTRY

Bureau of Forest Management

Adopted New Rule: N.J.A.C. 7:3-2

Proposed: January 19, 1988 at 20 N.J.R. 137(a).

Adopted: February 26, 1988 by Richard T. Dewling,
Commissioner, Department of Environmental Protection.

Filed: February 29, 1988 as R.1988 d.139, **without change**.

Authority: N.J.S.A. 13:1L-1 et seq. and 54:4-23.1 et seq.,
specifically 54:4-23.3.

DEP Docket Number: 066-87-12.

Effective Date: March 21, 1988.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 2. APPROVED FORESTERS LIST

7:3-2.1 Scope and authority

This subchapter constitutes the rules of the Department of Environmental Protection concerning the establishment of a list of foresters approved by the Department as necessary to implement P.L. 1986, c.201, amending and supplementing the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq. (the Act), and authorized by the State Park and Forestry Resources Act, N.J.S.A. 13:1L-1 et seq.

7:3-2.2 Purpose

The purpose of this subchapter is to provide the criteria for the establishment and maintenance of a list of foresters approved by the Department. The Act imposes certain requirements on those owners of land devoted exclusively to the production for sale of trees and forest products other than Christmas trees, and which is not appurtenant woodland, who desire to qualify for reduced property taxation. The landowner must establish and comply "with the provisions of a woodland management plan for this land prepared in accordance with policies, guidelines and practices approved by the Division of Parks and Forestry in the Department of Environmental Protection, in consultation with the Department of Agriculture and the Dean of Cook College at Rutgers, The State University, which policies, guidelines and practices are designed to eliminate excessive and unnecessary cutting." N.J.S.A. 54:4-23.3. In addition, both the landowner and a forester from the list of foresters approved by the Department in accordance with this subchapter shall annually attest to compliance with the woodland management plan.

7:3-2.3 Construction

This subchapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Act and the State Park and Forestry Resources Act.

7:3-2.4 Severability

If any section, subsection, provision, clause, or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:3-2.5 Definitions

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

"Act" means the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 et seq.

"Approved forester" means a forester meeting the standards and qualifications established by the Department in this subchapter.

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

"Department" means the Department of Environmental Protection.

"List of approved foresters" means a list of approved foresters meeting the requirements of N.J.A.C. 7:3-2.7 that is maintained and updated annually, or more frequently if needed, and available from the State Forestry Services, Division of Parks and Forestry, Department of Environmental Protection.

"Society of American Foresters Code of Ethics" means the canons governing professional conduct, adopted by the Society of American Foresters by Member Referendum, June 23, 1976, and on file at the Office of Administrative Law and available from that agency or the State Forestry Services, Division of Parks and Forestry, Department of Environmental Protection.

"Woodland management plan" means a plan prepared in accordance with the criteria set forth at N.J.A.C. 18:15-2.10.

7:3-2.6 Application procedure

(a) Any natural person may apply for entry on the list of approved foresters by submitting the following to the State Forestry Services, Division of Parks and Forestry, Department of Environmental Protection, CN 404, Trenton, New Jersey 08625:

1. A completed and executed application for entry on the list of approved foresters available from the State Forestry Services at the address given in (a) above; and

2. A certified copy of post-secondary school transcripts;

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(b) The Department will advise the applicant of its determination of the qualifications of the applicant. If approved, the name of the applicant will be entered on the list of approved foresters.

7:3-2.7 Qualifications for entry on the list of approved foresters

(a) The Department shall approve for entry on the list of approved foresters any natural person applying therefor and who at the time of application, satisfies the following qualifications:

1. Graduation from a four-year college or university accredited by the Society of American Foresters with a major course in forest management or from the Cook College-Rutgers University forest management option within the natural resource management curriculum or from a graduate degree program that the Department determines to be equivalent to the aforementioned major course in forest management;

2. Two years experience in forest management employment, beginning not earlier than the time of registration for the educational requirements specified above at (a)1, including one or both of the following:

- i. The preparation of woodland management plans; or
 - ii. The implementation of forestry practices for the protection, development, marketing, and utilization of forest land resources; and
3. Execution of a Department-prepared agreement to abide by the Society of American Foresters Code of Ethics.

(b) Each natural person on the list of approved foresters shall:

1. Submit accomplishments in a quarterly report upon request by the Department including, but not limited to, the following items:

- i. The number of woodland management plans and the acreage covered by each such plan;
 - ii. The number of timber stand improvements completed and the acreage covered by each such improvement;
 - iii. The number of reforestation and Christmas tree plantations completed and the acreage covered by each such plantation;
 - iv. The number, acres, volumes, and dollar returns on timber, pulpwood, and firewood harvests;
 - v. Evidence of annual participation in a relevant program of professional education to maintain forestry skills that is sponsored by the Society of American Foresters, Cook College-Rutgers University, or the Department, or is otherwise approved by the Department; and
 - vi. Other necessary information requested by the Department; and
2. Abide by the Society of American Foresters Code of Ethics.

7:3-2.8 Deletion from list of approved foresters

(a) The Department may delete from the list of approved foresters any forester on the list who:

1. Fails to submit a complete quarterly report as specified at N.J.A.C. 7:3-2.7(b)1 to the Department in accordance with the request therefor;
2. Submits the quarterly report specified at N.J.A.C. 7:3-2.7(b)1 to the Department with a fraudulent statement(s);
3. Fails to satisfy the requirement for participation in professional education specified at N.J.A.C. 7:3-2.7(b)1v;
4. Fails to abide by the Society of American Foresters Code of Ethics; or
5. Consistently evidences substantial error or otherwise falls below recognized professional standards in the provision of professional services to woodland owners.

7:3-2.9 Appeal from adverse determination on entry or deletion from list of approved foresters

(a) When the Department has made an adverse determination of the qualifications of the applicant and not approved the name of the applicant for entry on the list of approved foresters as provided at N.J.A.C. 7:3-2.6(b) or seeks to delete the name of any forester from the list of approved foresters as provided at N.J.A.C. 7:3-2.8(a), the applicant or forester shall be furnished with a written notice stating:

1. The Department action taken or sought;
2. The basis for such action; and
3. That an opportunity will be afforded to the applicant or forester for an administrative hearing if the hearing is requested within 21 days from the date of personal delivery or the date of receipt of such notice.

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(b) The applicant or forester requesting an administrative hearing shall submit to the Department the following information in writing:

1. The name and mailing address of the applicant or forester;
2. The date the adverse determination was received;
3. A description of the adverse determination; and
4. The specific reason(s) why the basis identified at (a)2 above is inadequate to support the Department action taken.

(c) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 54:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program Rules

Adopted Amendment: N.J.A.C. 7:7-2.1

Proposed: May 18, 1987 at 19 N.J.R. 807(a).

Adopted: February 26, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: February 29, 1988 as R.1988 d.136, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with portions of the proposal not adopted.**

Authority: N.J.S.A. 13:1D-9 and 13:19-17.

DEP Docket Number: 014-87-04.

Effective Date: March 21, 1988.

Expiration Date: May 7, 1989.

Summary of Public Comments and Agency Responses:

On May 18, 1987, the Department proposed amendments to N.J.A.C. 7:7-2.1 and 2.3, modifying N.J.A.C. 7:7-2.1(b)6 to terminate, under certain circumstances, exemptions from the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., and amending N.J.A.C. 7:7-2.3(a)2 to expand the waterfront development jurisdiction under certain circumstances. For additional information concerning the proposed amendments, please refer to 19 N.J.R. 807(a).

Public hearings concerning the proposal were held on June 15, 1987 in Toms River, New Jersey, June 16, 1987 in Jersey City, New Jersey and June 17, 1987 in Trenton, New Jersey. A total of seven people attended the hearings and submitted testimony concerning both proposed modifications. Additionally, eight persons submitted written comments concerning both proposed modifications before the close of comment period on June 24, 1987.

In response to the substantive comments submitted concerning the expansion of the waterfront development jurisdiction (N.J.A.C. 7:7-2.3), the Department has decided to take no action to adopt that proposed rule change at this time, but may do so at a later date. Proposed changes to N.J.A.C. 7:7-2.1 are being adopted as modified in response to comments received. The date upon which the termination of exemptions will occur has been changed to June 7, 1988 to provide for a notice period.

COMMENT: The Department should not assume that projects which have not been completed since the enactment of CAFRA have been abandoned. Some of the projects that were exempted are very large, are ongoing now and will probably still be ongoing beyond the five year period. The commenter requested that no limitation be placed upon the length of the extension provided that construction is not halted by the developer for more than one year. If construction is halted for more than one year for a reason beyond the developer's control, then the exemption should continue to be valid.

RESPONSE: As proposed, the rule modification dealing with CAFRA exemptions did not categorically terminate all exemptions but provided for an extension of time to allow for their completion.

The Department agrees with this witness that certain circumstances may exist in which unusually large or complex projects may warrant an extension beyond this five-year period just as CAFRA permits may be extended under certain circumstances. Accordingly, N.J.A.C. 7:7-2.1 has been modified to accommodate the possibility of additional extensions for some ongoing projects and certain interruptions in work progress where such is unavoidable.

COMMENT: The proposed amendment to eliminate the exemption from CAFRA is desirable. During the past 13 years, any developer should have completed or made significant progress on a project.

RESPONSE: By promulgating this rule change, the Department does propose, generally, that any project exempted from CAFRA because of ongoing construction on or prior to the effective date of the Act but which is still not complete as of the date set forth in the rule should be considered abandoned. As noted above, however, the rule as adopted does, in certain circumstances, allow for a continuing exemption where it can be shown that the project has not been abandoned.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks *thus*: deletions from the proposal shown in brackets with asterisks *[thus]*).

7:7-2.1 CAFRA

(a) (No change.)

(b) The Department interprets the statutory term "facility" as defined by CAFRA in its broadest sense so as to provide adequate environmental safeguards for the construction of any facility in the coastal area. On the other hand, the Department interprets the statutory intent as excluding relatively minor construction. To that end, the following terms are interpreted, for the purposes of this section, as follows.

1.-5. (No change.)

6. All exemptions from this subchapter, which were obtained on the basis that on-site construction had taken place on or before September 19, 1973, shall terminate on *[November 20, 1987.]* ***June 7, 1988 except as provided in (b)6i through iv below.*** The Division may authorize an extension of the exemption for a period of time not to exceed five years ***for the initial extension period and not to exceed one year for any subsequent period*.** All requests for extensions of exemptions shall comply with the following requirements.

i. All ***initial extension period*** requests shall be submitted, in writing, on or before *[November 20, 1987]* ***June 7, 1988*** to:

Chief, Bureau Coastal Enforcement & Field Services
Division of Coastal Resources
New Jersey Department of Environmental Protection
CN 401
Trenton, N.J. 08625

ii. All requests other than initial extension period requests shall be submitted to the Division as provided in (b)6i above no later than 30 days prior to the expiration of the exemption.

[ii.]*iii.***** All requests shall be submitted with information which shall be sufficient to enable the Division to make a determination that significant construction has occurred on the site during the 12 month period prior to *[November 20, 1987]* ***June 7, 1988*** and that the project is being constructed in accordance with plans that were submitted to the Division at the time that the exemption was granted.

iv. If no significant construction has occurred during the 12 month period prior to the expiration of the exemption as provided in (b)6iii above, the Division may, in its discretion and upon written request, grant an extension of the exemption provided that the interruption in the construction process was caused by factors beyond the developer's control. Such delaying factors, along with a description of the efforts made by or on behalf of the developer to overcome such factors, shall be documented in the exemption request.

DIVISION OF WATER RESOURCES

(a)

Redelineation of the Hackensack River in the Borough of Oradell

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: November 2, 1987 at 19 N.J.R. 1935(a).

Adopted: February 26, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: February 29, 1988 as R.1988 d.138, **without change.**

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.

DEP Docket Number: 047-87-10.

Effective Date: March 21, 1988.

Expiration Date: May 4, 1989.

Notice of the proposed amendment was published on November 2, 1987 in the New Jersey Register at 19 N.J.R. 1935(a). The notice also advised that a public hearing had been scheduled for November 20, 1987 at 10:00 A.M. at the Bureau of Radiation Protection, 380 Scotch Road, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, secondary notice of the proposal was published on October 15, 1987 in the Bergen Record. Both notices invited written comments to be submitted on or before December 2, 1987 and announced the holding of the public hearing. One person attended the hearing.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the ***revised*** ***[redelineated]*** ***delineated*** flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain ***[Delineation]*** ***Management***, ***[1911 Princeton Avenue, Lawrenceville, N.J.]*** ***5 Station Plaza, 501 E. State Street, Trenton, N.J.*** In addition, maps of the ***[proposed]*** delineations have been sent to the Borough of Oradell Town Clerk and to the Bergen County Planning Board.

(b)

Redelineation of Big Bear Brook in Mercer County Adopted Amendment: N.J.A.C. 7:13-7.1(d)

Proposed: November 2, 1987 at 19 N.J.R. 1933(a).

Adopted: February 26, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: February 29, 1988 as R.1988 d.135, **without change.**

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.

DEP Docket Number: 050-87-10.

Effective Date: March 21, 1988.

Expiration Date: May 4, 1989.

Notice of the proposed amendment was published on November 2, 1987 in the New Jersey Register at 19 N.J.R. 1933(a). The notice also advised that a public hearing had been scheduled for November 24, 1987 at 10:00 A.M. at the Bureau of Radiation Protection, 380 Scotch Road, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, secondary notice of the proposal was published on October 16, 1987 in the Trenton Times. Both notices invited written comments to be submitted on or before December 2, 1987 and announced the holding of the public hearing. Two persons attended the hearing.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the ***revised*** ***[redelineated]*** ***delineated*** flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain ***[Delineation]*** ***Management***, ***[1911 Princeton Avenue, Lawrenceville, N.J.]*** ***5 Station Plaza, 501 E. State Street, Trenton, N.J.*** In addition, maps of the ***[proposed]*** delineations have been sent to the East Windsor Township Clerk and to the Mercer County Planning Board.

(a)

Redelineation of Lawrence Brook, Ireland Brook, Mae Brook, Harry's Brook, Brook Branch No. 1, and Oakey's Brook**Adopted Amendment: N.J.A.C. 7:13-7.1(d)**

Proposed: November 2, 1987 at 19 N.J.R. 1934(a).

Adopted: February 26, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: February 29, 1988 as R.1988 d.134, **without change**.

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.

DEP Docket Number: 048-87-10.

Effective Date: March 21, 1988.

Expiration Date: May 4, 1989.

Notice of the proposed amendment was published on November 2, 1987 in the New Jersey Register at 19 N.J.R. 1934(a). The notice also advised that a public hearing had been scheduled for November 24, 1987 at 10:00 A.M. at the Bureau of Radiation Protection, 380 Scotch Road, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, secondary notice of the proposal was published on October 16, 1987 in the Trenton Times. Both notices invited written comments to be submitted on or before December 2, 1987 and announced the holding of the public hearing. Two persons attended the hearing.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the ***revised*** ***[redelineated]*** ***delineated*** flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain ***[Delineation]*** ***Management***, ***[1911 Princeton Avenue, Lawrenceville, N.J.]*** ***5 Station Plaza, 501 E. State Street, Trenton, N.J.*** In addition, maps of the ***[proposed]*** delineations have been sent to the ***[Clerks of Townships]*** ***Township Clerks*** of East Brunswick, North Brunswick, South Brunswick, and Princeton, the Clerk of the Borough of Milltown*,* and ***to*** the Planning Boards of Mercer and Middlesex Counties.

(b)

Redelineation of Carter's Brook in Middlesex County**Adopted Amendment: N.J.A.C. 7:13-7.1(d)**

Proposed: November 2, 1987 at 19 N.J.R. 1933(b).

Adopted: February 26, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: February 29, 1988 as R.1988 d.137, **without change**.

Authority: N.J.S.A. 13:1B-3 and 58:16A-50 et seq.

DEP Docket Number: 049-87-10.

Effective Date: March 21, 1988.

Expiration Date: May 4, 1989.

Notice of the proposed amendment was published on November 2, 1987 in the New Jersey Register at 19 N.J.R. 1933(b). The notice also advised that a public hearing had been scheduled for November 24, 1987 at 10:00 A.M. at the Bureau of Radiation Protection, 380 Scotch Road, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, secondary notice of the proposal was published on October 12, 1987 in the Home News. Both notices invited written comments to be submitted on or before December 2, 1987 and announced the holding of the public hearing. Two persons attended the hearing.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the ***revised*** ***[redelineated]*** ***delineated*** flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain ***[Delineation]*** ***Management***, ***[1911 Princeton Avenue, Lawrenceville, N.J.]*** ***5 Station Plaza, 501 E. State Street, Trenton, N.J.*** In addition, maps of the ***[proposed]*** delineations have been sent to the South Brunswick Township Clerk and to the Middlesex County Planning Board.

(c)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT
Identification and Listing of Hazardous Waste from Specific Sources****Adopted Amendment: N.J.A.C. 7:26-8.14**

Proposed: November 2, 1987 at 19 N.J.R. 1938(a).

Adopted: February 26, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: February 29, 1988 as R.1988 d.140, **without change**.

Authority: N.J.S.A. 13:1E-6.

Effective Date: March 21, 1988.

Expiration Date: November 4, 1990.

DEP Docket Number: 051-87-10.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

7:26-8.14 Hazardous Waste from Specific Sources

Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
Pesticides	K031-K099 (No change.)		
	K123	Process waste water (including supernates, filtrates, and washwaters) from the production of ethylene-bisdithiocarbamic acid and its salts.	(T)
	K124	Reactor vent scrubber water from the production of ethylene-bisdithiocarbamic acid and its salts.	(C,T)
	K125	Filtration, evaporation and centrifugation solids from the production of ethylene-bisdithiocarbamic acid and its salts.	(T)
	K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylene-bisdithiocarbamic acid and its salts.	(T)

HEALTH

(d)

**DIVISION OF HEALTH PLANNING AND RESOURCES
DEVELOPMENT****Certificate of Need: Hospital Policy Manual****Adopted Repeal: N.J.A.C. 8:43E-1****Adopted Repeal: N.J.A.C. 8:43G****Adopted New Rule: N.J.A.C. 8:43I**

Proposed: December 21, 1987 at 19 N.J.R. 2365(b).

Adopted: February 18, 1988 by Molly Joel Coye, M.D., M.P.H.,
Commissioner of the Department of Health (with approval of
the Health Care Administration Board).

Filed: February 19, 1988 as R.1988 d.114, 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 21, 1988.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

Written comments were received from the New Jersey Hospital Association (NJHA), Jersey Shore Medical Center (JSMC), West Jersey Health System (WJHS), Hunterdon Medical Center (HMC), the Hospital Planning and Marketing Society of New Jersey (HPMS), Raritan Bay Health Services Corporation (RB), and East Orange General Hospital (EO).

COMMENT: The WJHS and the HPMS commented on N.J.A.C. 8:43I-1.2(d) of the General Policies. WJHS notes that the capital policy goals are too "cost-based" and should include a quality-based statement such as "the achievement of saving of human lives." The HPMS has a similar concern and recommends the addition of a seventh goal to read: "the maintenance of technological and facility standards as a result of proposed new capital expenditures."

RESPONSE: The Department believes that it is evident that all participants in the health care delivery system have as a primary goal "the achievement of saving of human lives." Thus, it is neither necessary nor appropriate to include such a statement in these rules. The Department also believes that the recommendation of the HPMS is not necessary since it is already covered by its statement at N.J.A.C. 8:43I-1.2(d)6., "The orderly development of health care services."

COMMENT: WJHS recommends that N.J.A.C. 8:43I-1.2(e)1. and (f), regarding access to care for indigent and Medicaid patients be "rewritten to take into account the varying proportions of the indigent population in communities." Also, WJHS believes that N.J.A.C. 8:43I-1.2(f), which requires a hospital Certificate of Need applicant to submit "evidence from its medical staff that staff physicians with admitting privileges will accept indigent and Medicaid patients", would place a "severe burden on non-teaching, community hospitals." WJHS notes that the "health care system would be enhanced if all practitioners would accept indigent and Medicaid patients, non-salaried physicians cannot be forced to do so." The HPMS had similar objections.

RESPONSE: Access to needed services is one of the major objectives of the Department, as well as our enabling statutes. The granting of Certificate of Need approval for a capital project benefits not only a hospital's patients, but also the hospital and its physicians. In return, the Department, the Statewide Health Coordinating Council (SHCC), and its Plan Development and Implementation (PDI) Committee strongly believe that all residents of the hospital's service area must have access to that hospital and its services, regardless of ability to pay. As a point of clarification, this requirement is not intended to obligate each staff physician to treat Medicaid or indigent patients or to mandate assignment, but rather to insure that the community of physicians provides access to all Medicaid and indigent patients. To emphasize this, the Department has amended the last line of N.J.A.C. 8:43I-1.2(f) to read: "and the applicant submits evidence from its medical staff that staff physicians with admitting privileges will [accept] **insure access to care by all indigent and Medicaid patients who present.**"

COMMENT: Five of the commentators had objections to N.J.A.C. 8:43I-1.2(m) regarding the reporting of any transfer of funds from the general hospital to affiliated or subsidiary corporations. The commentators felt this was a financial issue that did not belong in a planning document. NJHA and JSMC also noted that hospitals are required to report transactions with related organizations by the Procedural and Methodological Regulations (PMR), Financial Elements and Reporting, N.J.A.C. 8:31B-4.25(c).

RESPONSE: The Department notes that language concerning related organizations is found in the PMR. The intent of that language is to require disclosure of financial information from related organizations for rate-setting purposes and to insure "prudent buying." The proposed language is related to planning and Certificate of Need issues, and thus appropriately placed in the Hospital Policy Manual. The transfer of funds between hospitals and affiliated or subsidiary corporations may significantly affect the financial feasibility of a capital project or the amount of the equity contribution a hospital can furnish for such a project.

COMMENT: Five of the commentators objected to N.J.A.C. 8:43I-1.5, regarding the minimum size for an acute general hospital. The WJHS asked for an exception to the 200 bed rule for facilities that are part of

a multi-hospital system; HMC was concerned that the rule did not address geographically isolated hospitals; the HPMS was concerned that the rule would discourage hospitals from closing or converting unneeded beds; and JSMC and NJHA noted an inconsistency between this section (which requires a 200 bed minimum) and N.J.A.C. 8:43I-1.13, which permits several exceptions to this minimum.

RESPONSE: The Department agrees that there is an inconsistency between N.J.A.C. 8:43I-1.5 and 1.13. To remedy this, the Department has added a fourth paragraph at N.J.A.C. 8:43I-1.5(a)4. to read: "Facilities with less than 200 beds that are granted exceptions according to the criteria identified at N.J.A.C. 8:43I-1.13(a)2. and 1.13(b)1.-3." The Department also eliminated the word "and" and after the word "operated" and before the word "geographically" in N.J.A.C. 8:43I-1.13(a)2., second sentence. These changes will permit exceptions to the 200 bed minimum for geographically isolated hospitals, those part of a multi-hospital system, and those that are efficiently operated.

COMMENT: Five commentators objected to N.J.A.C. 8:43I-1.6 and 1.7, regarding the minimum sizes for obstetric and pediatric units respectively. NJHA disagreed with continuing regulation of this area since "hospitals are capable of determining the size at which a unit is not feasible." The HPMS feels that N.J.A.C. 8:43I-1.7 is too vague and that pediatric practice has changed sufficiently enough to delete this section. JSMC notes that hospitals should have the flexibility to determine a feasible unit size and was concerned that N.J.A.C. 8:43I-1.6 was inconsistent with the perinatal rules. HMC noted that "isolation" was defined differently in N.J.A.C. 8:43I-1.6, 1.7 and 1.13.

RESPONSE: As reflected in previous comments, the Hospital Policy Manual is a planning document. It is intended to be used not only to evaluate Certificate of Need applications, but also as a guide for the future development of the acute care hospital system in the state. Thus, it is appropriate to maintain criteria regarding size in the rules, particularly since these criteria are not inflexible and permit reasonable exceptions. HMC is correct in noting the differing criteria for determining geographic isolation. The language in N.J.A.C. 8:43I-1.6 is taken virtually verbatim from the Perinatal Rules (N.J.A.C. 8:33C) and cannot be changed at this time. However, the Department has changed the mileage specified at N.J.A.C. 8:43I-1.7(a)1. from 20 miles to 15 miles, as requested by HMC. This makes the mileage criteria identical at both N.J.A.C. 8:43I-1.7(a)1. and N.J.A.C. 8:43I-1.13(b)1.i.

COMMENT: Six of the commentators objected to N.J.A.C. 8:43I-1.9 regarding shelled space. All commentators argue that if the criteria for approval are satisfied, then the capital costs should be recognized at the time the space is built, not at the time it is utilized.

RESPONSE: While, under certain circumstances, a hospital might document the cost-effectiveness of shell space, the time from its construction to its actual utilization could be significant. The Department, the SHCC, and the PDI all agree that consumers should not pay for space not being used to provide a health care service.

COMMENT: Four of the commentators (NJHA, JSMC, EO, and HMC) objected to N.J.A.C. 8:43I-1.10, regarding bed need, particularly with regard to the occupancy rate criterion. HMC felt that no occupancy rate be specified for the specialized services addressed in this section and that each case should be resolved on its own merits. NJHA, EO, and JSMC objected to the use of occupancy rates as a criterion for review in this section, and throughout the manual. They believe that "the institution of volume variable reimbursement should give hospitals a strong incentive to eliminate excess capacity." The commentators felt that, while occupancy was one way to measure utilization or bed need, it may not be the best or most valid. NJHA noted that hospitals may need more beds, yet show low occupancy because of strikes, construction, or staff shortages. Both NJHA and HMC also noted that the 80 percent occupancy rate required in this section is higher than the occupancy required at N.J.A.C. 8:43I-1.11.

RESPONSE: The Department, as well as the SHCC and PDI, strongly disagree with the contention that occupancy rate criteria are inappropriate in a planning document. Occupancy rates are well-established, well-understood, and easily obtainable criteria. They are a reflection of both admissions and length of stay and can be projected forward easily and reasonably well. Thus, occupancy rates continue to serve as a major (though not exclusive) evaluative tool in the Certificate of Need process. Certainly the participants in that process, when reviewing a hospital capital project with a 20 or 30 year or longer life span, must consider how fully occupied the facility is and will be; so must the facility submitting the application. To simply assume that volume variable reimbursement, virtually in and of itself, will render concerns about current and

future occupancy and bed need moot is not reasonable or warranted. It must also be noted that no commentor even suggested a substitute criterion for occupancy rates.

The reason that N.J.A.C. 8:43I-1.10(b)4. requires a minimum 80 percent occupancy is that this entire section refers to a specialized category of beds for which there are no need methodologies or criteria in other planning or regulatory documents. Since such an application would, in effect, represent a new category of inpatient service for which there are few, if any, criteria, requiring a slightly higher occupancy than for well-established services appears reasonable.

COMMENT: Similar to the comments on occupancy rates noted above, all commentors objected to N.J.A.C. 8:43I-1.11 regarding occupancy rates. Some also note that if occupancy rates are to be used, they would prefer an overall hospital occupancy rate instead of service-specific rates. NJHA and JSMC also want hospitals to have the flexibility to shift bed complements through the Administrative Review process.

RESPONSE: As noted above, the Department strongly opposes removing occupancy rate criteria from the Hospital Policy Manual. The Department, the PDI, and the SHCC also strongly believe that a planning document appropriately contains criteria by licensed bed category. In addition, these criteria are not inflexible standards. It must be noted that N.J.A.C. 8:43I-1.12(b) contains four potential exceptions to the occupancy rate criteria for hospitals proposing addition or replacement of beds. Finally, the Certificate of Need Rules, at N.J.A.C. 8:33-2.5(a)4., currently state that "any change in the number of beds within categories licensed for a facility that will not affect the total number of licensed beds, or result in a capital expenditure requires a Certificate of Need and shall follow the administrative review process..."

COMMENT: WJHS objects to N.J.A.C. 8:43I-1.12(a)1. and is concerned that "the expectation of a hospital to achieve no less than a 10 percent increase in occupancy rate for the service(s) being expanded in the second year of completion is too unrealistic. A five percent gain in that time period is more realistic."

RESPONSE: The Department does not agree. Please note that this rule requires achievement of an occupancy 10 percentage points higher than the **minimum** occupancy for that service.

COMMENT: HMC was concerned that the "optimal" occupancy rates reflected at N.J.A.C. 8:43I-1.11 and 1.12 for bed expansion were too high.

RESPONSE: The Department, PDI, and SHCC believe the proposed "optimal" occupancy rates are appropriate, particularly in view of increasing concerns related to capital acquisition and reimbursement. In addition, as noted previously, four potential exceptions to the occupancy rate criteria are identified at N.J.A.C. 8:43I-1.12(b)1.-4.

COMMENT: WJHS was concerned that N.J.A.C. 8:43I-1.12(a)4. would force hospitals to merge with other hospitals rather than expand.

RESPONSE: The comment is a misinterpretation of the rule. N.J.A.C. 8:43I-1.12(a)4. requires facilities seeking bed additions to make "good faith efforts to develop mergers, joint ventures, or other shared service arrangement" with nearby underutilized facilities.

COMMENT: NJHA, HPMS, JSMC, EO and HMC each objected to N.J.A.C. 8:43I-1.13 regarding Community Need Standards. The commentors asked for deletion of N.J.A.C. 8:43I-1.13(a)2., which requires that a hospital must maintain at least 200 beds and a 75 percent overall occupancy rate at the conclusion of a capital project. They maintain that this section is redundant, given N.J.A.C. 8:43I-1.5. The commentors also object to N.J.A.C. 8:43I-1.13(a)3., which requires hospitals to be "operated in an economically efficient manner through generally accepted industry efficiency standards." It is alleged that this language is "too vague."

RESPONSE: While the language at N.J.A.C. 8:43I-1.13(a)2. is similar to the language at N.J.A.C. 8:43I-1.5, it is appropriate in its context and should remain.

In terms of N.J.A.C. 8:43I-1.13(a)3., the Department believes that economic efficiency is an important factor to consider in the Certificate of Need review of a hospital capital project. The intent of the Department is to utilize any efficiency standards reported in the hospital literature that are appropriate and available at the time of a hospital capital batch and/or data that is supplied by the applicant itself. It must be noted that no commentor proposed alternative language.

COMMENT: NJHA, HPMS, and JSMC all commented on N.J.A.C. 8:43I-1.16 regarding equity contributions. NJHA and JSMC noted that they wanted "to see that sufficient reimbursement is provided" so that hospitals could accumulate the required 15 percent equity. The HPMS maintains that reimbursement is not adequate to meet the 15 percent criteria. They also comment that the allowed reduction in equity (one

half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals) "is not supported by any evidence." The HPMS then proposes that the reduction be "1 percent for each 1 percent of uncompensated care over the State average."

RESPONSE: In these times of sometimes difficult access to capital and the uncertainties of capital reimbursement, a 15 percent equity contribution (with permitted reductions) for a major capital project is prudent. This language is also included in the Certificate of Need Rules (N.J.A.C. 8:33-2.15(a)2.) and the Hospital Care Policy Rules (N.J.A.C. 8:43G-1.9(a)) proposed for repeal and was in effect for the October 15, 1986 major capital batch. The participants in that batch were able to comply with this criterion.

It must also be noted that while the HPMS comments that the reduction language in the proposed rule is not supported by evidence, they propose a significant revision without any reasons or support for such a change.

COMMENT: NJHA, HPMS, JSMC, and HMC commented on N.J.A.C. 8:43I-1.19, regarding single-bedded rooms. The objections raised included the lack of "empirical evidence" for the criteria and the fact that AIDS patients are usually treated in single-bedded rooms.

RESPONSE: The Department, the PDI, and the SHCC believe that this section is important in limiting unnecessary capital expenditures for construction of, for example, VIP floors. During review of the manual through the PDI and SHCC, the last sentence of this section was added. This now permits exceptions from the criteria when single-bedded rooms add no additional capital or operating costs to a project or when "clinical necessity" is demonstrated, such as the need to service AIDS patients under isolation procedures.

COMMENT: NJHA, HPMS, EO, RB and JSMC object to N.J.A.C. 8:43I-1.20 regarding outpatient clinics and recommended deletion. All commentors note that current reimbursement policy does not permit hospitals to be price competitive with other outpatient service providers. The HPMS also "objects to conditions requiring outpatient services that have no relation to the Certificate of Need at hand."

RESPONSE: The Department disagrees with these comments. N.J.A.C. 8:43I-1.20(b), regarding competitive pricing, is not the sole criterion to be used when a hospital applies to develop outpatient services. The Department, through this manual, encourages the development of lower cost alternatives to inpatient services. N.J.A.C. 8:43I-1.20(b) would particularly apply to requests to initiate services in areas already served by other providers. As indicated by the commentors, Chapter 83 often allows higher outpatient rates for hospitals than are typically charged by free-standing facilities. The Certificate of Need review process must evaluate the availability of these lower cost alternatives and the financial impact of new services on the health care system as a whole.

N.J.A.C. 8:43I-1.20(a) requires the "demonstration" of the availability of follow-up care, either directly or through formal linkages with other providers. It is unclear why this is apparently viewed as an onerous requirement, as opposed to a proper and appropriate responsibility of the health care delivery system. The criterion is also consistent with licensure rules that require outpatient service provision for those services also offered on an inpatient basis.

COMMENT: NJHA and JSMC object to N.J.A.C. 8:43I-1.22(a)2.iii., which requires that applicants proposing construction of a new hospital demonstrate that other hospitals within 25 miles exceed the optimal occupancy levels identified at N.J.A.C. 8:43I-1.11.

RESPONSE: The Department believes that this is an appropriate criterion. As noted previously, capital issues remain problematic. The construction of a new (not replacement) hospital adding a substantial number of beds to the system is enormously expensive and is appropriately subject to very rigorous criteria.

COMMENT: NJHA and JSMC find N.J.A.C. 8:43I-1.25, regarding multi-hospital arrangements, to be confusing. They ask that this section be clarified to refer only to transfer of ownership and asset mergers.

RESPONSE: The Department agrees that this section needs clarification. The original intent of this section was to apply to Certificates of Need for transfers of ownership through merger or acquisition. To appropriately reflect this, the title and text of this section have been revised.

COMMENT: NJHA, HPMS and JSMC object to N.J.A.C. 8:43I-1.26 regarding relocation or closure of services. The commentors ask that if an applicant for closure or relocation of a service documents financial losses in providing that service, then the Department should develop a plan to subsidize the service or permit closure or relocation.

RESPONSE: Access to needed services is one of the major objectives of the Department, as well as our enabling statutes. This section is included in the proposal to emphasize the commitment to ensuring that access concerns remain an important component of the project review process. It must also be noted that N.J.A.C. 8:33-2.1(a)5., referenced in the proposal, only requires an applicant to "address in writing" various access problems that might accrue if a service is closed or relocated. It does not mandate project denial as the commentators appear to assume. In addition, the Department is always available to work with any provider experiencing unavoidable financial losses in providing a needed service.

Full text of the adoption follows; additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***:

CHAPTER 43I

CERTIFICATE OF NEED: HOSPITAL POLICY MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

8:43I-1.1 Purpose

(a) The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq. as amended) established as public policy of the State of New Jersey "that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health." (N.J.S.A. 26:2H-1)

(b) To implement this policy, P.L. 1971 Ch. 136 (N.J.S.A. 26:2H-1 et seq.) has given the State Department of Health "the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services, and all public and private institutions, whether State, county, municipal, incorporated and not incorporated, serving principally as boarding, nursing or maternity homes or other homes for the sheltered care of adult persons or as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity, or physical condition(s). (N.J.S.A. 26:2H-1 as amended)

(c) No health care facility shall be constructed or expanded, and no new health care services shall be instituted except upon application for and receipt of a Certificate of Need. (N.J.S.A. 26:2H-7 as amended)

(d) The Department of Health has a major responsibility for the promotion of quality health services rendered in an efficient and economical manner and available to all residents of the State. To ensure significant progress toward the achievement of this policy goal, planning and Certificate of Need activities will be directed toward the provision of facilities and services which:

1. Improve the health of residents of a health service area;
2. Increase the accessibility (including overcoming geographic, architectural and transportation barriers), acceptability, continuity and quality of health services provided them;
3. Restrain increases in the cost of providing health services;
4. Prevent unnecessary duplication of health resources and encourage the development of cost effective alternative delivery modes (P.L. 93-641, Section 1513(a)), and
5. Reduce financial barriers to care.

(e) The general policies, standards and guidelines set forth in the chapter are intended to provide substantive criteria for the regulation, planning, review and implementation of health care facilities and services within the State of New Jersey.

(f) The general policies presented in the chapter apply to all facility and service planning within the State. In addition to these general policies, specific planning and review standards and guidelines are presented in this chapter for broad categories of health care facilities and services, as well as for specialized types of health care which shall be made available on a regionalized basis.

(g) This chapter is to be distinguished from the "Guidelines and Criteria for Submission of Applications for Certificate of Need" published by the New Jersey State Department of Health (N.J.A.C. 8:33-1 et seq.) which identifies the procedures, rules, and regulations which carry out the Certificate of Need program pursuant to N.J.S.A. 26:2H-1 et seq. (1971 Health Facilities Planning Act), Public Law 92-603 (Section 1122 of the Social Security Act).

(h) This chapter presents substantive criteria for the planning of health care facilities and services as provided by hospitals within the State. These policies, standards and guidelines shall be applied in the review of proposed actions requiring Certificate of Need authorization.

8:43I-1.2 General policies

(a) The general policies identified in this chapter shall apply to all facilities licensed and regulated under N.J.S.A. 26:2H-1 et seq. and amendments thereto.

(b) No certificate of need shall be issued unless the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care services (N.J.S.A. 26:2H-8)

(c) Each Certificate of Need shall comply with the State Health Plan and all appropriate health planning and rate setting regulations adopted by the Department of Health (with approval of The Health Care Administrative Board) and should also be in compliance with the adopted plan(s) of the local health planning agency in which the action is proposed.

(d) In reviewing Certificate of Need applications, the Department will consider the following as capital policy goals:

1. The reduction of duplicative services and excess bed capacity and the development of cost effective alternatives to inpatient care.
2. Accessibility to all inpatient and outpatient services by medically indigent residents of State.
3. The efficient operation of licensed hospitals in the State.
4. The achievement of operational cost savings or cost avoidances as a result of proposed new capital expenditures.
5. Maintenance of a level of capital debt as appropriate to a cost efficient health care delivery system.
6. The orderly development of health care services.

(e) Any applicant for a Certificate of Need must agree in writing at the time of filing its Certificate of Need application to unconditionally accept the following conditions of approval. These conditions will be a part of any and all Certificate of Need approvals which are issued:

1. In order to assure access to patient care services, under no circumstances may any patient be denied admission to the applicant institution or, once admitted, transferred to another institution due to inability to pay for services. This condition shall remain in effect for the life of the approved project.
2. The applicant will not practice discrimination on the basis of medical diagnosis if it has the ability to treat that medical diagnosis.
3. The applicant will assure that indigents and Medicaid patients have access to all services offered by the facility.

(f) Each applicant must demonstrate a historical commitment to caring for the medically indigent (that is, provision of uncompensated charity care, excluding bad debt accounts) and that it has taken steps to develop services for this population; for example, primary care programs followed-up with appropriate specialty referral; and the applicant submits evidence from its medical staff that staff physician*s* with admitting privileges will ***[accept]* *insure access to care by all*** indigent and Medicaid patients ***who present***.

(g) The Department of Health encourages planning by hospitals which promotes:

1. Actions consistent with the New Jersey State Health Plan and State Department of Health policies and regulations;
2. Actions consistent with the goals and objectives of the plan of the local health planning agency within the service area in which the action is proposed.
3. Prevention of disease through early intervention and the provision of primary care services, and encourages the continued development of alternative service modalities to substitute for inpatient hospital care and alternative facilities to substitute for hospital inpatient construction as appropriate.
4. Regionalization of medical resources to achieve cost efficiencies and to enhance the quality of care as appropriate.
5. Accessibility to and the availability of services to those persons unable to pay for services (in whole or in part).

6. Reductions in environmental and occupational illness and disease.

(h) Institutions which engage in cooperative regional planning and which demonstrate that they are sharing their resources on a regional basis shall be given special consideration in the awarding of certificate of need.

(i) In making determinations on applications for Certificate of Need approval, there shall be taken into consideration the availability of facilities or services which may serve as alternatives or substitutes, the need for special equipment and services in the area, the possible economies and improvement in services to be anticipated from the operation of joint central services, the adequacy of financial resources and sources of present and future revenues, the availability of sufficient manpower in the several professional disciplines, and such other factors as may be established by regulation. (see N.J.S.A. 26:2H-8)

(j) The Department of Health shall give preference to applicants which:

1. Document existing working relationships with other area hospitals and health care facilities providing primary care services, including, but not limited to, referral arrangements for regionalized services;

2. Document the accessibility of services to persons who are unable to pay; and

3. Propose mergers, consolidations, or other joint arrangements, or closure of underutilized and unneeded inpatient services and document quantifiable cost savings in future years resulting from such actions.

(k) The applicant shall identify alternative approaches to the project which were considered and demonstrate in specific terms how the option selected, relative to all other alternatives, most effectively benefits the health care system through achieving capital and operational savings, increasing access, and/or improving quality of care.

(l) If a hospital has closed, ceased or not maintained operation of any of its beds, facilities, or services for a period of eighteen months or more, these beds will be removed from the inventory of the facilities and a Certificate of Need shall be required to reopen such beds, facilities, or services.

(m) All hospitals must report any transfer of funds from the general hospital to affiliated or subsidiary corporations on an annual basis to the Department.

8:43I-1.3 Definitions

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

"Acquisition" means the obtainment of a health care facility or service through purchase, lease, donation or other means which requires a Certificate of Need.

"Adjusted admission" as defined at N.J.A.C. 8:31B-3.24 (as amended), the Uniform Bill-Patient Summary (Inpatient) Regulation, means inpatient admissions multiplied by total gross divided by inpatient gross revenue.

"Admissions" means all inpatients admitted to the hospital, including Same Day Medical Admissions and excluding Same Day Surgery, Outpatient Surgery, and internal transfers within the hospital.

"Commissioner" means the Commissioner of the Department of Health.

"Construction" means the erection, building, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

"Debt service" means those funds allocated to the repayment of principal, depreciation, and interest as a result of the financing of a capital expenditure.

"Department" means the New Jersey Department of Health.

"Equity" means a voluntary non-operating asset contribution which will reduce the total size of the debt.

"Fixed equipment" means equipment which is attached to the physical plant of a facility.

"Guidelines" means those general factors to be considered in applying a given standard, or to guide decision-making in areas for which specific standards are not available or would not be appropriate.

"Hospital Service Area" means those municipalities in an area that can be determined through the most recent patient origin/market share data collected by the Department to meet one or more of the following criteria:

1. The hospital derives five percent or more of total admissions from the municipality; or

2. Greater than 20 percent of residents of the municipality who are hospitalized utilize the subject hospital; or

3. It is the municipality in which the hospital is located.

"Inpatient" means either a patient appropriately admitted to a licensed acute care hospital bed for an overnight stay and/or a patient appropriately admitted to a licensed acute care bed following a same day medical procedure.

"Local health planning agency" means an agency which performs planning pertaining to health care facilities and services which are located in or serving a specific geographical area designated by the Commissioner.

"Major movable equipment" means equipment which generally is not attached to the physical plant of a facility and has, for depreciation purposes, a predetermined life.

"Medically underserved groups" means all population groups including racial, ethnic, and sexual minorities, migrant workers, the handicapped, Medicaid recipients, individuals and families with incomes below 80 percent of the median income for either the state or the Standard Metropolitan Statistical Area in which they reside, and other identifiable segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population as adjusted to account for their need for such services.

"Modernization" means the alteration, expansion, major repair (to the extent permitted by rules), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

"Outpatient surgery" means a very minor surgical procedure appropriately performed in private practice settings, or in hospital outpatient departments, on patients who do not require a licensed free standing ambulatory surgery facility or same-day surgery (SDS) status in a hospital. Anesthesia is generally of a local type. In a hospital setting, outpatient surgery is counted as an outpatient visit.

"Proposed capital expenditure" means the sum total of expenditures anticipated by the facility at the conclusion of a project, which includes expenditures by a facility acting as its own contractor, which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

"Replacement funding" means the amount of reimbursement as determined under Chapter 83 Rate Setting Regulations (N.J.A.C. 8:31 B-3 and 4 which provides for replacement of capital facilities and fixed equipment.

"Same day medical admissions" means those patients who were provided elective treatment (diagnostic and nonsurgical procedures as defined ICD-9-CM Codes) and were discharged in a routine status before midnight of the day of admission.

"Same day surgery" means a surgical procedure performed on patients who:

1. Have these procedures performed in a licensed health care facility, but do not stay overnight.

2. Require a licensed health care facility as a setting for these procedures and generally require some form of anesthesia (typically general or regional in nature) and a facility-based post surgery recovery period of at least one hour.

"Standards" means the specific requirements that applicants must satisfy in developing applications for Certificate of Need approval. To the extent practicable, standards shall address measurable characteristics that such applications must meet.

"Total project cost" means all costs associated with the proposed project, including all capital costs, carrying and financing costs,

interest on borrowings during construction, and lease/rental agreements. Total project cost excludes any contingency amounts.

8:43I-1.4 Scope

This chapter shall apply to all hospitals licensed and regulated under N.J.S.A. 26:2H-1 et seq. and amendments thereto.

8:43I-1.5 Standards regarding minimum size; acute general hospitals

(a) The minimum size for an acute general hospital shall be 200 beds. This standard shall not apply to:

1. Facilities licensed for fewer than 200 beds at the time of adoption of this chapter;
2. Facilities of less than 200 beds proposing to expand to at least 200 beds, where the need for expansion is justified;
3. Facilities with less than 200 beds which are operated by or have submitted a Certificate of Need to merge with a full-service general acute hospital with over a 200-bed capacity and which provide or will provide only those services which are necessary to meet the community's need without duplication of service.

4. Facilities with less than 200 beds that are granted exceptions according to the criteria identified at N.J.A.C. 8:43I-1.13(a)2. and 1.13(b)1.-3.

8:43I-1.6 Minimum size of obstetrics units

The minimum size of an obstetric service shall be 20 beds, unless waivers are granted pursuant to N.J.A.C. 8:33C-1.1 et seq. "Certificate of Need Designation of Perinatal Services", which applies to Level I units only in those instances dictated by severe geographic isolation of a population, demonstrated medical necessity, or cost effectiveness. In no case shall the minimum for obstetric beds fall below ten beds.

8:43I-1.7 Standards regarding minimum size; pediatric services

(a) The minimum size of a pediatric unit shall be 20 beds. Exceptions will be considered where it is documented that:

1. The distance to an alternate pediatric unit exceeds *[20]**15* miles; or,
2. At the proposed lower capacity, occupancy will exceed minimum occupancy standards identified at N.J.A.C. 8:43I-1.11, and the applicant demonstrates an appropriate level of care will be provided in a cost-effective manner.

8:43I-1.8 Limitations on approvals

Certificate of Need approval for construction, renovation, or purchase of a facility is limited to the project as contained in the Certificate of Need application. No implicit approval for additional beds, services, or equipment can be inferred from the approval unless specifically defined in the application.

8:43I-1.9 Standards regarding shelled space

Shelled space (any area of a facility built without the intent for immediate use) has generally not been proven to be cost effective. Projects proposing shelled space shall not be approved unless the applicant can demonstrate significant cost savings using present value analysis to both the institution and the health care system as well as the future need for the space. The Department will not recognize the capital costs of shell space within the cost base of the hospital while it remains shell space.

8:43I-1.10 Bed need

(a) Any application for establishment of or expansion of licensed beds must demonstrate need for these beds in the proposed service area based upon needs assessment methodology identified in:

1. Adopted Department of Health planning regulations governing regionalization of the service(s); or
2. The State Health Plan, and amendments thereto; or
3. Planning documents as developed by the Department and the Statewide Health Coordinated Council.

(b) Where the applicant is proposing beds to support specialized services for which there are no methodologies referenced in the documents cited at N.J.A.C. 8:43I-1.10(a), the need for beds shall be documented by an analysis of empirical evidence which demonstrates that beds for a new service are cost effective, beneficial to patients, accessible, of high quality, and could not be provided in a less costly

setting. In addition, an applicant shall provide evidence establishing the need for beds by documenting estimates of:

1. Referrals from major referral sources, as reflected in letters of support; and
2. Projected admissions, patient days, and average length of stay (the bases for these projections must be specifically identified in the application); and
3. Utilization based upon methodologies established by federal, regional, or other health planning or financing authorities; and
4. Occupancy level projections which shall be demonstrated to have achieved a minimum of 80 percent (for the beds proposed in the application) within two complete calendar years from initial licensure.

8:43I-1.11 Standards regarding occupancy rates

(a) For purposes of review of Certificate of Need applications, the minimum and optimal occupancy rates based upon licensed beds for an acute general hospital, by service category, shall be:

	Minimum	Optimal
Medical/Surgical	75%	90%
Obstetrics	60%	85%
Pediatrics		
Units of less than 40 beds	60%	85%
Units of 40 and above	65%	90%
ICU/CCU	60%	85%
Psychiatric	70%	90%

(b) The level of excess beds within a hospital shall be that number of licensed beds, which, when deleted from a service, will allow a hospital to achieve minimum occupancy levels as identified in (a) above, for a period two years beyond the projected completion date of the project, defined as the "target year". Utilization levels for the target year shall be based on a projection method defined at N.J.A.C. 8:43I-1.15(b), applied forward to the target year.

(c) For purpose of review of Certificate of Need applications for modernization/renovation, new construction or changes in licensed bed capacity, where occupancy falls below minimums within services identified above for the two most recent consecutive calendar years, the hospital must file a plan with the Department of Health that identifies an appropriate bed reduction or services closure. This plan must have hospital board approval and be filed within six months of the end of the second calendar year that occupancy falls below minimum. In addition, the plan and its implementation schedule must be acceptable to the Department.

8:43I-1.12 Standards regarding addition or replacement of beds

(a) Certificate of Need applications may be approved for the replacement or addition of licensed bed capacity where the applicant has demonstrated compliance with all of the following:

1. In the previous 18 months, the applicant hospital must exceed both minimum occupancy rates for all existing services as well as optimal occupancy rates for the service(s) being proposed for expansion and demonstrate that it will achieve an occupancy rate for the service(s) being expanded of no less than 10 percentage points higher than the minimum occupancy rates established for that service identified at N.J.A.C. 8:43I-1.11(a) for the year which is two years beyond project completion.

2. For projects proposing the replacement of existing acute care beds the applicant hospital must exceed minimal occupancy rates identified at N.J.A.C. 8:43I-1.11(a) in all existing services, and demonstrate that it will achieve an occupancy rate in service(s) being replaced of no less than 10 percentage points higher than the minimum occupancy rates identified at N.J.A.C. 8:43I-1.11(a) for two years beyond project completion.

3. The hospital must demonstrate an appropriate average length of stay in the service for which beds are being renovated or expanded.

4. For bed additions, where there are acute care hospitals within the applicant's service area which, during the 18 months preceding the filing of the Certificate of Need application failed to meet the minimum occupancy levels identified at N.J.A.C. 8:43I-1.11 within the service type(s) for which expansion is being requested, the applicant must provide written evidence that the Board of Directors have

undertaken good faith efforts to develop mergers, joint ventures, or other shared service arrangements with the underutilized facility(ies). The applicant must document these efforts, identify the status of these negotiations at the time the application is filed, describe the impact of agreements made between the boards of hospitals on the proposed project, and, where agreements have not been reached, describe in detail the obstacles preventing the formalization of agreements. Moreover, where an applicant has failed to enter into good faith efforts to achieve agreements of the type referred to in this chapter, a detailed explanation authorized by the board of the applicant institution must accompany the application.

(b) Exceptions to (a)1 and (a)2 above may be considered where:

1. The applicant is proposing to reduce licensed beds through conversion or decertification, thereby demonstrating that occupancy levels will be in compliance with minimum standards at the completion of the project; or

2. The applicant can demonstrate that there will be a net bed reduction in its County resulting from cooperative planning with neighboring hospitals; or

3. The applicant can demonstrate additional bed need by documenting rapid changes in demographics or casemix, as well as having evidenced appropriate increases in utilization over the previous 18 months.

4. The applicant demonstrates to the satisfaction of the Department of Health that a reduction in beds in order to meet minimum occupancy standards will produce no capital or operating cost savings.

8:43I-1.13 Community need standards

(a) A hospital may be approved for necessary capital renovation projects except where it fails to demonstrate that it meets the following standards:

1. Utilization Standards:

i. Overall occupancy rates of greater than 75 percent at the conclusion of the project.

ii. Trends in volume (admissions, ALOS, and/or patient days) which indicate occupancy will continue to be above 75 percent of total remaining licensed beds for a period of at least two years beyond completion of the project.

2. Efficient size: A hospital must maintain at least 200 beds at the conclusion of the project while maintaining *an* overall occupancy rate of at least 75 percent. Where it fails to meet this standard, capital projects may only be approved where the hospital is efficiently operated, and geographically isolated, or merged into a multi-hospital system in its area. These criteria are further defined in N.J.A.C. 8:43I-1.13(b).

3. Hospital efficiency: The applicant must demonstrate that it is operated in an economically efficient manner through generally accepted industry efficiency standards. Exceptions may be considered if the applicant meets criteria defined in (b) below.

4. Excess bed areas: Where the total number of excess beds as determined under N.J.A.C. 8:43I-1.11(b) in an area exceeds 75 percent of the licensed bed capacity of an applicant hospital at the time of application no approval may be granted unless the applicant qualifies under one or more of the exemption conditions outlined in (b) below. As an example, in County A, the Department determined that there is an excess of 300 beds. Hospital A with 200 beds does not meet the standard, as 75 percent of 200 is 150, and the excess of 300 is greater than 150. Hospital B, with 400 beds, meets the standard as 75 percent of 400 is 300, which exceeds the county bed excess. The intent is to examine need for the institution as a whole in areas of substantial bed excess prior to investment of major new capital obligation.

(b) The following criteria will be utilized in determining exceptions to N.J.A.C. 8:43I-1.13(a)2 through 4:

1. The hospital is geographically isolated, when each of the following apply:

i. There is a lack of another acute care hospital within a 15 mile radius of an applicant hospital; and

ii. Where at least 50 percent of the residents of the service area utilize the hospital; or

2. The hospital is efficient, where its occupancy rates are above 80 percent overall for the last four quarters reported to the Department; or

3. Where a multi-hospital system application is being proposed in one of two forms:

i. Joint Community Application: An application submitted jointly by all hospitals (or a combination of hospitals constituting a majority of needed beds) within a 15 mile radius of the applicant hospital or in a service area as approved by the Department, that accomplishes the following objectives:

(1) Consolidation and regionalization of services in the area, accomplishing the significant reduction of duplicative inpatient, outpatient, therapeutic and diagnostic services and of ancillary and administrative functions between institutions; and,

(2) Creation of specific operational cost savings which will be incorporated into the rates upon completion of the project; and

(3) Establishment of a joint planning committee for the area which includes all hospitals identified in the application, as well as community participants.

ii. Hospital Merger Applications: An application for transfer of ownership between two or more institutions within a 15 mile radius or in a service area as approved by the Department in which all assets are merged under a single corporate entity operated by a single board of trustees, which accomplishes the following objectives:

(1) Reduction of an appropriate level of excess beds within the merged institutions and conversion, closure, or consolidation of unnecessary physical plant areas in a manner achieving cost savings to the system;

(2) Consolidation of duplicative inpatient, outpatient, therapeutic and diagnostic services and ancillary and administrative functions where appropriate to the overall health care needs of the health service area.

(3) Compliance with accessibility standards identified at N.J.A.C. 8:33-2.1.

4. An exception to N.J.A.C. 8:43I-1.13 may be considered by the Commissioner where the project scope is limited to correction of conditions constituting an imminent hazard to the health and safety of patients and staff, as determined by the Department.

(c) Planning Alternatives: Hospitals not meeting the criteria for community need identified in (a) above may apply for a one time rate adjustment under Chapter 83 Hospital Reimbursement regulations (N.J.A.C. 8:31B) for each of the following types of studies:

i. Conversion of Acute-Care Beds Study: A hospital will analyze all available options in converting all or a portion of its acute care beds to non-acute care use. The study must determine the capital and operating costs associated with each option, and assess reimbursement implications.

ii. Closure Study: A closure study will address the impact on medically underserved populations, the ambulatory-care needs of the community, an employee retraining or job relocation plan, and a financial analysis of both short-term and long-term debt. To be eligible for a closure study, the hospital must not be in default or in bankruptcy.

8:43I-1.14 Project component need

(a) In addition to demonstrating continued community need, as defined in N.J.A.C. 8:43I-1.13, all hospitals must demonstrate the need for each component part of the proposed project. A component means any element of the overall project that is associated with the modernization or renovation, expansion, or new construction of an identifiable physical plant area, such as a nursing unit, ancillary department, administrative area, or any structural element of the facility.

(b) Approval of components proposing to address modernization/renovation or construction of physical plant areas for needed services and departments may be made where capital expenditures are necessary for:

1. Correcting functional or structural obsolescence;

2. Correcting life-safety code A and B violations; or

3. Achieving demonstrable and proportionate improvements in patient care as determined by the Department.

(c) Where a component is the subject of an approved planning regulation, that component must satisfy all applicable criteria of the specific regulation(s).

(d) The applicant must demonstrate the need for the expansion of total square footage to the hospital's physical plant within any component(s) of the proposed project.

(e) The applicant must demonstrate that the proposed costs for the modernization/renovation or new constructions are reasonable in relation to accepted industry standards for its area.

(f) Any component(s) of a Certificate of Need project not demonstrated to be needed as determined by the Department, based on the criteria in this chapter may be denied. (see N.J.A.C. 8:33-3.6(g).)

8:43I-1.15 Volume projections

(a) All applications must contain historical volume data and projections of inpatient and outpatient volume for purposes of Certificate of Need review. These must be submitted in a form prescribed by the Department.

1. All data must be consistent with the hospital statistics as reported to the Center For Health Statistics for the New Jersey General Hospital Inpatient Utilization Reports on official SHARE reporting forms, unless the application can demonstrate to the Department with verifiable evidence that there are inaccuracies in the statistical information which was reported.

(b) Historical hospital volume data must incorporate the last complete three calendar years preceding the date of filing the Certificate of Need application, as well as year-to-date data for the current year, and at a minimum include the following data components:

1. Inpatient admissions by licensed bed category and total hospital;

2. Adjusted admissions by total hospital;

3. Patient days by licensed bed category and total hospital;

4. Outpatient visits by department or service;

5. Emergency room visits;

6. Outpatient surgical procedures;

7. Same day surgery;

8. Same day medical admissions;

9. Births.

(c) Each application must provide an estimate of projected volume in all categories as listed in (b) above for each year inclusive from the time of application to that year which is two complete calendar years beyond estimated project completion. This estimate must be based on historical data defined in (b) above, using at a minimum, a straight-line projection and one or more of the following methodologies:

1. Linear regression modeling;

2. Constant volume;

3. Official county-based-volume projections and market share statistics published by the Department, if available;

4. A methodology chosen by the applicant but in each instance the assumptions utilized in making the projections must be clearly substantiated in the application.

(d) The volume projections must be deemed acceptable to the Department based on conformance to the results of one or more of the methodologies listed in (c) above. While these projections will be evaluated as an element in the review of the application for Certificate of Need purposes, the Department reserves the right to identify specific methodologies (separate and distinct from those referenced in (c) above) for purposes of establishing reimbursement standards that may be applied to the Certificate of Need application as approved.

8:43I-1.16 Standards regarding equity contributions and financing

(a) Financing of hospital construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all financing and carrying charges. Where a hospital demonstrates financial hardship to the satisfaction of the Department, this equity requirement may be reduced by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals.

(b) All projects involving long-term financing of capital construction costs shall demonstrate use of the least-cost financing reasonably available.

(c) Financing arrangements for construction, expansion, renovation, or purchase of facilities shall not entail debt obligations of greater duration than the expected useful life of the assets financed.

(d) All applicants must demonstrate the financial feasibility of their projects. An appropriate financial feasibility study must be submitted for projects in excess of the hospital construction/modernization project batching threshold identified at N.J.A.C. 8:33-1.5(d) at the time of application. The study must test the feasibility of the project under reimbursement rules in effect at the time of the application. A project will be determined financially feasible where the applicant can demonstrate a net positive income for the calendar or fiscal years which are two and five years beyond project completion.

(e) Capital costs associated with approved Certificate of Need applications will not be guaranteed full future reimbursement.

8:43I-1.17 Standards regarding the transfer of services from an acute care hospital

(a) The transfer of a service from one corporation to another, regardless of their relationship, requires a Certificate of Need application through procedures identified at N.J.A.C. 8:33-1.1 et seq.

(b) The facility or corporation transferring out the service must comply with the following criteria and conditions:

1. Implementation of the proposed transfer of service will not violate any bond, covenant or any loan and security agreement between itself and the New Jersey Health Care Facility Financing Authority or any other financing agency.

2. The applicant must assure within the application that:

i. No portion of the operating or capital costs incurred by or related to the proposed service will be incorporated into rates approved for the acute care hospital transferring out the service.

ii. Any losses generated by this proposed service will not be used as a justification for increases in the rates of the acute care hospital transferring out the service.

3. The hospital must guarantee that services which are corporately and/or physically transferred from hospitals to other areas are accessible and available to all persons, independent of their ability to pay, with special attention given to medically underserved groups in the existing hospital service area. The hospital must document that public transportation is available to the aforementioned groups, and if it is not, the hospital must make arrangements to guarantee that transportation will be made available to those individuals.

(c) The facility or corporation receiving the new service must comply with the following criteria and conditions:

1. Any service transferred in whole must provide indigent care at the same level as provided for that same service in the two calendar years preceding the application or at a level commensurate with other hospitals in the area over the preceding two calendar years, whichever is greater.

2. Any service transferred in part must, together with the applicant hospital, provide in the aggregate the same level of indigent care as provided for the same service in the two years preceding the application or at a level commensurate with other hospitals in the area over the preceding two years, whichever is greater.

3. A quality assurance and review program for the health services must be provided and it must be documented that such a program will be implemented at the proposed service.

4. The hospital must guarantee that services which are corporately and/or physically transferred from hospitals to other areas are accessible and available to all persons, independent of their ability to pay, with special attention given to medically underserved groups in the existing hospital service area. The hospital must document that public transportation is available to the aforementioned groups, and if it is not, the hospital must make arrangements to guarantee that transportation will be made available to those individuals.

8:43I-1.18 Standards regarding acquisition or replacement of major moveable equipment

(a) Where a Certificate of Need is required for the acquisition or replacement of major moveable equipment, it will not be awarded

unless the applicant has demonstrated compliance with all applicable Departmental regulations for the proposed service. For equipment categories not governed by existing Departmental regulations, the following criteria shall apply:

1. Projects involving addition of new equipment shall demonstrate need through:

- i. Documenting improved patient care as a result of such equipment; and
- ii. Documenting adequate patient volume for cost-effectiveness and, if appropriate, operational cost savings.
- iii. Where appropriate, documenting cooperative arrangements with area hospitals and other providers that will avoid duplication of services and ensure access to residents of the service area; and
- iv. Documenting access to new equipment by persons who are unable to pay.

2. Projects involving the replacement of existing major movable equipment shall demonstrate need through:

- i. Documenting historical operating volumes to warrant continued use of such equipment; and
- ii. Documenting that the existing equipment has surpassed its estimated useful life expectancy; and
- iii. Documenting operational inefficiencies of existing equipment through excessive downtime; and
- iv. Documenting access to existing equipment by persons who are unable to pay;

v. Documenting compliance with Department regulations in effect at the time the application is accepted for processing.

(b) Where a Certificate of Need is required for the acquisition or replacement of major movable equipment it will not be awarded unless the applicant has:

1. Documented use of least-cost financing;
2. Documented efficient operation of the area in which the proposed equipment is utilized through maintaining documentation (through most recently available financial reports submitted to the Department) that the costs for patients on whom the equipment is predominantly utilized are not above statewide standards.
3. Where method of acquisition is through lease arrangement, it must be demonstrated that the proposed lease arrangement is more cost-effective than purchase, giving consideration to maintenance costs, warranties, and other related costs, as well as to the imputed value of a 15 percent equity contribution.

(c) Exceptions to (b)2 above can be made where the applicant submits an acceptable plan which demonstrates that efficiencies will result in costs which are consistent with statewide standards or will enable the hospital to maintain an overall and specific cost center incentive position.

(d) Equity contributions to the financing of the project must meet minimum requirements identified at N.J.A.C. 8:33I-1.16(a). In projects proposing both acquisition of major moveable equipment and modernization/renovation, equity contributions must be pro-rated equally between equipment costs and costs of the remainder of the project.

8:43I-1.19 Single-bedded rooms

No Certificate of Need proposing the construction, modernization, renovation, or change in licensed bed capacity of acute care beds shall be approved where the total number of single-bedded rooms at the completion of the project exceeds 15 percent of the total complement of licensed medical/surgical, pediatric, and obstetric/gynecological beds. In calculating the percentage of single-bedded rooms, isolation rooms as determined necessary by Departmental licensure standards, will not be included. An exception may be permitted where the hospital can demonstrate clinical necessity or that no additional operational or capital costs will be incurred as a result.

8:43I-1.20 Outpatient clinics

(a) Applicants for any bed-related Certificate of Need must demonstrate the availability of follow-up care for all discharged patients and all residents of the service area either through direct provision of such services by the hospital or its physicians, or through formal written linkages with other health care providers in the area.

(b) An applicant for expanded outpatient clinic services shall demonstrate competitive pricing with all other providers of similar services in the area, and shall demonstrate that there will not be a negative economic impact on the health care system.

8:43I-1.21 Standards regarding energy conservation projects

(a) Where a Certificate of Need is required for a proposed energy conservation project, the following items must be addressed in the application and will be considered indicators of the cost effectiveness of the project:

1. Description of measures to be undertaken and why these measures were chosen over possible alternatives;
2. Cost of design, acquisition, and installation;
3. Useful life of the measure to be undertaken;
4. Effect of this measure on operating and maintenance costs;
5. Salvage value at the end of useful life of the measure to be undertaken;
6. Annual energy consumption by appropriate category for the three previous years;
7. Estimated energy consumption and energy savings at least three years into the future or until the pay-back year, whichever is longer.

8:43I-1.22 Standards regarding location of hospitals

(a) Any Certificate of Need application proposing the relocation, major new construction at an existing hospital by a new corporate entity, or new construction of an acute care hospital must meet all criteria in this chapter and must specifically address the following:

1. No Certificate of Need shall be awarded to a hospital proposing to relocate, unless it demonstrates compliance with the following criteria:

- i. There must be a bed need in the area of proposed location for all services to be relocated;
- ii. The applicant must demonstrate that there are sufficient resources in the former area to ensure access to care to the former patient population;
- iii. The proposed site must be accessible to patients of the newly-defined service area both economically and in terms of driving time and public transportation, where available;
- iv. All alternatives have been considered and the proposed project is responsive to identified health needs and represents the most cost-effective course of action to meet those needs;
- v. The applicant must at a minimum demonstrate long term reductions in total health system costs.

2. Applicants proposing construction of a new hospital must demonstrate compliance with all of the following:

- i. Bed need in the area has been documented for each proposed service;
- ii. The hospital at its proposed location must be physically and economically accessible to patients of the defined services area;
- iii. All hospitals located within a 25-mile radius of the proposed location shall have occupancy levels which exceed optimal levels as defined in N.J.A.C. 8:43I-1.11 for the previous two calendar years;
- iv. The applicant must demonstrate that the proposed project represents the most cost-effective approach to meeting identified health care needs of the area.

8:43I-1.23 Standards regarding costs of parking garages and medical arts buildings

(a) No Certificate of Need is required for a parking garage or a medical arts building.

(b) The costs of purchase, construction, renovation, expansion and operation of the proposed parking garage shall be fully underwritten by charges to users, as the costs will not be financed, directly or indirectly, in whole or in part, by charges to patients. An exception may be made for components of cost which are reasonable and necessary and conform to the reimbursement definitions and procedures for employee benefits related to patient care set forth at N.J.A.C. 8:31B-4.64(h).

(c) The costs of the purchase, construction, renovation, expansion and operation of a proposed medical arts building shall be wholly underwritten by charges to users. An exception can be made when documentation is provided and the Department determines that it is cost effective to locate hospital services in the building.

HEALTH

8:43I-1.24 Standards regarding accessibility

The applicant must demonstrate compliance with all accessibility criteria as identified in N.J.A.C. 8:33-2.1, "Certificate of Need Application and Review Process."

8:43I-1.25 *[Multi-hospital arrangements]* *Standards regarding transfers of ownership of hospitals*

(a) Hospitals which propose the merger, acquisition, or joint establishment of corporate structures with any other licensed hospital(s) for the purpose of providing a health care service, or where a change in ownership Certificate of Need application is filed by a licensed hospital, it shall demonstrate in the Certificate of Need that:

(a) Where a Certificate of Need is required for a transfer of ownership of a licensed New Jersey hospital through merger, acquisition, or other joint arrangement, the following must be demonstrated in the application:

1. Cost efficiencies will be affected and will result in significant net operational savings to the participating hospitals and to the health care system as a whole; and

2. *[Where the project is related to inpatient services, a]* *A* reduction of all excess bed capacity, as determined under standard N.J.A.C. 8:43I-1.11, will result for all participating hospitals through decertification or conversion of acute care beds; and

3. Duplication of services will be eliminated where appropriate *[through the proposed merger, acquisition or corporate restructuring]*.

4. Compliance with all other appropriate criteria contained in N.J.A.C. 8:43I.

8:43I-1.26 Standards regarding relocation or closure of services

A Certificate of Need may be awarded for the relocation or closure of a service except where the applicant fails to demonstrate compliance with N.J.A.C. 8:33-2.1(a)5, Access Criteria for submission of Certificate of Need applications, and other applicable requirements of these rules.

ADOPTIONS

Haloperidol tabs 10, 20 mg	Cord
Ibuprofen tabs 800 mg	Chelsea
Isosorbide dinitrate oral tabs 30 mg	Par
Lithium carbonate caps & tabs 300 mg	Roxane
Lithium carbonate tabs 300 mg	Bolar
Lithium citrate syrup 8 mEq/5ml	My-K
Lorazepam tabs 0.5, 1 mg	Bolar
Lorazepam tabs 2 mg	Bolar
Lorazepam tabs 0.5, 1, 2 mg	Cord
Medroxyprogesterone tabs 2.5, 5, 10 mg	Duramed
Methyldopa/HCTZ tabs 250/15, 250/25	Chelsea
Nitrofurantoin macrocrs. caps 50, 100 mg	Bolar
Nitroglycerin E.R. caps 2.5, 6.5, 9 mg	Vitarine
Nitroglycerin transdermal patch 10 mg	Hercon
Nitroglycerin transdermal patch 15 mg	Hercon
Nitroglycerin transdermal patch 5 mg	Hercon
Norethindrone 0.5 mg/ethinyl estr. 35 mcg	Corona
Norethindrone 1 mg/ethinyl estr. 35 mcg	Corona
Ortho-Novum formula 1 35, 1 50	Syntex
Perphenazine tabs 8 mg	Chelsea
Pramoxine 1%/HC 1% rectal foam	Copley
Prazosin caps 1, 2, 5 mg	Zenith
Prednisone tabs 5, 10, 20 mg	Amer. Ther.
Procainamide E.R. tabs 1000 mg	Bolar
Propranolol/HCTZ tabs 40/25, 80/25	Cord
Pyrimamine/Chlorpheniramine/PE tannates susp	Copley
Pyrimamine/Chlorpheniramine/PE tannates tabs	Copley
Salsalate tabs 500, 750 mg	Copley
SMZ TMP Susp. 200 mg+40 mg/5 ml	Naska
Temazepam caps 15, 30 mg	Duramed
Trifluoperazine tabs 5 mg	Bolar
Verapamil tabs 80, 120 mg	Bolar
Verapamil tabs 80, 120 mg	Cord

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of adoption can be found at 19 N.J.R. 1312(b), 1644(a), 2278(b), 2400(a), 20 N.J.R. 191(a).

DRUG UTILIZATION REVIEW COUNCIL

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: April 20, 1987 at 19 N.J.R. 615(a).

Adopted: February 22, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: February 22, 1988 as R.1988 d.118, with portions of the proposal not adopted and portions not adopted but still pending.

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

Effective Date: March 21, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their manufacturers were adopted:

Isosorbide dinitrate oral tabs 20 mg	Par
Isosorbide dinitrate oral tabs 20 mg	West-Ward
(Note: The SL isosorbide dinitrate 2.5 and 5 mg, as well as the oral tablets 5 and 10 mg are already listed in the Formulary.)	
Temazepam caps 15, 30 mg	Cord

The following products and their manufacturers were not adopted:

Chlorothiazide tabs 500 mg	Mylan
The following products were not adopted but are still pending:	
Amitriptyline tabs 10, 25, 50, 75, 100, 150 mg	Mutual
Amitriptyline/perphenazine 2/10, 2/25, 4/25	Cord
Butalbital, APAP, Caffeine tabs	Graham
Cephalexin caps 250, 500 mg	Nuovo
Doxepin caps 75 mg, 150 mg	Chelsea
Flurazepam caps 15, 30 mg	Duramed
Glutethimide tabs 250, 500 mg	Halsey
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea

(b)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: October 19, 1987 at 19 N.J.R. 1878(a).

Adopted: February 22, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: February 22, 1988 as R.1988 d.119, with portions of the proposal not adopted and portions not adopted but still pending.

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

Effective Date: March 21, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

Upjohn objected to the addition of Duramed's methylprednisolone tablets to the Formulary because they were not FDA-approved. The Council subsequently received evidence that the product had received FDA approval, thus it was added to the Formulary.

The following products were adopted:

Cephalexin for susp 125/5, 250/5 ml	Novopharm
Erythromycin topical solution 20 mg/ml	My-K
Furosemide tabs 80 mg	Barr
Haloperidol tabs 10, 20 mg	Roxane
Haloperidol tabs 10, 20 mg	Purepac
Metaproterenol syrup 10 mg/5 ml	My-K
Methyldopa/CTZ tabs 250/150, 250/250	Par
Methylprednisolone tabs 4 mg	Duramed
Prazepam caps 5, 10 mg	PharmBasics
Trimethoprim tabs 100 mg	Biocraft

The following products were not adopted:

Aminocaproic acid syrup 250 mg/ml	My-K
Carbamazepine tabs 200 mg	Sidmak
Chlorthalidone tabs 25, 50 mg	PharmBasics
Hydrochlorothiazide solution 50 mg/5 ml	My-K
Indomethacin E.R. caps 75 mg	Vitarine

Methyldopa tabs, 250, 500 mg
 Oxazepam caps 10, 15, 30 mg
 Propranolol syrup 20 mg/5 ml
 Propranolol syrup 40 mg/5 ml

Duramed
 Zenith
 My-K
 My-K

The following products were not adopted but are still pending:

Chlorthalidone tabs 25, 50 mg
 Doxepin caps 25, 50 mg
 Flurazepam caps 15, 30 mg
 Lactulose syrup 10 g/15 ml
 Leucovorin calcium tabs 15 mg
 Methyldopa susp 250 mg/5 ml
 Prednisone oral solution 5 mg/5 ml
 Propranolol/HCTZ tabs 40/25, 80/25
 SMZ/TMP tabs 400/80, 800/160 mg
 SMZ/TMP tabs 400/80, 800/160 mg
 Theophylline E.R. tabs 200 mg
 Thiothixene oral solution 5 mg/ml
 Triamterene/HCTZ tabs 75/50

Sidmak
 Barr
 Cord
 My-K
 Par
 My-K
 My-K
 Schering
 PFI
 PharmBasics
 Inwood
 My-K
 Barr

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notice of adoption can be found at 20 N.J.R. 191(b).

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: August 17, 1987 at 19 N.J.R. 1488(a).

Adopted: February 22, 1988 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: February 22, 1988 as R.1988 d.120, with portions of the proposal not adopted and portions not adopted but still pending.

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

Effective Date: March 21, 1988.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

Concerning sodium levothyroxine:

A. Opposing comments from Flint Laboratories

Dr. Peter Bernardo, Vice President for technical services at Flint Laboratories, specified that company's objections to the proposed levothyroxine products:

1. Flint disputes the protocol of the biostudies. One study was uncontrolled, thus it "was not a biostudy." In addition, Dr. Bernardo said that subjects should be euthyroid (not hypothyroid, as in the Daniels' studies) and crossed over.

2. Flint said that the second study also was inappropriate because the subjects were hypothyroid. Flint also questioned what product was used as a comparison in this study; the very large standard deviations seen make them doubt that it was Synthroid. This second study also emphasized TSH measurements; the real question is whether T4 is released and gets into the body.

3. Flint also questions the stability of the generics. An independent laboratory, commissioned by Flint to assay several strengths of the Daniels products, found the 0.2 mg strength was less than 90 percent of labeled potency before the expiration date. Flint will have that product re-assayed and will submit those results.

Flint suggested a proper biostudy protocol, like that developed by Flint with the University of Kentucky, which looks at free T4, total T4, T3, and TSH. Dr. Bernardo pointed out that small amounts of T4 are already present in the body, and that several (at least 6 to 8) data points are needed after steady state to show equivalency. Single point assays are highly variable, and thus may not properly demonstrate bioavailability.

Boots (Flint) also provided documentation on their claim that certain strengths of Daniels products do not meet potency standards, as measured by HPLC assays. Specifically, Boots stated that the Daniels 75 mcg tablet tested as only 75 percent of labeled potency and the Daniels 200 mcg tablet tested as only 81.6 percent potency, both well within their expiration dates. Boots also synthesized their idea of a well-designed biostudy.

Boots replied to the specific criticism from Daniels that Synthroid itself had been shown to be only 75 percent potent in the literature by explaining that the Flint product so found was the old formulation (before 1982) as assayed by HPLC.

B. Supporting comments from Daniels:

Daniels Pharmaceuticals supported their application by submitting, in addition to the usual bioequivalency studies, data addressing the stability issues raised and a letter from the FDA stating that their levothyroxines are "identical" to other marketed products. Daniels also stated that the various strengths are identical in their formulation (other than the amount of active ingredients, of course).

Daniels also sent responses to the criticisms of their biostudies from the laboratory performing the study and an analysis of the biostudies by an independent physician. Both supported the Daniels products.

Dr. B. Wolfson, representing Daniels, commented in support of their proposed levothyroxine tablets. He noted that both of the biostudies presented found no statistically significant differences between Synthroid and the Daniels products.

Regarding stability, Dr. Wolfson said that the Flint literature itself shows the instability of Synthroid. He referred to a Flint graph (showing stability among various generic levothyroxines) cited in a 1986 article by Dong in Drug Intelligence and Clinical Pharmacy, which found Synthroid itself to be only 75 percent potent. Dr. Wolfson also questioned the assay used in the independent laboratory's test of the generic levothyroxine. Daniels provided data showing that the testing laboratory used by Flint had assayed Synthroid itself (75 mcg tablets, in the last month of their expiration date, sent to the laboratory by Daniels) as only 80.9 percent to 81.7 percent of labeled potency.

COUNCIL'S RESPONSE: The Council acknowledged that levothyroxines have been noted to show bioequivalency problems based on lack of equal potency (strength) between generics and the brand, which itself was subpotent in the early 1980s. Dr. Amorosa reviewed several clinical studies provided by Daniels and concluded that the Daniels products were clinically equivalent to Synthroid. Therefore the Council added all the proposed levothyroxine products to the Formulary.

Concerning carbamazepine:

Dr. C. Minarcik, a practicing neurologist, said that from his clinical viewpoint, generics that were "pretty close" were not good enough. He said the problem is that multiple products exist that are not equal to each other, thus the close control needed with carbamazepine and other generics is not possible. He further said that the new HCFA rules force pharmacists to choose products based solely on cost, resulting in progressive loss of a physician's ability to control the clinical situation.

Dr. Paul Schrader, a physician who stated he has no vested interest, stated that the patient should always receive the same brand because there is little room for blood level changes.

Mr. M. Goshko, representing Lemmon, pointed out that the maximum spread in the AUCs and Cmax of those generic carbamazepines already listed in the Formulary is less than 8 percent.

Mr. J. Ackourey, representing CIBA-Geigy, said that the issue is not brand versus generic, it is "switching." CIBA-Geigy does not oppose adding generics to the Formulary. Mr. Ackourey pointed out that the Formulary does not apply when physicians order drugs generically. He admitted that CIBA-Geigy had a "blip" in reports of seizure breakthroughs with Tegretol itself when the product was changed in size and shape, but since that time such reports had diminished.

Dr. Desai pointed out that CIBA admits that the change to a pink tablet is not a formulation change, and further, that when CIBA introduced the chewable Tegretol, they compared it to the old white Tegretol in only six subjects (not even in pediatric patients), yet CIBA claims the chewable product is therapeutically efficacious. Dr. Desai stated that carbamazepine itself is inherently variable, it is not a question of differences among products.

COUNCIL'S RESPONSE: Dr. Amorosa, a Council member, pointed out that the Purepac carbamazepine data are virtually superimposable on the Tegretol data, thus there was little doubt in his mind that the two would be clinically equivalent. The Council then acted to add Purepac's carbamazepine to the Formulary.

The following products and their manufacturers were adopted:

Carbamazepine tabs 200 mg	Purepac
Clonidine/chlorthal. tabs 0.1, 0.2, 0.3	Par
Doxepin caps 75, 100, 150 mg	Par
Erythromycin/sulfisoxazole 200/600 for susp	Barr
Levothyroxine tabs 150, 175, 200, 300 mcg	Daniels
Levothyroxine tabs 25, 50, 75, 100, 125 mcg	Daniels

The following products were not adopted but are still pending:

Allopurinol tabs 100 mg	Interpharm
Amantadine HCl caps 100 mg	Pharmacaps
Amitriptyline perphenazine 4/10, 4/25, 4/50	Mylan

HEALTH

Amitriptyline/perphenazine 2/10, 2/25
Carbamazepine tabs 200 mg
Carbamazepine tabs 200 mg
Cephalexin caps 250, 500 mg
Chlorzoxazone/APAP tabs 250/300
Clorazepate dipot. caps 3.75, 7.5, 15 mg
Cyproheptadine tabs 4 mg
Diazepam tabs 2, 5, 10 mg
Dyphylline/guaifenesin syrup
Erythromycin estolate susp 125/5, 250/5
Erythromycin ethylsuccinate 200/5 susp
Furosemide oral solution 10 mg/ml
Haloperidol tabs 2 mg
Ibuprofen tabs 400, 800 mg
Indomethacin caps 25, 50 mg
Iodinated glycerol drops 50 mg/ml
Isosorbide dinitrate oral tabs 20 mg
Lactulose syrup 10 g/15 ml
Metoclopramide tabs 10 mg
Minoxidil tabs 2.5, 10 mg
Nystatin oral susp 100,000 U/ml
Oxtriphylline/guaifenesin syrup
Phenylephrine ophth. soln 10%
Prednisone tabs 5, 10, 20 mg
Prednisone tabs 5, 20 mg
Procainamide E.R. tabs 750 mg
Propranolol tabs 10, 20, 40, 60, 80, 90
Propranolol tabs 10, 20, 40, 80 mg
Thiothixene caps 20 mg
Tolazamide tabs 100 mg
Trazodone tabs 50, 100 mg
Trazodone tabs 50, 100 mg
Verapamil tabs 80, 120 mg

Mylan
Barr
Interpharm
Purepac
Interpharm
Mylan
Interpharm
Ferndale
Barre-National
Barr
Barre-National
Barre-National
Lemmon
Interpharm
Interpharm
Barre-National
Cord
Barre-National
Mylan
Par
Lemmon
Barre-National
Steris
Amer. Ther.
Cord
Copley
Halsey
Interpharm
Cord
Cord
Mylan
Purepac
Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of adoption may be found at 19 N.J.R. 2279(b), 2401(a), and 20 N.J.R. 190(a).

HIGHER EDUCATION

STUDENT ASSISTANCE BOARD

(a)

Student Assistance Programs

**Student Assistance Board; General Provisions;
Tuition Aid Grant Program; Garden State Scholars;
Public Tuition Benefits Program; Garden State
Graduate Fellowship Program; Veterans Tuition
Credit Program; Vietnam Veterans Tuition Aid
Program; Congressional Teacher Scholarship
Program**

Readoption: N.J.A.C. 9:7

Amendments: N.J.A.C. 9:7-1 through 9:7-9

Proposed: January 4, 1988 at 20 N.J.R. 33(a).

Adopted: February 29, 1988 by Student Assistance Board,
M. Wilma Harris, Chairperson.

Filed: February 29, 1988 as R.1988 d.128, with technical changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:71-15.2, 18A:71-15.3, 18A:71-26.8,
18A:71-48, 18A:71-76.6, 18A:71-77, 18A:71-15.3, Title V, Part
E of the Higher Education Act of 1965, as amended by the
Human Services Reauthorization Act of 1984, 20 U.S.C.
1119d-1119d-8.

Effective Date: February 29, 1988 for readoption; March 21, 1988
for amendments.

Expiration Date: February 29, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

(CITE 20 N.J.R. 656)

ADOPTIONS

The Board, however, has made several technical changes upon adoption due to printing errors in N.J.A.C. 9:7-3.2 Tuition Aid Grant Award Table and 9:7-7.6 Calculation of tuition credit. The changes upon adoption reflect the correct wording as adopted and filed by the Board.

Full text of the readoption follows (additions indicated in boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*).

9:7-1.2 Creation of Student Advisory Committee

The Student Assistance Board shall create a Student Advisory Committee whose purpose shall be to advise the Student Assistance Board on the effect of Board policy and regulations; suggest alternative policy and regulations to the Board; and provide a means of communication between the Student Assistance Board and students. The Student Assistance Board shall initially appoint a nine member Student Advisory Committee from nominations provided by the student government associations of each individual college in New Jersey. The nine members, all of whom shall be full-time students, shall consist of two students from independent colleges, two students from Rutgers, The State University, two students from the State colleges, one student from the New Jersey Institute of Technology, and two students from the county colleges. Students representing each sector shall be chosen such that in any given year one of the representatives shall complete his/her degree requirements within one academic year from the time of his/her selection and one shall be of lower class rank. Members of the Student Advisory Committee shall serve one year terms and their appointments may be renewed according to the initial appointment process. The Student Advisory Committee shall elect a Chairman and Vice Chairman from among its members, one of whom shall be a student at an independent institution and one of whom shall be a student at a public institution, and each of whom shall complete their degree requirements within one academic year from the time of their selection. The Chairman and Vice Chairman shall serve as voting members on the Student Assistance Board. In the event of a vacancy on the Student Advisory Committee, the Student Assistance Board may fill the vacancy in the same manner as the original appointment.

9:7-2.1 Undergraduate enrollment

Students must be enrolled or plan to be enrolled as full-time undergraduate students matriculated in a curriculum leading to a degree or certificate in order to be eligible for student assistance, with the exception of Garden State Fellowships which are reserved for graduate students meeting the same enrollment criteria (see N.J.A.C. 9:7-6). Students possessing an undergraduate degree (either a Baccalaureate or Associate degree) are not eligible for student assistance at that degree level. Certification of full-time status is the responsibility of the enrolling institution based on the current institutional definition of full-time status and subject to review and approval by the Student Assistance Board.

9:7-2.2 Residency

(a) Students must be legal residents of New Jersey for a period of not less than 12 consecutive months immediately prior to receiving a grant. The residence of a student is defined in terms of domicile. Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment, and to which, whenever he/she is absent, he/she has the intention of returning.

1. A dependent student as defined in N.J.A.C. 9:7-2.6 is presumed to be a legal resident of the State in which his or her parent(s) or guardian(s) is a resident. A dependent student whose parent(s) or guardian(s) is not a legal resident of New Jersey is presumed to be in the State for the temporary purpose of obtaining an education. However, any dependent student who is domiciled in this State and enrolled in an institution of higher education in New Jersey shall continue to be eligible for New Jersey financial assistance despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year.

(b) Residence established solely for the purpose of attending a particular college cannot be considered as fulfilling the definition of domicile. When in question, a student must demonstrate proof of residence by presenting the following documents: driver's license,

voter registration form, tax return(s), or other suitable proof. The Office of Student Assistance, Department of Higher Education shall determine the state of residence for any individual whose residency is not certain. Institutions may provide information to substantiate the student's claim of legal New Jersey residence.

9:7-2.4 Determination of eligibility for and value of student assistance

In order to receive a need-based award students must have demonstrated financial need through submission of a financial aid form approved by the Student Assistance Board in accordance with annually established deadline dates. Students may not receive assistance under the programs administered by the Student Assistance Board if they owe a refund on a grant or scholarship previously received from a state or Federal program through any institution or are in default on any loan made under any state or Federal student financial assistance program at any institution. Students owing a refund on a grant or scholarship or who are in default on a loan may receive State financial assistance if they make arrangements acceptable with the appropriate office to repay the debt.

9:7-2.5 Student notification

Students will be notified of grant eligibility through the Student Eligibility Notice issued by the Office of Student Assistance, Department of Higher Education. The amount of the grant is subject to change based on the annual level of appropriations and other resources available to the student (see N.J.A.C. 9:7-2.9). The institution's written notification to the student regarding State student assistance shall contain a clause indicating the State is not responsible for funding of the grant in the event of fraudulent, inaccurate or misleading information.

9:7-2.7 Income tax verification of family financial data

Students must provide an authorization to the Department of Higher Education, Office of Student Assistance, which permits the release of Internal Revenue Service and/or State income tax returns for verification purposes. Financial data provided on the financial aid form will be verified through the comparison of information reported on income tax returns. Discrepancies will require the re-evaluation of the student's eligibility. Students as well as institutions will be notified if an adjustment in the value of aid is required.

9:7-2.8 Renewal eligibility and filing

Students must apply to renew their need-based student assistance through the annual filing of a financial aid form in accordance with N.J.A.C. 9:7-2.4. In addition, filing of the financial aid form is also required to participate in the Vietnam Veterans Tuition Aid Program. To receive a renewal of State assistance, students must continue to meet all program eligibility requirements as contained in these rules and applicable statutes.

9:7-2.9 Award combinations

(a) Students receiving New Jersey State student aid funds may receive combinations of a Tuition Aid Grant, a Distinguished Scholars award, veterans awards, a POW/MIA award, a Public Tuition Benefits award, a Garden State Scholarship or an Educational Opportunity Fund grant. Students cannot simultaneously hold an Educational Opportunity Fund grant and a Garden State Scholarship grant in any single semester.

(b) State grants and scholarships and other financial aid cannot exceed the cost of attendance as determined by the institution.

(c) (No change.)

9:7-2.10 Verification of enrollment and academic performance

(a) Before payment may be made to an eligible student, the institution shall have satisfactory evidence that the student is eligible for State grant and/or scholarship assistance, has registered as a full-time student for an academic term, and that the student is meeting minimum standards for academic performance and academic progress. Degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration.

(b)-(i) (No change.)

9:7-2.12 Refunds

(a) If a refund is due a student under the institution's refund policy and the student received financial aid under any State student assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the State: amount of State assistance (minus work earnings) awarded for the payment period divided by the total amount of financial aid (minus work earnings) awarded for the period.

(b) Payment period as used in (a) above shall mean the time between the first day of classes for an academic term and the end of that term according to the institutional calendar.

(c) The above formula shall be applied if a student reduces his/her academic course load to less than full-time prior to the date full tuition liability is required by the institution. However, if the student reduces his/her academic course load to less than full-time after the date full tuition liability is due to the institution, a refund to the State is not necessarily required.

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

(f) If a student utilizes any portion of an award, it will be treated the same as a full semester payment in calculating the number of semesters of eligibility. Thus, the institution shall afford the student the opportunity to decline and repay the State award for that payment period.

9:7-2.13 Student's obligation to report changes in institution or financial status

Any changes in college attendance or family financial status which occur after the Student Eligibility Notice has been issued to the student must be reported immediately, in writing by the student, to the Office of Student Assistance, Department of Higher Education, in order that the student's continued eligibility may be evaluated and prompt payment provided. Institutions may report these changes on behalf of the student.

9:7-2.15 Appeals

If, for any reason a student, his/her family or an institution feels that the application of these rules results in an unfair determination of eligibility, an appeal shall be filed with the Student Assistance Board within 60 days of notification of ineligibility. Appeals should be in the form of a letter addressed to the Chairman, Student Assistance Board, Attention: Appeals Officer, CN 540, Trenton, New Jersey 08625, and shall contain the student's full name, social security number, college of attendance, and a description of the basis for the appeal.

9:7-2.16 Accounting and auditing standards

(a) Institutions must maintain separate accounts for each State student assistance program for which funds are received. Institutional student records must also be maintained which include name, address, social security number, date and amount of each State award and such other information as may be defined by the Director of the Office of Grants and Scholarships. Records of receipts and disbursements shall be maintained in accordance with generally accepted accounting principles.

(b) As part of the institution's periodic audit by an independent accounting firm, State student assistance programs shall be included to insure compliance with Student Assistance Board rules. The Department reserves the right to conduct its own institutional audit.

(c) Institutions shall, upon reasonable notice, make available to the Director of the Office of Grants and Scholarships or his/her representative, access to institutional and student records for audit purposes.

9:7-3.1 Determination of eligibility for and value of student assistance

The information on the financial aid form will be evaluated by employing the methodology used to calculate the New Jersey Eligibility Index (NJEI). The evaluation results in an estimate of the family or student's ability to contribute to the cost of education. This estimate is then used to determine eligibility for and value of the Tuition Aid Grant.

9:7-3.2 Tuition Aid Grant Award Table

(a) The value of the grant is related to the tuition charges of the

various institutional sectors in New Jersey and the student's ability to pay for educational costs.

TUITION AID GRANT (TAG) AWARD TABLE FOR 1987-88
APPROXIMATE TUITION AID GRANT VALUES'
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ²	NJ Inst. of Tech.
Under 950	100% of tuition	100% of tuition	40-50% ³	100% of tuition	100% of tuition
950-1349	80-99%	90-99%	91-99%	91-99%	91-99%
1350-1749	70-79%	80-89%	86-90%	86-90%	86-90%
1750-2149	60-69%	75-79%	81-85%	81-85*[5]**%*	81-85%
2150-2549	50-59%	68-74%	76-80%	76-80%	76-80%
2550-2949	40-49%	62-67%	71-75%	71-75%	71-75%
2950-3349	30-39%	55-61%	66-70%	66-70%	66-70%
3350-3749	Minimum	48-54%	61-65%	61-65%	61-65%
3750-4149	0	41-47%	56-60%	56-60%	56-60%
4150-4549	0	34-40%	51-55%	51-55%	51-55%
4550-4949	0	28-33%	46-50%	46-50%	46-50%
4950-5349	0	21-27%	41-45%	41-45%	41-45%
5350-5749	0	Minimum	36-40%	36-40%	36-40%
5750-6149	0	0	31-35%	31-35%	31-35%
6150-6549	0	0	26-30%	26-30%	26-30%
6550-6949	0	0	21-25%	21-25%	21-25%
6950-7349	0	0	16-20%	Minimum	Minimum
7350-7749	0	0	11-15%	0	0
7750-8149	0	0	5-10%	0	0
8150-8549	0	0	Minimum	0	0
Over *8549*	0	0	0	0	0

¹In accordance with State guidelines, the value of a student's grant may decrease dependent upon appropriated funds, and the student's college budget, available resources, and estimated family contribution. The student shall be notified of any increase in his/her grant if additional funds become available. Additional eligibility (NJEI) cells may be added below the minimum award level dependent upon the current tuition charges and estimated family contribution. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum award for all institutional sectors shall be \$200.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY88 Budget Request contains a recommended \$3,000.00 maximum award level in the independent sector for students with an NJEI under 950. Percentages listed for NJEI categories 950 and above represent percentages of the first cell award.

9:7-3.4 (Reserved)

9:7-3.5 Part-time students

(a) Eligibility for Tuition Aid Grants will be extended on an annual basis to part-time students upon the approval of the Student Assistance Board and the Board of Higher Education depending on the level of appropriated funds.

(b) Eligible students must be enrolled for at least six credits, matriculated in a degree or certificate program, and maintain minimum standards of academic progress as determined by the institution.

(c) The provisions of N.J.A.C. 9:7-2 shall apply to part-time students receiving Tuition Aid Grants except where such provisions specifically refer to full-time students.

(d) Payments to eligible students will be counted for the purpose of the requirements set forth in N.J.A.C. 9:7-2.11 as one-half a semester of payment.

9:7-4.1 Eligibility requirements

(a) Undergraduate Garden State Scholarship recipients must meet minimum academic requirements as defined in N.J.A.C. 9:7-4.6 and be selected by the institution they attend or plan to attend. Awards shall be provided to eligible students in accordance with the provisions of N.J.A.C. 9:7-2.9.

(b) Distinguished Scholar recipients must meet the academic requirements as defined by the Student Assistance Board. The academic requirements shall include secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test (SAT) scores. Where SAT scores are not available, the appropriate equivalent from the American College Testing (ACT) Program may be used. Each year the

Student Assistance Board shall determine and publicize the actual academic requirements prior to the distribution of awards. Such scholarships may be awarded on the basis of indicators of academic merit defined by the Board, without consideration of financial need, and must satisfy the requirements as stipulated in N.J.A.C. 9:7-2.9. Distinguished Scholar recipients must attend an eligible New Jersey institution and may be eligible to receive a Garden State Scholarship or an Educational Opportunity Fund Grant. Distinguished Scholar awards are renewable for up to four or five years, depending upon the course of study and providing the student continues to achieve satisfactory academic progress. Eligible scholars may receive assistance under the Tuition Aid Grant Program.

(c) Garden State Scholarship and Distinguished Scholar recipients who transfer to another eligible New Jersey institution may transfer their awards provided they have demonstrated satisfactory academic progress.

9:7-4.2 Award amounts

Undergraduate scholarship award amounts shall be a minimum of \$200.00. The maximum Garden State Scholarship award shall be \$1,000 and the Student Assistance Board shall annually establish award amounts in recognition of various levels of academic achievement. The exact amount of the Garden State Scholarship award shall be determined by the college financial aid officer in accordance with N.J.A.C. 9:7-2.9. The Garden State Distinguished Scholar award amount shall be established annually by the Student Assistance Board.

9:7-4.5 Institutional eligibility, allocations and funding of awards

(a) (No change.)

ADOPTIONS

(b) The Student Assistance Board will annually allocate Garden State Scholarship funds to all eligible institutions. All eligible institutions will be guaranteed a minimum allocation of funds annually by the Student Assistance Board.

(c) (No change.)

9:7-4.6 Academic eligibility for undergraduate scholarships

(a) (No change.)

(b) Academic Index (AI) computation rules: To qualify for a Garden State Scholarship, an applicant must attain a minimum AI of 210. Applicants with a rank in class in the lowest quartile shall be ineligible for a Garden State Scholarship regardless of AI.

1. Formula: Academic qualification for a Garden State Scholarship is gauged by an AI. The AI is derived by combining two factors, the Scholastic Aptitude Test scores from the College Entrance Exam-

ination Board and a converted secondary school rank in class. The formula for combining the two factors is:

$$AI = \frac{\text{Verbal} + \text{Math SAT scores}}{10} + 2 \text{ Converted Rank}$$

2. (No change.)

3. Rank in class:

i. In order to weigh secondary school rank equally with SAT scores, the converted rank is multiplied by 2. The rank from which ever semester the institution chooses to use is acceptable.

ii. Conversion of the secondary school rank to a standardized score is necessary in order to combine it equally with the SAT scores which have also been standardized. The following table gives the converted rank multiplied by 2, which is the figure to be combined with the test score sum in the AI formula given in (b)1 above.

SECONDARY SCHOOL RANK CONVERSION TABLE

Percent Standing	Converted Rank x 2	Percent Standing	Converted Rank x 2	Percent Standing	Converted Rank x 2
00-01	= 150	13-14	= 122	44-47	= 102
02	= 142	15-16	= 120	48-52	= 100
03	= 138	17-18	= 118	53-56	= 98
04	= 136	19-21	= 116	57-60	= 96
05	= 134	22-24	= 114	61-64	= 94
06	= 132	25-27	= 112	65-68	= 92
07	= 130	28-31	= 110	69-72	= 90
08	= 128	32-35	= 108	73-75	= 88
09-10	= 126	36-39	= 106		
11-12	= 124	40-43	= 104		

(c) Applicants who rank in the top 10 percent of their secondary school graduating classes shall be eligible regardless of test scores.

(d) Students who have not attended secondary school for a period of at least two years prior to entering college shall be allowed to meet the academic eligibility criterion by earning a 3.6 grade point average (GPA) on a 4.0 grading scale during their first semester of full-time college attendance. Students selected by the means shall begin receiving their scholarships at the beginning of the following academic year.

(e) Academic eligibility for Distinguished Scholars shall be determined in accord with N.J.A.C. 9:7-4.1.

9:7-4.7 (Reserved)

9:7-4.8 Renewal of scholarships

Students receiving undergraduate scholarship assistance will continue to receive aid provided they continue to meet all of the eligibility criteria as stipulated in the statute and in the rules adopted by the Student Assistance Board. Award eligibility based upon academic achievement, as defined in N.J.A.C. 9:7-4.6, must only be evaluated when initial awards are being determined and the academic eligibility criteria used at the time scholarships are awarded shall remain throughout the student's remaining period of eligibility.

9:7-5.1 General provisions

General provisions for all programs administered by the Student Assistance Board (N.J.A.C. 9:7-2) which pertain to residency (2.2), foreign nationals (2.3), payments (2.11), refunds (2.12), check endorsements (2.14), and accounting and auditing standards (N.J.A.C. 9:7-2.16) shall be in effect for the Public Tuition Benefits Program.

9:7-5.2 (Reserved)

9:7-5.3 (Reserved)

9:7-5.4 Eligible institutions

Tuition benefits are available to eligible students enrolled in an institution of collegiate grade in New Jersey and approved or licensed by the State Board of Higher Education.

9:7-5.6 Student notification

Students will be notified of their eligibility by the Department of Higher Education. Notification to eligible students will specify the amount of the student's tuition charges which will be paid by the

State. In addition, instructions will be provided regarding the manner in which payment will be disbursed for tuition charges.

9:7-5.7 Renewal

In order to continue to receive tuition benefits under the program, students must be in good academic standing at their institution.

9:7-5.8 Period of Eligibility

Eligibility to receive tuition benefits shall be limited to eight years from the date of the death of the member or officer in the case of a widowed spouse or eight years following graduation from secondary school in the case of a dependent child. Recipients shall not be eligible for more than eight semesters of payment for full-time enrollment or the equivalent for half-time enrollment. Payment for half-time enrollment shall count as one half a semester of payment. Students enrolled in a program of study normally requiring five years to complete shall be eligible for 10 semesters of payment.

9:7-5.9 Verification of enrollment and academic performance

Before payment may be made to an eligible student, the institution must have satisfactory evidence that the student is eligible for tuition benefits, and has registered for an academic term in an undergraduate degree program, and that the student is meeting the minimum standards for academic performance and academic progress at the institution in accordance with N.J.A.C. 9:7-2.10. Eligible students shall be enrolled on at least a one-half time basis during any term in order to receive payment.

9:7-5.10 (Reserved)

9:7-6.1 (Reserved)

9:7-6.2 General provisions

General provisions for all programs administered by the Student Assistance Board (N.J.A.C. 9:7-2) which pertain to residency (2.2), foreign nationals (2.3), verification of enrollment and academic performance (2.10), payments (2.11), refunds (2.12), check endorsements (2.14), appeals (2.15), and accounting and auditing standards (2.16) shall be in effect for the Garden State Graduate Fellowship Program.

9:7-6.3 Eligibility

Applicants shall not be enrolled for more than six graduate credits during the fall term preceding the application deadline and shall not have completed more than 16 graduate credits prior to the appli-

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cation deadline. Graduate credits earned while enrolled as an undergraduate student shall not be considered in determining the above totals.

9:7-6.4 Approved programs

Fellowships shall be awarded only for attendance at institutions in New Jersey offering graduate programs approved by the State Board of Higher Education, except in the case of exempt institutions pursuant to N.J.S.A. 18A:68-6. Approved programs are graduate programs in recognized fields in the humanities, social sciences, and natural and physical sciences. Studies in such areas as law, medicine, and theology shall not be approved programs for Graduate Fellowship support. Degrees within excluded studies areas are: M.D., D.D.S., D.M.D., O.D., D.O., D.Pharm., Pod D., D.P., D.P.M., D.V.M., D.C., D.C.M., LL.B., J.D., B.D., M.Div.

9:7-6.5 Period of eligibility

Fellowships will be awarded for one academic year, renewable upon the recommendation of the institution, the continued eligibility of the student, and the availability of appropriated funds. An award holder shall not be eligible for payment for a second masters degree unless such degree progresses directly towards a doctoral degree. In no case shall a graduate student be paid for more than four years of study.

9:7-6.6 Attendance

A recipient of a Fellowship award shall be enrolled full-time and matriculate in an approved program of study no later than the fall term immediately succeeding the notification of award and continue in regular full-time attendance. After payment has been received by the recipient and the recipient has successfully completed one semester of graduate education, a request for a leave of absence may be made for a period not to exceed one year.

9:7-6.7 Number of awards and amount

The number and amount of Fellowship awards for an academic year shall be determined annually by the Student Assistance Board.

9:7-6.8 (Reserved)

9:7-6.9 Selection

Eligible students shall be selected on the basis of academic achievement and evidence of further academic promise. Degree of financial need may also be considered.

9:7-7.1 Residency

(a) For purposes of this program an eligible veteran will be considered a resident of the State of New Jersey if the veteran:

1. Had been domiciled in New Jersey at the time of induction into the armed forces; or
2. Was domiciled in New Jersey at the time of separation from active duty; or
3. Has been domiciled in New Jersey for at least two consecutive years prior to date of application, exclusive of any time spent on active duty.

(b) Domicile has been defined as the place where a person has his/her true, fixed, permanent home and principal establishment, and to which, whenever he/she is absent, he/she has the intention of returning.

9:7-7.2 Approved educational institution

(a) (No change.)

(b) To qualify as an "approved educational institution" any such institution must have been approved for veteran educational assistance pursuant to Federal law.

9:7-7.3 Approved course of study

The eligible veteran shall be enrolled in any curriculum or any combination of unit courses or subjects at an educational institution which is approved for veterans educational assistance pursuant to Federal law.

9:7-7.4 Full-time course requirements

(a) For the purposes of this program:

1. (No change.)

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2. An institutional course offered on a clock-hour basis below the college level in which theoretical or classroom instruction predominates shall be considered a full-time course when a minimum of 25 hours per week net of instruction (which may include customary intervals not to exceed 10 minutes between hours of instruction) is required;

3.-4. (No change.)

9:7-7.6 Calculation of tuition credit

(a) Each eligible veteran shall be entitled to tuition credit in accordance with the following schedule:

1. For a period of one semester (or the equivalent thereof in part-time tuition credit), in the case of educational institutions regularly operated on the semester system, for each three months or fraction thereof of the veteran's service on active duty **[from]** **after** December 31, 1960, and before August 1, 1974. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he/she shall be entitled to tuition credit for a period of eight semesters (or the equivalent thereof in part-time tuition credit). The maximum credit hereunder shall be for a period of eight semesters; or

2. For a period of one-quarter (or the equivalent thereof in part-time tuition credit) in the case of educational institutions regularly operated on the quarter system, for each two months or fraction thereof of the veteran's service on active duty after December 31, 1960, and before August 1, 1974. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he/she shall be entitled to tuition credit for a period of 12 quarters. The maximum credit hereunder shall be for a period of 12 quarters; or

3. For a period of 1½ months of any tuition period (or the equivalent thereof in part-time tuition credit)* in the case of educational institutions not operated on the quarter or semester system, for each month or fraction thereof of the veteran's service on active duty after December 31, 1960, and before August 1, 1974. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he/she shall be entitled to tuition credit for 36 months of tuition credit (or the equivalent thereof in part-time tuition credit). The maximum credit hereunder shall be for a period of 36 months.

(b) If an eligible veteran shall change his/her program of study from an educational institution regularly operated on the quarter or semester system or otherwise, to an educational institution regularly operated on a different system, he/she shall submit a written request to the Chancellor of Higher Education for a re-evaluation of the remaining tuition credits.

9:7-7.7 Award amount

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

9:7-7.8 (Reserved)

9:7-7.9 (Reserved)

9:7-7.10 (Reserved)

9:7-8.6 Period of eligibility (No change.)

9:7-8.7 (Reserved)

9:7-8.8 Renewal

In order to continue to receive tuition benefits under this program, the eligible Vietnam veteran must maintain good academic standing. Good academic standing shall be defined in accordance with the standards established and enforced by the institution and approved by the Department of Higher Education, State Approving Agency, pursuant to 38 U.S.C. §§1775 and 1776.

9:7-8.9 (Reserved)

9:7-8.10 (Reserved)

9:7-8.11 (Reserved)

9:7-9.1 Rules incorporated by reference

The provisions of the following sections of subchapter 2 of this chapter, N.J.A.C. 9:7-2.2 residency, 2.3 foreign nationals, 2.11 payments, 2.14 check endorsements, 2.15 appeals and 2.16 accounting and auditing standards, governing the programs administered by the Student Assistance Board shall also apply to this program unless they are inconsistent with or otherwise excepted within the provisions of this subchapter.

(a)
**Student Assistance Programs
Foreign Nationals**
Adopted Amendment: N.J.A.C. 9:7-2.3

Proposed: November 16, 1987 at 19 N.J.R. 2101(a).

Adopted: February 29, 1988 by Student Assistance Board,

M. Wilma Harris, Chairperson.

Filed: February 29, 1988 as R.1988 d.129, **without change**.

Authority: N.J.S.A. 18A:71-26.5, 18A:71-26.8, 18A:71-47(a) and 18A:71-48.

Effective Date: March 21, 1988.

Expiration Date: February 28, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:7-2.3 Foreign nationals

(a) A foreign national must present affirmative evidence that he or she is not in the United States for the temporary purpose of obtaining an education. Such evidence must include documentation from the United States Immigration and Naturalization Service that the student may remain permanently in this country and such evidence must be placed in the student's file. The student must:

1. Be the holder of an Alien Registration Receipt Card form I-151 or I-551; or

2. Be the holder of an approval Notice from the Immigration and Naturalization Service form I-181 stating that the non-citizen has applied and met the requirements for Permanent Resident status; or

3. Be the holder of a Temporary Resident Card form I-688 with a valid expiration date from the Immigration and Naturalization Service; or

4. Be the holder of an Arrival Departure Record form I-94 endorsed by the Immigration and Naturalization Service showing one of the following:

i. Parole Indefinite/Humanitarian: Paroled pursuant to Sec. 212(d)(5) of the Immigration and Naturalization Act; or

ii. Refugees: Admitted as a refugee pursuant to Sec. 207 of the Immigration and Naturalization Act; or

iii. Granted Asylum: Asylum status granted pursuant to Sec. 208 of the Immigration and Naturalization Act; or

iv. Cuban-Haitian Entrant: Status pending; or

v. Conditional Entrant: Admission into this status through March 31, 1980.

5. The Arrival Departure Record form I-94 for persons in the aforementioned categories must be updated for each award year as required by the Immigration and Naturalization Service.

(b) (No change.)

(b)
**Student Assistance Programs
Dependent/Independent Student Defined**
Adopted Amendment: N.J.A.C. 9:7-2.6

Proposed: November 16, 1987 at 19 N.J.R. 2101(b).

Adopted: February 29, 1988 by Student Assistance Board,

M. Wilma Harris, Chairperson.

Filed: February 29, 1988 as R.1988 d.130, **without change**.

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-48.

Effective Date: March 21, 1988.

Expiration Date: February 29, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:7-2.6 Dependent/independent student defined

(a) (No change.)

(b) Except as provided in (c) below an individual meets the requirements of this section if such individual:

1.-5. (No change.)

6. Is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for income tax purposes for the two calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the two calendar years preceding the award year in which the initial award will be granted by demonstrating annual total resources (including all sources of resources other than parents) of at least \$4,000; or

7. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For purposes of receiving State student assistance as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i. (No change.)

ii. The student is a recipient of either Aid to Families with Dependent Children (AFDC) or general assistance in his or her own name and complies with the provisions of (b)6 above except for the resource requirement set forth therein.

iii. The student is from a foreign country but has established permanent residency in the United States, is a refugee or has received political asylum, and complies with the provisions of (b)6 above except for the resource requirement set forth therein. For the purposes of eligibility under this subparagraph, the student's parents must reside outside of the United States.

iv. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5 (or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education), is living with a relative who is providing support to the student, and complies with the provisions of (b)6 above except for the resource requirement set forth therein.

v. The student was considered as an independent student for the purposes of New Jersey State student assistance programs during the 1986-87 academic year, and complies with the provisions of (b)6 above except for the resource requirement set forth therein. This provision will be effective for the 1987-88 academic year only.

vi. (No change.)

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

(c)
**Tuition Aid Grant Program
1988-89 Award Table**
Adopted Amendment: N.J.A.C. 9:7-3.2

Proposed: January 19, 1988 at 20 N.J.R. 147(a).

Adopted: February 29, 1988 by Student Assistance Board,

M. Wilma Harris, Chairperson.

Filed: February 29, 1988 as R.1988 d.127, **without change**.

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Effective Date: March 21, 1988.

Expiration Date: February 29, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:7-3.2 Tuition Aid Grant award table

(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs.

1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1987-88
APPROXIMATE TUITION AID GRANT VALUES¹
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ²	NJ Inst. of Tech.
Under 950	100% of tuition	100% of tuition	40-50% ³	100% of tuition	100% of tuition
950-1349	80-99%	90-99%	91-99%	91-99%	91-99%
1350-1749	70-79%	80-89%	86-90%	86-90%	86-90%
1750-2149	60-69%	75-79%	81-85%	81-85%	81-85%
2150-2549	50-59%	68-74%	76-80%	76-80%	76-80%
2550-2949	40-49%	62-67%	71-75%	71-75%	71-75%
2950-3349	30-39%	55-61%	66-70%	66-70%	66-70%
3350-3749	Minimum	48-54%	61-65%	61-65%	61-65%
3750-4149	0	41-47%	56-60%	56-60%	56-60%
4150-4549	0	34-40%	51-55%	51-55%	51-55%
4550-4949	0	28-33%	46-50%	46-50%	46-50%
4950-5349	0	21-27%	41-45%	41-45%	41-45%
5350-5749	0	Minimum	36-40%	36-40%	36-40%
5750-6149	0	0	31-35%	31-35%	31-35%
6150-6549	0	0	26-30%	26-30%	26-30%
6550-6949	0	0	21-25%	21-25%	21-25%
6950-7349	0	0	16-20%	Minimum	Minimum
7350-7749	0	0	11-15%	0	0
7750-8149	0	0	5-10%	0	0
8150-8549	0	0	Minimum	0	0
Over 8549	0	0	0	0	0

¹In accordance with State guidelines, the value of a student's grant may decrease dependent upon appropriated funds, and the student's college budget, available resources, and estimated family contribution. The student shall be notified of any increase in his/her grant if additional funds become available. Additional eligibility (NJEI) cells may be added below the minimum award level dependent upon the current tuition charges and estimated family contribution. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum award for all institutional sectors shall be \$200.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY88 Budget Request contains a recommended \$3,000.00 maximum award level in the independent sector for students with an NJEI under 950. Percentages listed for NJEI categories 950 and above represent percentages of the first cell award.

2. TUITION AID GRANT (TAG) AWARD TABLE FOR 1988-89
APPROXIMATE TUITION AID GRANT VALUES¹
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ²	NJ Inst. of Tech.
Under 1500	100% of tuition	100% of tuition	40-50% ³	100% of tuition	100% of tuition
1500-2499	80-99%	80-99%	80-99%	85-99%	80-99%
2500-3499	50-79%	60-79%	70-79%	70-84%	70-79%
3500-4499	Minimum	50-59%	60-69%	60-69%	60-69%
4500-5499	0	30-49%	50-59%	50-59%	50-59%
5500-6499	0	Minimum	35-49%	35-49%	35-49%
6500-7499	0	0	25-34%	30-34%	30-34%
7500-8499	0	0	20-24%	Minimum	Minimum
8500-9499	0	0	Minimum	0	0
Over 9499	0	0	0	0	0

¹In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1989 Budget Request contains a recommended \$3,300.00 maximum award level in the independent sector for students with an NJEI under 1500. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award.

(a)

**Congressional Teacher Scholarship Program
Teaching Obligations; Repayment Schedule;
Postponement of Repayment**

Adopted Amendments: N.J.A.C. 9:7-9.9, 9.11 and 9.12

Proposed: November 16, 1987 at 19 N.J.R. 2102(a).

Adopted: February 29, 1988 by Student Assistance Board,
M. Wilma Harris, Chairperson.

Filed: February 29, 1988 as R.1988 d.131, **without change**.

Authority: N.J.S.A. 18A:71-15.3, Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984, 20 U.S.C. 1119d-1119d-8 and the Higher Education Technical Amendments Act of 1987.

Effective Date: March 21, 1988.

Expiration Date: February 29, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

**SUBCHAPTER 9. PAUL DOUGLAS TEACHER
SCHOLARSHIP PROGRAM**

9:7-9.9 Teaching obligations of the scholarship recipient

(a) The scholar shall teach on a full-time basis in any state for a period of not less than two years for each year for which he or she received a Paul Douglas Teacher Scholarship, in a public or private nonprofit preschool, elementary or secondary school, or in a public or private nonprofit preschool, elementary, or secondary education program.

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

9:7-9.11 Repayment schedule for failure to meet teaching obligations or withdrawal from undergraduate degree program leading to teacher certification

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

(c) The interest charge shall be adjusted annually, from the time interest begins to accrue to the time the repayment period begins as described in (d) below, and shall be set by the U.S. Secretary of Education at a rate which in no event is higher than the rate applicable to loans under Part B of Title IV, HEA, during the same 12-month period. The interest rate applicable during the repayment period is the interest rate prescribed by the Secretary which is in effect as of the beginning date of the repayment period.

(d)-(j) (No change.)

9:7-9.12 Postponement of repayment schedule

(a) A scholar is not considered in violation of the repayment schedule and need not make scholarship repayments nor will interest accrue during the time he or she is:

1.-5. (No change.)

6. Unable to satisfy the terms of the repayment schedule established by the NJHEAA, and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary or secondary school, or in a public or private nonprofit preschool, elementary or secondary education program for a single period not to exceed 27 months as evidenced by notarized copies of letters of application for teaching positions and any other documents as required by the Department of Higher Education, Office of Student Assistance.

(b)

**HIGHER EDUCATION ASSISTANCE AUTHORITY
Student Loan Program
Repayment of Student Loans**

Adopted Amendments: N.J.A.C. 9:9-1.12, 1.13 and 1.16

Proposed: September 8, 1987 at 19 N.J.R. 1619(a)

Adopted: February 16, 1988 by the New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman

Filed: February 22, 1988 as R.1988 d.116, **without change**.

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

Effective Date: March 21, 1988

Expiration Date: October 3, 1988

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:9-1.12 Repayment of loan: installment arrangements

When a student ceases to be enrolled at least half time at an eligible school, the student must contact the lender within four months for the purpose of making arrangements toward repayment of the loan.

9:9-1.13 Delinquent payments; responsibility of lender

When an account becomes delinquent as a result of nonpayment of interest on a nonsubsidized loan when due or nonpayment of installment when due or the failure to return funds due to non-enrollment in school, the Authority must be notified to such an event either through a carbon copy of a statement or other correspondence at the time of occurrence.

9:9-1.16 Procedure for filing claim

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

(c) Separate claims must be submitted on each loan accruing interest at different rates. It is permissible to combine more than one loan on one claim form as long as the interest rate is the same. Two sets of claim forms will be sent with both copies expected to be returned in completed form. The lender will be reimbursed for the total unpaid principal and interest due for a period not to exceed 90 days beyond the date of default. A photostatic copy of the note must be forwarded with the claims. By law, the Authority may not reimburse the lender for late charges.

HUMAN SERVICES

(c)

DIVISION OF PUBLIC WELFARE

**General Assistance Manual
Monthly Case Reviews Form GA-19**

Adopted Amendment: N.J.A.C. 10:85-3.5.

Proposed: November 16, 1987 at 19 N.J.R. 2111(a).

Adopted: February 19, 1988 by Drew Altman, Commissioner,
Department of Human Services.

Filed: February 22, 1988 as R.1988 d.117, **without change**.

Authority: N.J.S.A. 44:8-111(d).

Effective Date: March 21, 1988.

Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:85-3.5 Continuing eligibility

(a) Monthly Review: The eligibility of each case shall be reviewed at least once each calendar month. The Form GA-19, Authorization and Case Review Card, shall be utilized during the review. This

review provides an opportunity for the municipal welfare department to evaluate any change in the client's circumstances or income and make appropriate adjustments on Form GA-19 in the amount of assistance to be granted. (See N.J.A.C. 10:85-7.2(a) regarding timely notice of adverse action.)

1. (No change in text.)
2. (No change in text.)

(b) Redetermination of eligibility: In order to continue granting assistance, the MWD shall make a complete redetermination for each case at least once every six months except that for the chronically ill, recertification by a physician via Form GA-18 shall be made at time intervals in accordance with N.J.A.C. 10:85-5.3(e)1i.

1. (No change.)
2. Authorization and Case Review Card, Form GA-19: At the time of the redetermination, a new Form GA-19 shall be prepared by the MWD worker.
- 3-4. (No change.)
- (c)-(d) (No change.)

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Prevailing Wages for Public Works

Adopted New Rules: N.J.A.C. 12:60

Proposed: February 17, 1987 at 19 N.J.R. 345(b).

Adopted: February 16, 1988 by Charles Serrano, Commissioner, Department of Labor.

Filed: February 16, 1988 as R.1988 d.113, **without change**.

Authority: N.J.S.A. 34:11-56.25 et seq., specifically 34:11-56.43.

Effective Date: March 21, 1988.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

The Department of Labor solicited comments from certain interested parties during the comment period, which expired on March 21, 1987. No negative comments were received from the interested parties, listed below:

AFL-CIO of New Jersey, Trenton, New Jersey
 Associated General Contractors, Jamesburg, New Jersey
 Building Contractors Association, Woodbridge, New Jersey
 Building Laborers of New Jersey Training and Education Trust Fund, Jamesburg, New Jersey
 Heavy and General Laborers Local 472, Newark, New Jersey
 Heavy and General Laborers Local 172, Trenton, New Jersey
 New Jersey Association of Counties, Trenton, New Jersey
 New Jersey Business and Industry Association, Trenton, New Jersey
 New Jersey School Boards Association, Trenton, New Jersey
 New Jersey State Building and Construction Trades Council, Newark, New Jersey
 New Jersey State Chamber of Commerce, Trenton, New Jersey
 New Jersey State League of Municipalities, Trenton, New Jersey
 Operating Engineers Local 825 Fund Services Facilities, Newark, New Jersey
 Utility and Transportation Contractors Association, Lakewood, New Jersey

The Department of Labor received six public comments during the comment period. The following commenters reviewed the rule as published in the *New Jersey Register*.

American Telephone and Telegraph Company, Berkeley Heights, New Jersey

Archer and Greiner, Haddonfield, New Jersey
 Communication Workers of America, Trenton, New Jersey
 Paul M. Levinson, Demarest, New Jersey
 New Jersey Bell Telephone Company, Newark, New Jersey
 Schlesinger, Schlosser, Foy and Harrington, Mount Holly, New Jersey

COMMENT: One commenter contends that the Commissioner has no legal authority to exclude "industrial collective bargaining agreements" or telecommunication technicians from treatment under the Prevailing Wage Act. The commenter argues that the power given to the Commissioner by the Legislature under the Prevailing Wage Act is limited

to making the factual determination of what the wage rate is in the collective bargaining agreement for each craft, trade or classification of workmen. *Male v. Ernest Renda Contracting Co.*, 122 N.J. Super. 526 (App. Div. 1973), 301 A.2d 153, aff'd., 64 N.J. 199, 314 A.2d 361, cert. denied, 419 U.S. 839; N.J.S.A. 34:11-56.30. The commenter states that the Legislature did not grant any authority to the Commissioner to decide which craft, trade or class of workmen covered by a collective bargaining agreement is to be recognized or is not to be recognized for prevailing wage determinations under the Act. The commenter asserts that there is nothing in the statutory language, the legislative history or judicial decisions which show that the Legislature intended to exclude "industrial collective bargaining agreements" or the crafts or trades covered by those agreements from the Act.

RESPONSE: The Commissioner of Labor is granted broad discretion under N.J.S.A. 34:11-56.25 et seq. to determine the classifications for which prevailing wage rates for particular tasks are to be established. The Commissioner has historically made such determinations pursuant to this statutory authority in keeping with the legislative intent of the Prevailing Wage Act. Furthermore, the Act has, since its enactment, been interpreted by the Commissioner and the Department of Labor to require consideration of only craft collective bargaining agreements in determining classifications and prevailing wages. This interpretation is consistent with a literal reading of the statement, its underlying legislative intent and the policies it was designed to implement.

COMMENT: One commenter argues that the work performed by a telecommunication technician, such as the installation of telecommunication wiring, is not a "public work" under the Act.

RESPONSE: "Public work" is defined as "... construction, reconstruction, demolition, alteration, repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of funds of a public body . . ." N.J.S.A. 34:11-56.26. This definition clearly places the installation of inside wire within the scope of a "public work", as the work in question is an integral part of the construction of a public building and involves the pulling, splicing, termination and landing of wires throughout the building.

COMMENT: Three commenters made similar arguments concerning the classification of telecommunication workers as a separate craft or trade. One commenter argued that if the work performed by telecommunication technicians is deemed "public work" by the Department of Labor, then the prevailing wage rate for such technicians is the wage rate established in the collective bargaining agreement which covers a majority of the technicians in the geographical jurisdiction in question, which in this case would be the collective bargaining agreement for telecommunication technicians. Another commenter further argues that the proposed rules are premised on the erroneous notion that Local 827 represents only employees of a single employer and is an industrial union, and that its members, who are telecommunication technicians, do not constitute a craft.

RESPONSE: The Commissioner is mandated to make prevailing wage determinations for workers "needed" to perform public works. Jurisdictional disputes between International Brotherhood of Electrical Workers union locals over the installation of telecommunication wire is irrelevant to the Commissioner's responsibility. Furthermore, the National Labor Relations Board does not have jurisdiction over New Jersey's prevailing wage rules. The authority to determine the prevailing rate is exclusively that of the Commissioner of the Department of Labor.

COMMENT: One commenter noted that the New Jersey Prevailing Wage Act, like the Davis-Bacon Act, is intended to protect all manual laborers, not only construction crafts. Therefore, the Department's proposed rules are contrary to law.

RESPONSE: The Prevailing Wage Act, while intended to protect all workers on public works projects, establishes prevailing rates on the basis of craft or trade collective bargaining agreements. The Davis-Bacon Act is a Federal law and is not applicable to the issue in this matter.

COMMENT: Two commenters state that electricians receive very little training that is relevant to telecommunication work, that their training in telecommunication wiring is inadequate, and that they are not trained in the Bell System Practices, which are the applicable industry standards for telecommunication installation work.

RESPONSE: Contrary to the commenter's statements, there is ample evidence which clearly shows the work in question has been successfully completed by members of Local 269 electricians on many construction projects for qualified electrical contractors. Qualified electrical contractors have proven themselves capable of installations which meet or exceed

industry standards which are the same whether the wire is for an "internal" communications system or an "interfaced" communication system.

COMMENT: One commenter maintains that the installation of telecommunication wiring cannot simply be considered as part of the installation of electrical wiring, but must be treated as separate and clearly distinguishable work. Another commenter similarly noted that the Department of Labor did not set a prevailing wage for the type of wiring in question until 1985, at which time it set the prevailing wage at the electricians' wage.

RESPONSE: The electricians' wage rate determination for wiring meets the criteria for all wiring installations. A new classification for separate and distinct wiring installations would be superfluous and contrary to the mandate in N.J.S.A. 34:11-56.30.

COMMENT: According to one commenter, promulgation of the rules would tend to displace telecommunication technicians from the work they have traditionally performed, and would have an adverse impact on employers whose telecommunication employees are not represented by Local 269 or other locals. One commenter stated that since the prevailing wage rate was set at the electricians' wage, New Jersey Bell and Local 827 employees have lost substantial work. Three commenters stated that if the prevailing wage rate is set at that for electricians, the rules would eliminate telecommunication employers from bidding on jobs, and would effectively eliminate the lowest provider of services which would result in higher consumer prices.

RESPONSE: The Act would not displace telecommunication technicians from the work in question. The Act only requires that the employer comply with the Prevailing Wage Act by paying the prevailing rate, as determined by the Commissioner, for work performed on a public work project. The Prevailing Wage Act was not predicated on reducing costs, but on protecting workers. The Department of Labor is not precluding telecommunication companies and Local 827 employees from bidding on public work.

COMMENT: One commenter suggests that N.J.A.C. 12:60-5.2 be reworded to mandate that individuals have the right to inspect and to copy, at their expense, any of the collective bargaining agreements which form the basis for any craft or prevailing rate determinations made by the Department of Labor.

RESPONSE: The "Right-to-Know" Act, N.J.S.A. 47:1A-1 et seq., and rules promulgated thereunder, govern the public inspection of information required to be submitted under the Prevailing Wage Act. All determinations made regarding the disclosure of such information will be made in accordance with the Right-to-Know Act. Additional rules are unnecessary.

COMMENT: One commenter suggests that the proposed rules be amended to provide that all disputes concerning the appropriate craft classification under N.J.A.C. 12:60 between the Public Contracts Section and a private contractor should be resolved by a referral to the New Jersey Office of Administrative Law.

RESPONSE: Contested case determinations will be handled in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., with a determination as to whether a particular contested case should be referred to The Office of Administrative Law to be made by the Commissioner.

COMMENT: One commenter applauds the promulgation of N.J.A.C. 12:60, but suggests that N.J.A.C. 12:60-4.2(a), which defines the criteria for the establishment of crafts, be expanded to include the concept of "need" as set forth at N.J.S.A. 34:11-56.30.

RESPONSE: The proposed criteria set forth at N.J.A.C. 12:60-4.2 grant sufficient authority to the Commissioner to consider the necessity for recognition of a new craft. Specifically, N.J.A.C. 12:60-4.2(a)3, concerning the nature of the specific work in issue, would allow the Commissioner to evaluate the specific job, determine whether a craft listed in N.J.A.C. 12:60-3.1 et seq. could perform the job, or recognize a new craft. Additionally, N.J.A.C. 12:60-4.2(b) provides that the Department shall consider "... any relevant information, documentation or argument presented by an interested party" in establishing a craft, trade or class of workmen. Therefore, any person who feels that a new craft is necessary can submit the reasons to the Department for its consideration.

COMMENT: One commenter says it is doubtful that the following occupations in the proposed rules are construction crafts: diver, driller, dredging operator, laborer, asphalt laborer, and truck driver.

RESPONSE: The following construction projects associated with the above occupations are, respectively, dock construction, well construction, lagoon construction, all kinds of construction, and road construction. In

Horn v. Serritella Bros., Inc., 190 N.J. Super. 280, (1983), the court held that truck drivers who carried debris away from a project site to dump sites were rendering services directly upon a public work, and thus were covered by the Prevailing Wage Act.

COMMENT: One commenter noted that the State of New York has established a prevailing wage rate for telecommunication technicians.

RESPONSE: The determinations of other jurisdictions based on different legislation, statutory interpretation and administrative practice are not controlling in New Jersey and are not persuasive in view of the above reasons for New Jersey's determination.

Full text of the adoption follows:

CHAPTER 60 PREVAILING WAGES FOR PUBLIC WORKS

SUBCHAPTER 1. GENERAL PROVISIONS

12:60-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:60, Prevailing Wages for Public Works.

12:60-1.2 Authority

These rules are promulgated pursuant to the authority of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

12:60-1.3 Purpose

(a) The purpose of this chapter is to:

1. List each and every craft, trade, or class of workmen employed on public works in each of the 21 counties of the State; and
2. List the criteria to be used when an issue regarding the establishment of a craft, trade or class of workmen arises.

12:60-1.4 Scope

(a) This chapter shall implement the Act by listing by name each craft, trade or class of workmen utilized in the various counties of the State; and

(b) This chapter shall apply to every contract in excess of \$2,000 awarded by a public body and to every subcontract pursuant to said contract.

12:60-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:60-6.

12:60-1.6 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

SUBCHAPTER 2. DEFINITIONS

12:60-2.1 Definitions

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

"Act" means the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

"Commissioner" means the Commissioner of Labor, or his duly authorized designee.

"Department" means the Department of Labor.

"Division of Workplace Standards" means the Division of Workplace Standards, New Jersey Department of Labor, CN 054, Trenton, New Jersey 08625-0054.

"Employer" means any natural person, company, firm, subcontractor or other entity engaged in public work.

"Locality" means any political subdivision of the State, combination of the same or parts thereof, or any geographical area or areas classified, designated and fixed by the commissioner from time to time, provided that in determining the "locality" the commissioner shall be guided by the boundary lines of political subdivisions or parts thereof, or by a consideration of the areas with respect to which it has been the practice of employers of particular crafts or trades to engage in collective bargaining with the representatives of workmen in such craft or trade.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Office of Wage and Hour Compliance" means the Office of Wage and Hour Compliance of the Division of Workplace Standards, New Jersey Department of Labor, CN 389, Trenton, N.J. 08625-0389.

"Persons" means any natural person, company, firm, association, corporation, contractor, subcontractor or other entity engaged in public work.

"Prevailing wage" means the wage rate paid by virtue of collective bargaining agreements by employers employing a majority of workmen of that craft or trade subject to said collective bargaining agreements, in the locality in which the public work is done.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.

SUBCHAPTER 3. CATEGORIES OF CRAFTS, TRADES OR CLASSES OF WORKMEN

12:60-3.1 Scope of subchapter

This subchapter shall apply to crafts, trades or classes of workmen which are utilized on public work construction contracts governed by the New Jersey Prevailing Wage Act.

12:60-3.2 List of crafts, trades or classes of workmen

(a) Listed below are those crafts, trades or classes of workmen established by the Commissioner in all counties, except as otherwise noted, which shall be paid prevailing wages on public works construction contracts governed by the New Jersey Prevailing Wage Act.

1. Air conditioning worker, refrigeration worker: journeyman or apprentice.
2. Asbestos worker, heat insulator, frost insulator: journeyman, foreman, or apprentice.
3. Boilermaker: journeyman, foreman, helper, or apprentice.
4. Bricklayer, stonemason: journeyman, foreman, or apprentice.
5. Building laborer: journeyman or foreman.
6. Carpenter: journeyman, foreman, or apprentice.
7. Carpenter of resilient flooring: journeyman, foreman, or apprentice. Applies in all counties except Atlantic, Camden, Cape May, Cumberland, Gloucester, and Salem counties.
8. Cement mason, cement finisher: journeyman, foreman, or apprentice.
9. Diver, diver tender.
10. Dock builder, pile-driver: journeyman, foreman, or apprentice.
11. Dock builder creosote, pile driver creosote: journeyman, foreman, or apprentice.
12. Drywall finisher: journeyman, foreman, or apprentice.
13. Electrician: journeyman, foreman, or apprentice.
14. Elevator constructor: journeyman, foreman, helper, or apprentice.
15. Glazier: journeyman, foreman, or apprentice.
16. Ironworker: journeyman, foreman, or apprentice.
17. Lineman: journeyman, foreman, or apprentice. Applies in Atlantic and Cape May counties only.
18. Lather: journeyman, foreman, or apprentice.
19. Marble setter: journeyman, foreman, or apprentice.
20. Millwright: journeyman or foreman. Applies in all counties except Mercer county.
21. Painter: journeyman, foreman, or apprentice. See N.J.A.C. 12:60-3.3 for classification of tasks.
22. Pipefitter: journeyman, foreman, or apprentice.
23. Plasterer: journeyman, foreman, or apprentice.
24. Plumber: journeyman, foreman, or apprentice.
25. Roofer: journeyman, foreman, helper or apprentice.
26. Roofer shingle, slate and tile: journeyman, foreman, or helper.
27. Sheet metal worker: journeyman, foreman, or apprentice.
28. Sprinkler fitter: journeyman, foreman, or apprentice.
29. Tile setter: journeyman, foreman, or apprentice.

30. Tile setter helper.

31. Welder.

32. Operating engineer. See N.J.A.C. 12:60-3.4 for classification of tasks.

33. Driller. See N.J.A.C. 12:60-3.5 for classification of tasks.

34. Dredging operator. See N.J.A.C. 12:60-3.6 for classification of tasks.

35. Heavy and general laborer. See N.J.A.C. 12:60-3.7 for classification of tasks.

36. Asphalt laborer. See N.J.A.C. 12:60-3.8 for classification of tasks.

37. Truck driver. See N.J.A.C. 12:60-3.9 for classification of tasks.

12:60-3.3 Classification of tasks for painters

(a) Painters shall be classified in all counties, except as otherwise noted below, into various tasks in accordance with the prevailing collective bargaining agreements as follows:

1. Painter.
2. Structural steel and spray painter.
3. Bridge viaduct and other appurtenances painter.
4. Repaint painter. Applies in Atlantic, Bergen, Cape May, Cumberland, Essex, Hudson, Hunterdon, Mercer, Morris, Passaic, Somerset, Sussex, Union and Warren counties.
5. Repaint painter on bridge, viaduct and other appurtenances. Applies only in Atlantic, Bergen and Cape May counties.
6. Traffic marking painter.

12:60-3.4 Classification of tasks for operating engineers

(a) Operating engineers shall be classified in all counties into various tasks in accordance with the prevailing collective bargaining agreement as follows:

1. A-frame operating engineer.
2. Aerial platform operating engineer.
3. Assistant engineer, oiler.
4. Asphalt curbing machine operating engineer.
5. Asphalt plant engineer.
6. Asphalt spreader operating engineer.
7. Autograde combination subgrader, base material spreader, base trimmer operating engineer.
8. Autograde pavement profiler operating engineer.
9. Autograde pavement profiler, recycle type, operating engineer.
10. Autograde placer-trimmer, spreader combination operating engineer.
11. Autograde slipform paver operating engineer.
12. Autograde curecrete machine operating engineer.
13. Autograde tube finisher, texturing machine operating engineer.
14. Autograde curb trimmer, sidewalk, shoulder, slipform, operating engineer.
15. Backhoe operating engineer.
16. Backhoe, combination operating engineer.
17. Bar bending machine, power operating engineer.
18. Batcher, batching plant, crusher on site operating engineer.
19. Belt conveyor system operating engineer.
20. Boiler, steam jenny operating engineer.
21. Boom type skimmer machine operating engineer.
22. Boom attachment or loader operating engineer.
23. Boring and drilling machine operating engineer.
24. Bridge deck finisher operating engineer.
25. Broom and sweeper operating engineer.
26. Brush chopper, shredder, tree shredder, tree shearer operating engineer.
27. Bulldozer operating engineer.
28. Cableway operating engineer.
29. Car dumper, railroad operating engineer.
30. Carryall operating engineer.
31. Central power plant operating engineer.
32. Chipper operating engineer.
33. Compressor, blower operating engineer.
34. Compressor, single operating engineer.
35. Compressor, two or three battery operating engineer.

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36. Concrete breaking machine operating engineer.
37. Concrete finishing machine operating engineer.
38. Concrete paving machine operating engineer.
39. Concrete pump operating engineer.
40. Concrete pumping system, pumpcrete, similar types, operating engineer.
41. Concrete saw and cutter, ride on type, operating engineer.
42. Concrete spreader, Hetzel, Rexomatic and similar types, operating engineer.
43. Concrete spreader, small type, operating engineer.
44. Concrete vibrator operating engineer.
45. Conveyor, under 125 feet, operating engineer.
46. Conveyor, 125 feet and over, operating engineer.
47. Conveyor loader, not including elevator grader, operating engineer.
48. Crane, all types, including overhead and straddle traveling type, operating engineer.
49. Crane, gantry, operating engineer.
50. Crushing machine, operating engineer.
51. Derrick operating engineer.
52. Ditching machine operating engineer.
53. Drill doctor operating engineer.
54. Drillmaster, quarrymaster operating engineer.
55. Dope pot, mechanical operating engineer.
56. Dragline operating engineer.
57. Dumpster operating engineer.
58. Elevator operating engineer.
59. Elevator grader operating engineer.
60. Engine, large diesel, 1620 horsepower, staging pump operating engineer.
61. Farm tractor operating engineer.
62. Fertilizing equipment operating engineer.
63. Field engineer.
 - i. Chief of party.
 - ii. Transit or instrument man.
 - iii. Rodman or chainman.
 - iv. Survey apprentice.
64. Fine grade machine, small type operating engineer.
65. Fine grade machine, large type, operating engineer.
66. Fireman operating engineer.
67. Fork lift operating engineer.
68. Form line grader, small type, operating engineer.
69. Front end loader, five yards and over, operating engineer.
70. Front end loader, two yards but less than five yards, operating engineer.
71. Front end loader, one yard but less than two yards, operating engineer.
72. Front end loader, under one yard, operating engineer.
73. Generator, single, operating engineer.
74. Generator, two or three battery, operating engineer.
75. Giraffe grinder operating engineer.
76. Gradall operating engineer.
77. Grader, finish, fine, operating engineer.
78. Grader and motor patrol operating engineer.
79. Grader, Rago, operating engineer.
80. Grease, gas, fuel, oil supply truck operating engineer.
81. Groove cutting machine, ride on type, operating engineer.
82. Gunit machine, excluding nozzles, operating engineer.
83. Hammer vibratory in conjunction with generator, operating engineer.
84. Heater planer operating engineer.
85. Heater, Nelson or other type including propane, natural gas or flow type units, operating engineer.
86. Helicopter operating engineer.
 - i. Pilot or engineer.
 - ii. Co-pilot.
 - iii. Communications engineer.
87. Hoist, all types including steam, gas, diesel, electric, air, hydraulic, single and double drum, concrete brick shaft caisson, conveyor, snorkel roof, tugger, house car or any other similar type hoisting machine, portable or stationary, except Chicago boom type operating engineer.

LABOR

88. Hoist, Chicago, boom operating engineer.
89. Hoist, roof, tugger, aerial platform, elevator, house car, operating engineer.
90. Hopper operating engineer.
91. Hooper door, power operated, operating engineer.
92. Hydraulic crane, six tons and under, operating engineer.
93. Hydro-axe operating engineer.
94. Jack, screw, air, hydraulic, power operated unit or console type, but not hand jack or pile load test type, operating engineer.
95. Ladder, motorized, operating engineer.
96. Laddervator operating engineer.
97. Lead engineer, foreman engineer, safety engineer, operating engineer.
98. Light, portable generating plant, operating engineer.
99. Locomotive, large, Dinky type, operating engineer.
100. Log skidder operating engineer.
101. Maintenance apprentice, oiler.
102. Maintenance utility man.
103. Maintenance and repair operating engineer of asphalt curbing machine, concrete finishing machine, concrete vibrator, gas buggy, leveling machine, portable generator, power saw, compressor equipment, compressor unit used in connection with cement, paint, insulating, curbing and sand blasting and all similar types.
104. Mechanic.
 - i. Mechanic's helper
 - ii. Registered mechanic's apprentice.
105. Mixer except paving mixer operating engineer.
106. Mixer, concrete small, operating engineer.
107. Motor patrol and grader operating engineer.
108. Mucking machine operating engineer.
109. Mulching equipment operating engineer.
110. Pan operating engineer.
111. Paver, 21E and over, operating engineer.
112. Paver, under 21E, operating engineer.
113. Paver, concrete, operating engineer.
114. Pavement and concrete breaker, superhammer, hoe ram operating engineer.
115. Pavement breaker, small, self-propelled, ride on type, operating engineer.
116. Pavement breaker, truck mounted, operating engineer.
117. Pile driver operating engineer.
118. Pipe bending machine, power, operating engineer.
119. Pitch pump operating engineer.
120. Plaster pump operating engineer.
121. Post hole digger operating engineer.
122. Pumpcrete, unit type, operating engineer.
123. Pumpcrete machine, Squeezecraft and concrete pump, operating engineer.
124. Pump, four inch suction and over including submersible pump, operating engineer.
125. Pump, two inch or less than four inch suction including submersible pump operating engineer.
126. Pump, diesel engine and hydraulic, operating engineer.
127. Road finishing machine, small type, operating engineer.
128. Roadway surface grinder, operating engineer.
129. Rod bending machine, power, operating engineer.
130. Roller, grade fill or stone base, operating engineer.
131. Roller, black top, operating engineer.
132. Scale, power, operating engineer.
133. Scooper, loader and shovel, operating engineer.
134. Scraper operating engineer.
135. Seaman pulverizing mixer operating engineer.
136. Seeding equipment operating engineer.
137. Shoulder widener operating engineer.
138. Shovel operating engineer.
139. Side boom operating engineer.
140. Silo operating engineer.
141. Skimmer machine, boom type, operating engineer.
142. Sprinkler and water pump truck, operating engineer.
143. Squeezecrete operating engineer.
144. Steam jenny, boiler operating engineer.
145. Steel cutting machine operating engineer.

LABOR

146. Stone spreader operating engineer.
147. Straddle carrier operating engineer.
148. Tamping machine, vibrating ride-on, operating engineer.
149. Temporary heating plant operating engineer.
150. Tire repair and maintenance operating engineer.
151. Tractor operating engineer.
152. Tree chopper with boom operating engineer.
153. Trench machine operating engineer.
154. Tug captain operating engineer.
155. Vibrating plant operating engineer.
156. Water and sprinkler truck operating engineer.
157. Welder and repair mechanic operating engineer.
158. Welding machine, gas, diesel, electric converter, single, two or three within 100 feet, operating engineer.
159. Welding system multiple rectifier transformer type, operating engineer.
160. Wellpoint system operating engineer.
161. Winch truck, hoisting, operating engineer.
162. Water operation, operating engineer on all power boats used in conjunction with pipeline, river crossings and construction.
163. Captain, power boat.
164. Tug master, power boat.
165. Maintenance apprentice, deckhand.
166. Apprenticeship operator, oiler.
167. Structural steel, aerial platform used on hoist, operating engineer.
 - i. Assistant engineer, oiler.
 - ii. A-frame operating engineer.
168. Structural steel operating engineer.
 - i. Cherry picker six tons and under.
 - ii. Cherry picker over six tons.
169. Structural steel, compressor, single, operating engineer.
170. Structural steel, compressor, two or three in battery, operating engineer.
171. Structural steel, crane, land or floating with boom, including jib, 140 feet and over aboveground, operating engineer.
172. Structural steel, crane, land or floating with boom, including jib, less than 140 feet aboveground, operating engineer.
173. Structural steel, derrick, land or floating with boom including jib, 140 feet and aboveground, operating engineer.
174. Structural steel, derrick, land or floating with boom including jib, less than 140 feet aboveground, operating engineer.
175. Structural steel, foreman.
176. Structural steel, fork lift operating engineer.
177. Structural steel, generator operating engineer.
178. Structural steel, helicopter operating engineer.
 - i. Pilot, engineer.
 - ii. Co-pilot.
 - iii. Communications engineer.
179. Structural steel, hoist, all types except Chicago boom type, operating engineer.
180. Structural steel, elevator or house car, operating engineer.
181. Structural steel, jack, screw air hydraulic power operated unit or console type but not hand jack or pile load test type, operating engineer.
182. Structural steel lead engineer, foreman engineer, safety engineer.
183. Structural steel, maintenance apprentice, oiler.
184. Structural steel, maintenance utility man.
185. Structural steel, rod bending machine, power, operating engineer.
186. Structural steel, side boom, operating engineer.
187. Structural steel, straddle carrier operating engineer.
188. Structural steel, welding machine, gas or electric converter, single, operating engineer.
189. Structural steel, welding machine, gas or electric converter, two or three in battery multiple welders, operating engineer.
190. Structural steel, welding system multiple, rectifier transformer type, operating engineer.
191. Structural steel, water operation, operating engineer.
 - i. Captain, power boats.

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- ii. Tug master, power boats.
- iii. Maintenance apprentice, deckhand.

12:60-3.5 Classification of tasks for drillers

(a) Drillers for test borings and drillers for groundwater shall be classified in all counties into various tasks in accordance with the prevailing collective bargaining agreements as follows:

1. Driller of test borings, journeyman.
2. Driller of test borings, foreman.
3. Driller of test borings, helper.
4. Driller of groundwater, journeyman.
5. Driller of groundwater, helper.

12:60-3.6 Classification of tasks for dredging operators

(a) Dredging operators shall be classified in all counties into various tasks in accordance with the prevailing collective bargaining agreement as follows:

1. Dipper and clamshell dredge operator.
2. Dipper and clamshell dredge craneman.
3. Dipper and clamshell dredge engineer.
4. Dipper and clamshell dredge maintenance engineer.
5. Dipper and clamshell dredge mate.
6. Dipper and clamshell dredge deckhand.
7. Dipper and clamshell dredge oiler.
8. Dipper and clamshell dredge fireman.
9. Dipper and clamshell dredge welder.
10. Dipper and clamshell dredge welder's helper.
11. Dipper and clamshell dredge scowman.
12. Dipper and clamshell dredge handyman.
13. Dipper and clamshell dredge rodman.
14. Dipper and clamshell dredge boat master.
15. Dipper and clamshell dredge boat captain.
16. Dipper and clamshell dredge tug deckhand.
17. Hydraulic dredge leverman.
18. Hydraulic dredge engineer.
19. Hydraulic dredge maintenance engineer.
20. Hydraulic dredge derrick operator.
21. Hydraulic dredge spider barge operator.
22. Hydraulic dredge chief mate on dredge.
23. Hydraulic dredge mate.
24. Hydraulic dredge deckhand.
25. Hydraulic dredge oiler.
26. Hydraulic dredge fireman.
27. Hydraulic dredge boilerman.
28. Hydraulic dredge carpenter.
29. Hydraulic dredge carpenter's helper.
30. Hydraulic dredge chief welder.
31. Hydraulic dredge welder.
32. Hydraulic dredge welder's helper.
33. Hydraulic dredge blacksmith.
34. Hydraulic dredge blacksmith's helper.
35. Hydraulic dredge electrician.
36. Hydraulic dredge handyman.
37. Hydraulic dredge general fill foreman.
38. Hydraulic dredge shift fill foreman.
39. Hydraulic dredge shoreman.
40. Hydraulic dredge front end loader.
41. Hydraulic dredge dozer operator.
42. Hydraulic dredge rodman.
43. Hydraulic dredge boatmaster.
44. Hydraulic dredge boat captain.
45. Hydraulic dredge tug deckhand.
46. Hydraulic dredge steward.
47. Hydraulic dredge assistant cook.
48. Hydraulic dredge night cook.
49. Hydraulic dredge messman.
50. Hydraulic dredge porter or janitor.
51. Company lead dredgeman.
52. Tugs over 1000 shaft horsepower with master or captain having license endorsed for 200 miles offshore, tug master.
53. Tugs over 1000 shaft horsepower with master or captain having license endorsed for 200 miles offshore, tug captain.

ADOPTIONS

LABOR

54. Tugs over 1000 shaft horsepower with master or captain having license endorsed for 200 miles offshore, tug chief engineer.

55. Tugs over 1000 shaft horsepower with master or captain having license endorsed for 200 miles offshore, tug engineer.

56. Tugs over 1000 shaft horsepower with master or captain having license endorsed for 200 miles offshore, tug deckhand.

57. Tugs over 1000 shaft horsepower without master or captain having license endorsed for 200 miles offshore, tug master.

58. Tugs over 1000 shaft horsepower without master or captain having license endorsed for 200 miles offshore, tug captain.

59. Tugs over 1000 shaft horsepower without master or captain having license endorsed for 200 miles offshore, tug chief engineer.

60. Tugs over 1000 shaft horsepower without master or captain having license endorsed for 200 miles offshore, tug engineer.

61. Tugs over 1000 shaft horsepower without master or captain having license endorsed for 200 miles offshore, tug deckhand.

12:60-3.7 Classification of tasks for heavy and general laborers

(a) Heavy and general laborers shall be classified in all counties into various tasks in accordance with the prevailing collective bargaining agreement as follows:

1. Blaster.
2. General foreman.
3. Finisher, rammer, paver, gunite nozzle man, stonecutter, form setter and drill foreman.
4. Timberman, pipe foreman, laborer foreman, grade foreman, wagon drill operator, and drill master.
5. Sewer pipe laborer, laser man, conduit and duct line layer, jack hammer laborer, pavement breaker, power buggy laborer, concrete cutter, asphalt cutter, sheet hammer laborer, tree cutter operator, sandblasting laborer, cutting laborer, burning and other power tools laborer.
6. Wagon drill operator helper, drill master helper, powder carrier and magazine tender, signal man.
7. Common laborer, landscape laborer, railroad track laborer, flagman, traffic director, salamander laborer, tender, pitman, dumpman, waterproofing laborer, raker, tamper on cold patch work, wrapper and coater of all pipe.
8. Finisher foreman, concrete foreman.
9. Toxic or hazardous waste laborer.
10. Free air tunnel walking boss, superintendent.
11. Free air tunnel heading foreman, shaft foreman, rod foreman, electrician foreman, rigging foreman.
12. Free air tunnel iron foreman, caulking foreman, form foreman, cement finishing foreman, concrete foreman, track foreman, cleanup foreman.
13. Free air tunnel blaster.
14. Free air tunnel top laborer foreman.
15. Free air tunnel skilled man including miner, drill runner, iron man, conveyor man, maintenance man, safety miner, rigger, block layer, cement finisher, rod man, caulker, powder carrier, any other skilled man.
16. Free air tunnel semi-skilled man including miner's helper, check tender, track man, nipper, brake man, derail man, cable man, hose man, grout man, gravel man, form man, bell or signal man, form worker and mover, concrete worker, shaft man, tunnel laborer, caulkers' helper, any other semi-skilled man.
17. Free air tunnel any other semi-skilled man including powder watchman, change house attendant, top laborer.

12:60-3.8 Classification of tasks for asphalt laborers

(a) Asphalt laborers shall be classified in all counties, except as otherwise noted below, into various tasks in accordance with the prevailing collective bargaining agreements as follows:

1. Head raker.
2. Raker, screed man, shop steward.
3. Tamper, smoother, kettelman, painter, roller boy, shoveler.
4. Trainee. Applies only to Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem counties.
5. Plant, scale mixer and burner man.
6. Plant, feeder and dust man.

12:60-3.9 Classification of tasks for truck drivers

(a) Truck drivers shall be classified in Atlantic and Cape May counties into various tasks in accordance with the prevailing collective bargaining agreement as follows:

1. Teamster, chauffeur.
2. Driver on tractor, trailer, 10 wheel flat or dump truck.
3. Driver in euclid, 10 wheel tractor trailer or tractor trailer truck, low bed or pole trailer.

(b) Truck drivers shall be classified in Bergen, Hudson, and Passaic counties into various tasks in accordance with the prevailing collective bargaining agreement as follows:

1. Helper on asphalt distributor, pick-up and dump truck driver, winch straight truck driver, water or fuel truck driver.
2. Straight three-axle material driver.
3. Tractor trailer truck driver.
4. Euclid type vehicle, except self loading driver.
5. Winch trailer driver.
6. Mechanic helper.
7. Truck foreman.

(c) Truck drivers shall be classified in Burlington, Camden, Cumberland, Gloucester and Salem counties into various tasks in accordance with the prevailing collective bargaining agreement as follows:

1. Tractor, tractor trailer, winch tractor trailer, winch straight truck, euclid trailer driver not self loading, fuel truck, asphalt distributor driver.
2. Straight truck, dump, water, transit, mix, pick-up, and asphalt distributor driver.
3. Truck towing driver.
4. Mechanic.
5. Straight truck helper, mechanic's helper.

(d) Truck drivers shall be classified in Essex, Morris, Sussex, Union and Warren counties into various tasks in accordance with the prevailing collective bargaining agreement as follows:

1. Helper on asphalt distributor, pick-up and dump truck driver, winch straight truck driver, water and fuel truck driver.
2. Straight three-axle material driver.
3. Tractor trailer truck driver.
4. Euclid type vehicle except self loading driver.
5. Winch trailer driver.
6. Mechanic helper.
7. Truck foreman.

(e) Truck drivers shall be classified in Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset counties into various tasks in accordance with the prevailing collective bargaining agreement as follows:

1. Helper on asphalt distributor, pick-up and dump truck driver, winch straight truck driver, water and fuel truck driver.
2. Straight three-axle material driver.
3. Tractor trailer truck driver.
4. Euclid type vehicles except self loading driver.
5. Winch trailer driver.
6. Mechanic helper.
7. Truck foreman.

SUBCHAPTER 4. CRITERIA FOR ESTABLISHMENT OF CRAFTS, TRADES OR CLASSES OF WORKMEN

12:60-4.1 Scope of subchapter

This subchapter establishes the criteria to be used to classify a craft, trade or class of workmen.

12:60-4.2 Criteria for establishment

(a) The criteria used to establish a craft, trade or class of workmen shall include:

1. Work history and industry practice;
2. Training and skills;
3. Nature of the specific work in issue;
4. Craft union collective bargaining agreements and craft recognition; and
5. Governmental regulation and recognition.

LABOR

ADOPTIONS

(b) In establishing a craft, trade or class of workmen, the Department shall consider any relevant information, documentation, or argument presented by an interested party and submitted to:

New Jersey Department of Labor
Division of Workplace Standards
Office of Wage and Hour Compliance
Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey

SUBCHAPTER 5. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:60-5.1 Documents referred to by reference

The full title and edition of each of the standards and publications referred to in this chapter are as follows:

N.J.S.A. 34:11-56.25 et seq., New Jersey Prevailing Wage Act.

12:60-5.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
Office of Wage and Hour Compliance
Labor and Industry Building
John Fitch Plaza
Trenton, New Jersey

12:60-5.3 Availability of documents from issuing organization

Copies of the referred to standards and publications in this chapter may be obtained from the organization listed below. The abbreviations preceding these standards and publications have the following meaning, and is the organization issuing the standards and publications listed in N.J.A.C. 12:60-5.1.

N.J.S.A. New Jersey Statutes Annotated
Copies available from:
Office of Wage and Hour Compliance
New Jersey Department of Labor
CN 389
Trenton, New Jersey 08625-0389

LAW AND PUBLIC SAFETY

NEW JERSEY RACING COMMISSION

(a)

Thoroughbred Rule

Trifecta

Adopted Amendment: N.J.A.C. 13:70-29.53

Proposed: December 21, 1987 at 19 N.J.R. 2385(a).

Adopted: February 18, 1988 by New Jersey Racing Commission,
Bruce H. Garland, Executive Director.

Filed: February 29, 1988 as R.1988 d.132, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: March 21, 1988.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:70-29.53 Trifecta

(a) (No change.)

(b) Trifecta tickets shall be sold in not less than \$2.00 denominations and only from machines capable of issuing three numbers. Nothing in this section shall preclude any permit-holders from the sale of combination trifecta tickets in the amount of \$6.00.

(CITE 20 N.J.R. 670)

(c) Races in which trifecta pools shall be conducted shall be approved by the Commission and shall be clearly designated in the program.

(d)-(g) (No change.)

(h) Where a field in a trifecta race is less than seven at wagering time, said race will be run as an exacta. A late scratch after wagering starts will not affect the trifecta.

(i) (No change.)

(b)

Harness Rule

Trifecta

Adopted Amendment: N.J.A.C. 13:71-27.50.

Proposed: December 21, 1987 at 19 N.J.R. 2385(b).

Adopted: February 18, 1988 by New Jersey Racing Commission,
Bruce H. Garland, Executive Director.

Filed: February 29, 1988 as R.1988 d.133, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: March 21, 1988.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-27.50 Trifecta

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

(h) Where a field in a trifecta race is less than seven at wagering time, said race will be run as an exacta. A late scratch after wagering starts will not affect the trifecta.

(i) (No change.)

TRANSPORTATION

TRANSPORTATION OPERATIONS

(c)

Speed Limits

Route N.J. 23 in Passaic County

Adopted Amendment: N.J.A.C. 16:28-1.25

Proposed: January 4, 1988 at 20 N.J.R. 45(a)

Adopted: February 19, 1988 by John F. Dunn, Jr., Assistant
Chief Engineer, Traffic and Local Road Design, Department
of Transportation.

Filed: February 25, 1988 as R.1988 d.125, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: March 21, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this section shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-vii. (No change.)

viii. Zone eight: 55 mph in Wayne Township, Passaic County between the Route U.S. 46-Route N.J. 23-Route I-80 interchange (Singac Brook) and 3,170 feet north of Packanack Lake Road (at U-Turn) (milepost 5.62 to 8.9); thence

ix.-x. (No change.)

2. For northbound traffic:

ADOPTIONS

- i.-iii. (No change.)
- iv. 40 mph in Wayne Township, Passaic County (along Route N.J. 23 Service Road) between 3,170 feet north of Packanack Lake Road (at U-turn) and Ratzer Road; thence
- v. 40 mph in Wayne Township, Passaic County between 3,170 feet north of Packanack Lake Road (at U-Turn) and the Black Oak Ridge Road Connection (at traffic signal) (milepost 8.9 to 9.59).
- 3. For southbound traffic:
 - i.-iv. (No change.)
 - v. 40 mph between Black Oak Ridge Road Connection (at traffic signal) and 700 feet south of Black Oak Ridge Road (milepost 9.59 to 9.30); thence
 - vi. 55 mph between 700 feet south of Black Oak Ridge Road and 3,170 feet north of Packanack Lake Road (at U-turn) (milepost 9.30 to 8.90).
- 4. For both directions of traffic:
 - i.-xiv. (No change.)
 - xv. 55 mph between Black Oak Ridge Road Connection (at traffic signal) and the Pompton River (Wayne Township-Pequannock Township line) (milepost 9.59 to 9.63).

(a)

Speed Limits

Route N.J. 94 in Sussex County

Adopted Amendment: N.J.A.C. 16:28-1.79

Proposed: January 19, 1988 at 20 N.J.R. 177(b).

Adopted: February 19, 1988, by John F. Dunn, Jr. Assistant

Chief Engineer, Traffic and Local Road Design, Department of Transportation.

Filed: February 25, 1988 as R.1988 d.123, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: March 21, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.79 Route 94

(a) The rate of speed designated for the certain parts of State highway Route 94 described in this subsection shall be established and adopted as the maximum legal rate of speed thereat:

- 1. For both directions of traffic:
 - i.-xii. (No change.)
 - xiii. In Sussex County:
 - (1)-(2) (No change.)
 - (3) Hardyston Township:
 - (A)-(B) (No change.)
 - (C) 45 miles per hour between the Hamburg Borough-Hardyston Township line and 2,600 feet west of Old Coach Road (mileposts 36.10 to 36.87); thence
 - (D) 40 miles per hour between 2,600 feet west of Old Coach Road and the Hardyston Township-Vernon Township line (mileposts 36.87 to 37.22); thence
 - (4) Hamburg Borough:
 - (A) 35 miles per hour between the southernmost Hardyston Township-Hamburg Borough Corporate line and the northernmost Hamburg Borough-Hardyston Township Corporate line (mileposts 35.23 to 36.10); thence
 - (B) and (C) (No change in text.)
 - (5) Vernon Township:
 - (A) 40 miles per hour between Hardyston Township-Vernon Township line and Old Rudetown Road (mileposts 37.22 to 37.95); thence
 - (B) 35 miles per hour between Old Rudetown Road and 900 feet west of Rudetown Road (Route 517) (mileposts 37.95 to 38.35); thence
 - (C) 45 miles per hour between 900 feet west of Rudetown Road (Route 517) and Sand Hill Road (mileposts 38.35 to 40.07); thence

TRANSPORTATION

(D) 40 miles per hour between Sand Hill Road and 400 feet west of Giveans Road (mileposts 40.07 to 41.20); thence

(E) 35 miles per hour between 400 feet west of Giveans Road and Vernon Crossing Road (County Road 644) (mileposts 41.20 to 41.80); thence

(F). (No change in text.)

(G). (No change in text.)

2.-3. (No change.)

(b)

Restricted Parking and Stopping

Routes N.J. 35 in Monmouth County; N.J. 57 in

Warren County; and N.J. 71 in Monmouth County

Adopted Amendments: N.J.A.C. 16:28A-1.25, 1.36 and 1.38

Proposed: January 19, 1988 at 20 N.J.R. 178(a).

Adopted: February 23, 1988, by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design, Department of Transportation.

Filed: February 25, 1988 as R.1988 d.126, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-139.

Effective Date: March 21, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.25 Route 35

(a) The certain parts of State highway Route 35 described in this subsection are designated and established as "no stopping or standing" zones.

1. (No change.)

2. No stopping or standing in the Borough of Red Bank, Monmouth County.

i. Along the northbound (easterly) side:

(1) Maple Avenue:

(A) From the Little Silver-Red Bank Borough corporate line to Bergen Place.

(B) From White Street to West Front Street.

(2) West Front Street—Riverside Avenue:

(A) From Maple Avenue to a point 600 feet northerly therefrom.

(3) Riverside Avenue:

(A) From a point 252 feet north of Allen Place to the Middletown Township-Red Bank Borough corporate line.

ii. Along the northbound (westerly) side:

(1) West Front Street—Riverside Avenue:

(A) From Maple Avenue to Pearl Street

iii. Along the southbound (westerly) side:

(1) Riverside Avenue:

(A) From the Middletown Township-Red Bank corporate line to Pearl Street.

(2) Maple Avenue:

(A) From Bergen Place to the Little Silver-Red Bank Borough corporate line.

iv. Along both sides:

1. Pearl Street-Water Street:

(A) From Riverside Avenue to Maple Avenue.

3.-21. (No change.)

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

(e) The certain parts of State highway Route 35 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. (No change.)

TRANSPORTATION

ADOPTIONS

2. In the Borough of Red Bank, Monmouth County:

i. Two hour time limit parking 8:00 A.M. to 6:00 P.M. daily.

(1) Along both sides of Maple Avenue from Bergen Place to White Street.

(2) Along the northbound (westerly) side of Maple Avenue from Water Street to West Front Street.

(3) Along the northbound (easterly) side of Riverside Avenue from a point 600 feet north of Maple Avenue to a point 252 feet north of Allen Place.

16:28A-1.36 Route 57

(a) The certain parts of State highway Route 57 described in this subsection are designated and established as "no stopping or standing" zones.

1.-2. (No change.)

3. No stopping or standing in Washington Borough, Warren County:

i. Along the westbound side:

(1) From a point 250 feet east of the center line of Route N.J. 31 to the center line of Jackson Street.

(2) From Belvidere Avenue to a point 55 feet easterly therefrom.

(3) From the Washington Borough-Washington Township corporate line (just east of Brass Castle Road) to a point 350 feet east of Terrace Street.

ii. Along the eastbound side:

(1) From the Washington Borough-Washington Township corporate line (just east of Brass Castle Road) to a point 350 feet east of Terrace Street.

(2) From the center line of Vannatta Street to a point 250 east of the center line of Route N.J. 31;

(3) From a point 200 feet east of the prolongation of the easterly curb line of Prosper Way and extending to a point 850 feet easterly therefrom.

4.-5. (No change.)

(b) (No change.)

16:28A-1.38 Route 71

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

(d) The certain parts of State highway Route 71 described in this subsection are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Loading Zones:

1. No parking—Loading Zone in the City of Asbury Park, Monmouth County:

i. Along the easterly (northbound) side:

(1) Main Street—Beginning at a point 35 feet north of the northerly curb line of Lake Avenue and the extending 60 feet northerly therefrom.

(a)

Restricted Parking and Stopping Route U.S. 206 in Somerset County

Adopted Amendment: N.J.A.C. 16:28A-1.57

Proposed: January 19, 1988 at 20 N.J.R. 179(a).

Adopted: February 19, 1988, by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design, Department of Transportation.

Filed: February 25, 1988 as R.1988 d.124, **without change**.

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

Effective Date: March 21, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no stopping or standing" zones.

1.-10. (No change.)

11. No stopping or standing in Montgomery Township, Somerset County:

i. Along both sides:

(1) For the entire length of Montgomery Township including all ramps and connections.

12.-25. (No change.)

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

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund Interfund Transfers

Adopted Amendment: N.J.A.C. 17:3-7.1

Proposed: January 4, 1988 at 20 N.J.R. 47(a).

Adopted: February 16, 1988 by Anthony Ferrazza, Secretary, the Board of Trustees, Teachers' Pension and Annuity Fund.

Filed: February 25, 1988 as R.1988 d.122, **without change**.

Authority: N.J.S.A. 18A:66-56.

Effective Date: March 21, 1988.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Response:

No comments received.

Full text of the adoption follows.

17:3-7.1 Interfund transfers; State-administered retirement systems

(a) The system will transfer membership to any State-administered retirement system as follows:

1.-3. (No change.)

4. The member shall enjoy the same credits established in the present system, subject to the provisions of the new system.

5. This procedure would not apply where a member has credit in the present system for service after the date of enrollment in the new system or where a person has ceased to be a member of the present system before establishing sufficient service credit to be eligible for deferred retirement.

6. (No change.)

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

(d) A member who makes a timely transfer in accordance with N.J.S.A. 43:2-1 et seq. will contribute to the new system at a rate based on his or her age at the time of enrollment in the present system and no refund of pension contributions will be made except for those contributions made by veterans covering service prior to January 1, 1955, where applicable. The contribution rate for a member granted a deferred retirement in the present system who makes a timely transfer at the time of enrollment in the new system will be determined in accordance with the rules concerning enrollment after deferred retirement in the new system. A member who does not make a timely transfer will contribute to the new system at a rate based on his or her age at the time of enrollment in the new system.

(a)

STATE PLANNING COMMISSION**Municipal and County Cross-Acceptance of State Development and Redevelopment Plan****Adopted New Rules: N.J.A.C. 17:32**

Proposed: November 2, 1987 at 19 N.J.R. 1971(b).

Adopted: January 30, 1988 by State Planning Commission, James G. Gilbert, Chairman.

Filed: February 25, 1988 as R.1988 d.121 **with substantive and technical changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:18A-203.

Effective Date: March 21, 1988.

Expiration Date: March 21, 1993.

Notice of the proposed new rules regarding municipal and county cross-acceptance of the State Development and Redevelopment Plan, was published on November 2, 1987 in the New Jersey Register at 19 N.J.R. 1971. In addition, a notice of the proposed new rules, together with a copy of the proposed new rules attached thereto, was mailed to each municipality and county in the State of New Jersey. Both notices invited written comments to be submitted on or before December 2, 1987. The comment period was subsequently extended until December 18, 1987.

Eight written comments were received and are available for inspection at the offices of the State Planning Commission at 150 West State Street in Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:**Subchapter 1. General Provisions**

COMMENT: One county comment expressed concern that "vertically integrated" plans indicated that county and local plans would be subject to recommendations from regional and state plans. Another county comment expressed concern that the state planning process recognize planners at the local and county level and planners at the state level on an equal basis, and that the process be allowed to work in either direction.

RESPONSE: "Vertically integrated" means that each level of the plan should reflect all other levels of plans and should be compatible. State and regional plans should not be construed as superior to county and local plans. The vertical integration is intended to operate in either direction—from local to county to regional to state and from state to regional to county to local.

COMMENT: Several commenters stated that public participation should be included, under the section of the rule on "Purpose and Authority," as a specific purpose of the rule. One commenter also suggested that municipal government be included as an "early and direct participant in the review and revision" of the Preliminary Plan, and be listed as a key participant throughout the rule.

RESPONSE: The Commission agrees that each of these are important participants in the state planning process, and has amended N.J.A.C. 17:32-1.2(a)4 to include both municipal and public participation as a specific purpose of the rule along with county participation, as originally written.

COMMENT: One commenter suggested that a definition for "days" be included in the rule, and that it should mean "calendar days" as is used by the Municipal Land Use Law and the Procedural Rules of the Council on Affordable Housing.

RESPONSE: The Commission agrees that this is a good suggestion and has incorporated it into the definitions section of the rule with the added note that in some places throughout the rule days may be stated to mean otherwise.

COMMENT: One commenter stated that the definitions of "goal," "objective," "strategy," "policy," and "standard" are confusing, and recommended that an example for each be included in the rule.

RESPONSE: The definitions which appear in the rule are purposely of a general nature because these definitions will remain in effect over the years as each three year revision of the State Development and Redevelopment Plan is prepared. The examples which the commenter proposed will be found in the plan document itself.

COMMENT: Several commenters, although not stated specifically, seemed to be confused over the definition of "compatibility."

RESPONSE: The definition of "compatibility" was missing a few words. The definition should read: "shall mean that a policy or standard

in a local, county or regional plan or regulation is equally effective as the policy or standard contained in the Preliminary Plan in achieving the pertinent State goal, objective or strategy set forth in the Preliminary State Development Plan. The rule has been amended to reflect this correction.

COMMENT: Two commenters suggested that the definition of "county" be modified to specify that where there is both a county executive and a freeholder board, the county executive should have the responsibility for carrying out the provisions of the State Planning Act. They also stated that other sections of the rule be amended to reflect this intention.

RESPONSE: The definition of county as originally written states that "the county governing body, or executive, as appropriate," would have responsibility for carrying out the requirements of the rule. The intention of the Commission is to allow each county the flexibility to decide how they intend to carry out the state planning process. However other sections of the rule will be amended to reflect the possibility that the county executive may be the appropriate party to take responsibility for the state planning process.

COMMENT: Several commenters raised questions about what an "implementation map" would be and who would be responsible for preparing it.

RESPONSE: Confusion between the "implementation map" and the "plan map," as originally defined in the rule proposal will be eliminated by deleting the term "plan map" and renaming the "implementation map" to "preliminary plan map," which indicates the preliminary nature of the map being prepared. The newly named "preliminary map" will be prepared by the State Planning Commission and the Office of State Planning in consultation with the counties. Once a generally correct map is prepared it will be the subject of cross-acceptance discussions and will be subject to change based upon those discussions.

COMMENT: Several commenters expressed concern over the amount of time available to complete the cross-acceptance process.

RESPONSE: The definition of "Period of Cross-Acceptance" explains the space of time which will be considered part of the cross-acceptance process, but does not state what must be accomplished during that timeframe. The misconception appears to be that all of the work of cross-acceptance must be completed within a six month timeframe. This is not the case. The major item which must be completed within six months is the county report. The continuing discussions which may occur after the county report is submitted take an additional six to nine months and is part of the "period of cross-acceptance." The definition of the "Period of Cross-Acceptance" should be amended to state that the time extends from "the date of release" of the Preliminary Plan, not the date of receipt. Additionally, the commenters are referred to the definition of cross-acceptance which states that it includes both the comparison of plans which result in a county report as well as the discussions which continue after the report is filed.

Subchapter 2. Preparation of Preliminary State Development and Redevelopment Plan

COMMENT: One commenter suggested that the title of N.J.A.C. 17:32-2.1, "Functional State Agency Review of a Draft Preliminary State Development and Redevelopment Plan," should be consistent with the text of the subsection which refers to the Draft Preliminary Plan.

RESPONSE: The commission agrees that this is a good suggestion and has amended the title to read: "the Draft Preliminary . . . Plan."

COMMENT: Several commenters pointed out that N.J.A.C. 17:32-2.1(a) only authorizes the Office of State Planning to carry out the decisions of the State Planning Commission, but does not direct the Office to perform a specific duty.

RESPONSE: Although the Commission intended its authorization to be mandatory, they appreciate the concerns of the commenters and have changed the section to read: "the State Planning Commission shall [authorize] direct the Office of State Planning to . . ."

COMMENT: Several commenters requested that the state agency comments filed with the Office of State Planning in response to the Draft Preliminary State Development and Redevelopment Plan be immediately available to the public.

RESPONSE: The Commission will make copies of comments available upon request as soon as is practicably possible.

COMMENT: Several commenters pointed out that the timetable for functional state agency review and public comments have different starting points. The former begins with "receipt" of the Draft Preliminary State Development and Redevelopment Plan, while the latter begins with the "date of release" of the Draft Preliminary Plan.

RESPONSE: The Commission has amended the rule to consistently refer to the "date of release." All previous references to "date of receipt"

have been changed to "date of release." The official "date of release" will be established when the Commission passes a resolution to authorize release of the Draft Preliminary State Development and Redevelopment Plan and the Preliminary State Development and Redevelopment Plan.

COMMENT: Several commenters stated that the rule should state clearly that "supporting and background materials" will be available to the public. One commenter suggested that all maps, appendices, and other material included by reference, as per the definition of the State Development and Redevelopment Plan, be made available to the public.

RESPONSE: The Commission has amended N.J.A.C. 17:32-2.2(a) to make it clear that "supporting and background materials" will be made available to the public along with the Draft Preliminary State Development and Redevelopment Plan. Any additional information or materials which would not otherwise be provided to the state agencies for their review will be available upon request, depending upon the nature of the materials and whether or not they are easily reproduced.

COMMENT: One commenter suggested that copies of the Draft Preliminary State Development and Redevelopment Plan be available from the Office of State Planning for 60 days, as opposed to 45 days.

RESPONSE: Copies of the Draft Preliminary Plan will be available from the Office of State Planning for 45 days, however, additional copies will be available for inspection and copying at other locations, such as State depository libraries, and county administrative offices, after the 45 day period.

COMMENT: One commenter suggested that the rule state where, in addition to the Office of State Planning, copies of the Draft Preliminary State Development and Redevelopment Plan will be available.

RESPONSE: The Commission will announce where copies of the various documents will be available, however, it is not appropriate to attempt to provide a list of possible locations within this rule. The rule will govern the state planning process for the first State Development and Redevelopment Plan and subsequent plans which will be prepared every three years.

COMMENT: Several commenters questioned the purpose of the three public presentations which will coincide with the release of the Draft Preliminary State Development and Redevelopment Plan.

RESPONSE: The primary purpose of the presentations will be to present and explain the Draft Preliminary Plan to members of the public and officials who cannot be present at a Commission meeting when the plan is discussed. Public comments may be taken at these sessions, however, it is anticipated that these public presentations will be most useful as a forum to ask questions and receive clarifications. As noted in N.J.A.C. 17:32-2.2(c), written comments from the public will be taken for 60 days after the release of the Draft Preliminary Plan.

COMMENT: One commenter pointed out that the reference in N.J.A.C. 17:32-2.2(c) was incorrect.

RESPONSE: The Commission has amended this section to correct the reference, and it now reads: "in accordance with N.J.A.C. 17:32-2.2(a)."

COMMENT: One commenter suggested extending the time period for public comment following the release of the Draft Preliminary Plan to 75 days.

RESPONSE: The Commission feels that 60 days is sufficient time for public comment on the Draft Preliminary State Development and Redevelopment Plan. Additional opportunities for public comment will follow when the Preliminary State Development and Redevelopment Plan is released, and the Commission will accept written public comments throughout the state planning process.

COMMENT: Several commenters suggested that the rule specifically state that sufficient copies of the Preliminary State Development and Redevelopment Plan will be available to the public at the same time they are available to counties and municipalities.

RESPONSE: The Commission will make the Preliminary Plan available to interested persons upon request. In order to make this clear, N.J.A.C. 17:32-2.3(b) has been amended to read: "... authorize its transmittal to each county and municipality and to other interested persons and organizations."

COMMENT: One commenter suggested that upon release of the Preliminary State Development and Redevelopment Plan public comments be taken again prior to beginning the cross-acceptance process.

RESPONSE: The Commission must be governed not only by the rules which they establish herein, but also by their enabling legislation, the "State Planning Act." The Act specifically states that the six month time period during which counties must prepare reports will begin with the release of the Preliminary State Development and Redevelopment Plan. In addition, the commission feels that ample opportunity for public comment will be provided throughout the state planning process.

COMMENT: Several commenters stated that the term "due consideration" should be clarified to ensure that it includes revisions to the Draft Preliminary State Development and Redevelopment Plan.

RESPONSE: The Commission feels that "due consideration" clearly states that if revisions are necessary, they will take the appropriate action.

COMMENT: One commenter stated that the rule should include a paragraph which states that the Preliminary Plan will be available until such time as it is replaced by a revised plan.

RESPONSE: The Commission feels that such a paragraph is unnecessary because no limitations on the availability of the Preliminary Plan are included in the rule.

Subchapter 3. Procedures for Conducting Cross-Acceptance

COMMENT: Comments from several counties pointed out the need to receive the Cross-Acceptance Manual, which is to be prepared by the Office of State Planning, as soon as possible. One county suggested the manual be made available at the same time as the Draft Preliminary State Development and Redevelopment Plan is sent to the state agencies for review and comment.

RESPONSE: The Cross-Acceptance Manual will be sent to each county and municipality as soon as it is completed. The Commission anticipates the Manual will be available prior to the release of the Preliminary Plan.

COMMENT: Two commenters suggested that the timing for the financial assistance application, coinciding with the delivery of the Preliminary Plan would be too late to enable sufficient time to complete it.

RESPONSE: The Commission does not believe there will be a problem with the completion of a financial assistance application because it will be a simple form. The financial assistance form will not be competitively reviewed, and the assistance itself will be tied to completion of the county cross-acceptance report.

COMMENT: Several counties expressed concern with the 45 day time period in which to complete a notice of participation and a proposed work plan.

RESPONSE: The Office of State Planning will work closely with each of the counties to assist them in completing the requirements of the cross-acceptance process. The timeframe which has been established by this rule is tied to the State Planning Act's requirement that a county cross-acceptance report be completed within six months of release of the Preliminary Plan. The 45 day time frame is also specified within the State Planning Act. "Each county planning board shall ... unless it shall notify the Commission in writing within 45 days of the receipt of the preliminary plan that it waives this responsibility, ..." (N.J.S.A. 52:18A-202(b)). Receipt by the counties of the Cross-Acceptance Manual at an early stage should help alleviate the concerns which have been expressed.

COMMENT: One county asked whether a number of public meetings would be specified and who would sponsor them.

RESPONSE: The Commission will require at least two public meetings, the public informational meeting at the beginning of cross-acceptance and the public hearing at which the county final report is considered for transmittal to the State Planning Commission. In addition the work program which the county submits to the Office of State Planning must contain a plan for public participation in the cross-acceptance process. The county will have flexibility in designing a public participation program and may call upon the Office of State Planning for assistance.

COMMENT: One commenter questioned what criteria would be used by the State Planning Commission to choose a "negotiating entity" should a county decide not to participate in the state planning process. They also asked whether any appeal to the Commission's choice of a negotiating entity would be available to a municipality which might be dissatisfied with the designation.

RESPONSE: The Commission will designate a negotiating entity which is suited to carry out the provisions of the state planning process. The State Planning Act states that in the eventuality that a county chooses not to participate, the Commission "shall designate an appropriate entity, or itself, to assume this responsibility." This rule further states in N.J.A.C. 17:32-3.3(b)1 that the Commission "shall accept the recommendation of the county and designate the recommended entity, unless the Commission finds that the recommended designation would interfere with the practical application of the spirit and intent of the State Planning Act."

An appeal by a municipality of a negotiating entity would be inappropriate because the entity, whether a county or not, will be following the state planning process as set forth in this rule and in the Preliminary

State Development and Redevelopment Plan. Should a municipality disagree with the final report of a county, or otherwise designated negotiating entity, the municipality may file its own cross-acceptance report as provided for in N.J.A.C. 17:32-3.12.

COMMENT: Several commenters stated that the details of the county work program should be specified by the State Planning Commission or the Office of State Planning.

RESPONSE: The Cross-Acceptance Manual will specify what must be included in the county work program.

COMMENT: Several commenters questioned the meaning of "officially approved" application for a cross-acceptance grant-in-aid in N.J.A.C. 17:32-3.4(b).

RESPONSE: The "official approval" in this section refers to approval by the designated negotiating entity. If a county chooses not to participate in the state planning process, the designated negotiating entity will be eligible for the financial assistance which would otherwise be available to the county.

COMMENT: One county questioned the meaning of "official representation" by a municipality regarding its participation in the cross-acceptance process.

RESPONSE: "Official representation" means that the person or persons participating in cross-acceptance discussions or other aspects of the state planning process on behalf of a municipality, as defined in this rule (see definition of "municipality" at N.J.A.C. 17:32-1.4), be recognized by that body as their representative.

COMMENT: Several commenters stated that N.J.A.C. 17:32-3.5(b), which explains that the Commission will "take whatever steps are appropriate to carry out the provisions of this Rule and the Act," was inappropriate language and was unnecessarily threatening. It was suggested that either the steps to be taken be specified or the paragraph be deleted.

RESPONSE: The Commission's intention is not to appear to threaten any party regarding their participation in the state planning process. It is not feasible at this time to know exactly what action or response the Commission may take, thus any listing of possible actions would almost invariably be incomplete and therefore misleading. Based upon the stated situation and the concerns raised by commenters, N.J.A.C. 17:32-3.5(b) has been deleted. The commenters are referred to N.J.A.C. 17:32-3.12(b) which states that if a municipality neither participates in the cross-acceptance process nor files a separate report, they will be deemed to have concurred and agreed in the final report and waiver their right to file a separate report. Additionally, the Commission believes it is unnecessary to make a statement dealing with the steps it may take, since its authority to take appropriate action is implicit in the State Planning Act.

COMMENT: Two commenters suggested that provision should be made for public comments at the public informational meetings to be held in each county following the release of the Preliminary State Development and Redevelopment Plan.

RESPONSE: The Commission fully intends for the public informational meetings to include the opportunity for public comment. A phrase has been added to N.J.A.C. 17:32-3.6 to read: "... and shall provide the opportunity for the public to ask questions and make comments."

COMMENT: Several commenters questioned when, exactly, the Office of State Planning would be providing technical assistance to each county.

RESPONSE: Advice and assistance to county and local planning agencies, as referred to in the State Planning Act, will be provided upon request. Other forms of technical assistance specifically related to the cross-acceptance discussions and other aspects of the state planning process will also be available upon request following the release of the Preliminary State Development and Redevelopment Plan.

COMMENT: Several commenters requested clarification regarding the preparation and availability of a map or maps which would accompany either the Draft Preliminary or Preliminary State Development and Redevelopment Plan or would be prepared as "factor maps" to the plan map.

RESPONSE: The Draft Preliminary and the Preliminary State Development and Redevelopment Plan will include a preliminary plan map, as defined in the amended definitions section of this rule. Other maps which may be useful to counties and municipalities during the state planning process may be prepared and made available.

COMMENT: Several commenters suggested strengthening the language of N.J.A.C. 17:32-3.8 dealing with public participation in the cross-acceptance process.

RESPONSE: The Commission believes that public participation is very important in the state planning process, however, they further believe that it has been sufficiently provided for throughout the rule. The work programs to be prepared by each county must include provision for public participation, and the Office of State Planning will assist each county in this effort if it is appropriate.

COMMENT: Several commenters stated that the language of N.J.A.C. 17:32-3.9 was unclear as to whether or not the State Planning Commission would be providing a draft map for review and revision by the negotiating entities, and further recommended that the Commission would be the best entity to prepare the initial map which would then be reviewed and revised.

RESPONSE: The Commission will prepare a preliminary plan map which will accompany the Draft Preliminary Plan in draft form, and ultimately will accompany the Preliminary State Development and Redevelopment Plan and will be subject to review and revision as a result of cross-acceptance discussions and the continuing state planning process.

COMMENT: One county commenter stated that discussions with the staff of the Office of State Planning had led him to believe that an unreasonable amount of detail would not be required during the comparison of plans, and that the Cross-Acceptance Manual would provide for this.

RESPONSE: The Cross-Acceptance Manual will specify the level of detail necessary in the comparison of plans. The Commission has endeavored to make the process as simple as possible while maintaining a comprehensive approach. As stated previously, technical assistance and advice will be available from the Office of State Planning.

COMMENT: One county asked for more specificity as to the format and methodology of the County Final Report.

RESPONSE: An outline and a methodology to be utilized in preparing the County Final Report will be included in the Cross-Acceptance Manual.

COMMENT: Two commenters pointed out that the County Report is referred to inconsistently as both a "final" report and a "formal" report.

RESPONSE: The rules have been amended to refer consistently to a "final" report.

COMMENT: Two commenters questioned what action the Commission would take if a county refused to transmit a final report after agreeing to participate in the process.

RESPONSE: The Commission has considered this possibility and should such an eventuality occur, it would initially engage in discussions to determine the reason for the refusal to transmit the document and seek to resolve the problem. The Commission would, of course, expect a county to take whatever action is necessary to carry out its obligation. Additionally, any financial assistance to the county would be withheld until a Final Report had been officially transmitted.

COMMENT: Several commenters questioned the availability of public access to the County Final Reports, Municipal Reports and the Office of State Planning Report on Cross-Acceptance.

RESPONSE: Upon official transmittal of each of these reports to the State Planning Commission, they will become part of the public record and be available upon request.

COMMENT: One county requested that the optional municipal reports be required to be filed with both the State Planning Commission and the appropriate county.

RESPONSE: The Commission agrees that this would be a good course of action and has amended N.J.A.C. 17:32-3.12 to add a sentence which reads: "The individual municipal report shall also be filed with the appropriate county or negotiating entity at the same time as it is filed with the State Planning Commission."

COMMENT: One county commenter stated that 30 days in which to file an individual municipal report would be insufficient time because they would need to review the county report and have an action taken by their own municipal governing body in order to file a report.

RESPONSE: The Commission believes that 30 days should be sufficient time if the municipality has participated in the cross-acceptance process from the beginning. According to the Cross-Acceptance Manual, the county must submit a draft report to each of its constituent municipalities 30 days prior to adopting a Final Report. A municipality should have a good understanding of what the county will be including in its report well in advance of the official transmittal of the Final Report.

COMMENT: One county comment suggested that the Office of State Planning Report on cross-acceptance take the form of a response document, responding to the County Final Reports, in order to ensure the

State Planning Commission would be apprised of all of the issues raised by the county reports. Further, the county suggested that the Office of State Planning report not be completed until after receipt of all the individual municipal reports, and that copies of the Office report be sent to each of the counties.

RESPONSE: The Office of State Planning Report, as per N.J.A.C. 17:32-3.13(a), will include a summary of the "findings, recommendations and objections contained in the reports of the negotiating entities and municipalities." As such, the report will not be completed until after a thorough review of all the County Final Reports and the individual municipal reports. Each county or negotiating entity, and those municipalities who file an individual report, will receive a copy of the Office of State Planning Report.

COMMENT: One county recommended that a mediation process be established to continue discussions on unresolved issues after the adoption of a final State Development and Redevelopment Plan, and further recommended that a section on conflict resolution be incorporated into this rule.

RESPONSE: The State Development and Redevelopment Plan will be revised every three years and the Commission fully anticipates that once the first State Plan is adopted, work will continue across all levels of planning in state in order to resolve outstanding issues for the next revision of the plan. Regarding conflict resolution, the process of cross-acceptance itself is a method of conflict resolution. The continuing dialogue is intended to reveal areas of disagreement or conflict and endeavor to resolve them.

COMMENT: One commenter questioned what document or documents would be the issue of the public hearings which will precede adoption of a State Development and Redevelopment Plan.

RESPONSE: The public hearings referred to in the rule, and required in the State Planning Act, N.J.S.A. 52:18A-202(c), will be for the purpose of receiving comments on a draft final plan which is to be prepared and distributed based on the cross-acceptance reports from counties and municipalities.

COMMENT: Two commenters stated that the Commission should consider the Office of State Planning Report on cross-acceptance and the comments received from the public hearings prior to adopting a State Development and Redevelopment Plan. They also asked how much latitude the Commission would have in amending the plan before adoption.

RESPONSE: The Commission will consider the Office of State Planning Report and the comments received at the public hearings prior to adoption of a final State Plan. Since the Commission is the body responsible for preparing and adopting the State Development and Redevelopment Plan, they will have sufficient latitude to make whatever amendments are appropriate based on testimony and cross-acceptance reports.

COMMENT: One county commenter stated that the rule should include procedures governing the review by state agencies of the State Plan and provide for a process to resolve conflicts of policies, programs, and projects between state agencies.

RESPONSE: The State Planning Commission, in addition to being responsible for preparing a State Development and Redevelopment Plan, is also responsible for facilitating cooperation and coordination among state agencies. The Commission, upon receipt of state agency reports will review them and engage in discussions with each of the state agencies toward resolution of any remaining inconsistencies.

This rule is meant to specify how the state planning process will be carried out at the county and municipal level. The Commission recognizes the importance of state agency coordination and expects the state agency review of the Draft Preliminary Plan, and the consequent amendments to the Draft prior to the release of a Preliminary Plan, will serve to avoid confusion about state agency positions during cross-acceptance.

COMMENT: One commenter suggested that the rules be amended to include the policy of the Commission to accept written comments from the public throughout the cross-acceptance process.

RESPONSE: The Commission recognizes the importance of public participation during the cross-acceptance process and encourages members of the public to be part of that process at the local level. However, should the public choose, the Commission will accept written statements throughout the process. A sentence stating this policy has been added to N.J.A.C. 17:32-3.8.

COMMENT: Many comments were received regarding whether copies of Commission documents and reports filed with the Commission by state and local agencies would be available to the public.

RESPONSE: The Commission and the Office of State Planning are subject to the "Right-To-Know" Law, N.J.S.A. 47:1A-1 et seq.

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 32 STATE PLANNING RULES

SUBCHAPTER 1. GENERAL PROVISIONS

17:32-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 17:32, "State Planning Rules."

17:32-1.2 Purpose and authority

(a) This chapter is adopted by the State Planning Commission pursuant to N.J.S.A. 52:18A-203 in order to establish an orderly and efficient process for the preparation, adoption, and implementation of the State Development and Redevelopment Plan. In support thereof, it is determined that in order to fulfill the purposes and to satisfy the requirements of the State Planning Act, it is necessary and appropriate that:

1. The cross-acceptance process be structured so as to establish vertically integrated and compatible local, county, regional and State plans;

2. A process be established for State agency review of and comment upon the Preliminary State Development and Redevelopment Plan to assure the proper and timely consideration of State functional plans and regulations in the formulation of the State Development and Redevelopment Plan;

3. The counties participate in cross-acceptance and that the State Planning Commission take all reasonable steps to ensure county participation;

4. The detail and substance of the Preliminary State Development and Redevelopment Plan be enhanced by early and direct county ***municipal and public*** participation in the review and revision, if necessary, of the Plan and Implementation maps for the Preliminary State Development and Redevelopment Plan; and

5. The State Planning Commission prepare rules pursuant to authority granted by N.J.S.A. 52:18A-202 and 203 of the State Planning Act, which establishes detailed procedures for the participation of appropriate governmental units at all levels in the formulation and implementation of the State Development and Redevelopment Plan.

17:32-1.3 Applicability

This chapter shall apply to all activities and actions of municipal and county governments, the State Planning Commission, State agencies, and any negotiating entity designated by the Commission in the preparation, review and implementation of the State Development and Redevelopment Plan.

17:32-1.4 Definitions

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

"Compatibility" means that a policy or standard in a local, county or regional plan or regulation is equally effective ***as the policy or standard contained in the Preliminary Plan*** in achieving the pertinent State goal, objective or strategy set forth in the Preliminary State Development and Redevelopment Plan.

"Consistency" means that a policy or standard in a local, county or regional plan or regulation is substantially the same as the policy or standard in the Preliminary State Development and Redevelopment Plan.

"County" means any board, department, division, office, agency or other subdivision of the county duly authorized by the county governing body, or executive, as appropriate, to carry out the requirements of this chapter.

"Cross-acceptance" means the process of comparing the provisions and maps of local, county and regional plans and regulations with those of the Preliminary State Development and Redevelopment Plan and the dialogue which occurs among participants during and after this process to achieve compatibility or consistency between local, county, regional and State plans.

"Cross-Acceptance Manual" means a document prepared by the Office of State Planning for the purpose of guiding negotiating en-

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ties through the cross-acceptance process. The manual shall contain, at a minimum, a prototype work program and schedule, and a final report outline and instructions.

"Days" means calendar days, unless otherwise specified.

"Final Report" means a written statement submitted by the negotiating entity to the State Planning Commission describing the findings, recommendations, objections and other information as set forth in the Cross-Acceptance Manual, resulting from the comparison of plans by the negotiating entity.

"Functional state agency" means the following Departments of the State of New Jersey and any division, office or other subdivision of such Departments:

1. Agriculture;
2. Banking;
3. Board of Public Utilities;
4. Commerce*, Energy,* and Economic Development;
5. Community Affairs;
6. Corrections;
7. Defense;
8. Education;
9. Environmental Protection;
10. Health;
11. Higher Education;
12. Human Services;
13. Insurance;
14. Labor;
15. Law and Public Safety;
16. Personnel;
17. Public Advocate;
18. State;
19. Transportation; and
20. Treasury.

"Goal" means a desired state of affairs to which planned effort is directed. The goals of the plan are general statements of values derived from the State Planning Act of 1986 and public comments.

***["Implementation Map"]** means a graphic depiction of the boundaries of tiers, as defined in the Plan.]*

"Municipality" means any board, department, division, office, agency or other subdivision of the municipality duly authorized by the municipal governing body, or executive, as appropriate, to carry out the requirements of this chapter.

"Negotiating entity" means a county, or where a county has declined to participate in the cross-acceptance process, some other entity designated by the State Planning Commission to carry out cross-acceptance.

"Negotiation" means the dialogue which occurs among participants during the period of cross-acceptance which could lead to a state of consistency or compatibility in their plans and regulations.

"Objective" means a more specific articulation of a goal formulated in a manner which enables it to be the object of action.

"Period of Cross-Acceptance" means that period of time extending from the date of *[receipt]* ***release*** of the Preliminary State Development and Redevelopment Plan by the *[negotiating entity]* ***Commission*** to 30 days beyond the last of the six public hearings held by the State Planning Commission pursuant to the Act.

***["Plan Map"]** means that map contained in, or referenced within, the State Development and Redevelopment Plan, or drafts thereof, which describes an appropriate and desirable state of development of New Jersey at some future year.]*

"Policy" means a general rule for action focused on a specific issue, derived from more general goals, objectives and strategies. Some policies can be implemented directly through institutional procedures or regulations, others require the establishment of more specific and extensive plans, programs, or standards.

"Preliminary Plan Map" means a graphic depiction of the boundaries of tiers, as defined in the Plan.

"Regional" means a geographical area encompassing land in more than one county.

"Regional agency" means an agency which performs planning for land development for an area of the State encompassing land in more than one county.

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"Standard" means a criterion that defines the meaning of a policy by providing a way to measure its attainment. A standard is specified whenever a particular outcome is desirable or well-established.

"State Development and Redevelopment Plan" means that document, and all maps, appendices, and other material included by reference adopted by the State Planning Commission as its plan for the development and redevelopment of the State, pursuant to its duties set forth in the Act.

"Strategy" means a general course of action, linking goals and objectives of the Plan with Plan Policies.

"Tier" means a geographic unit employed by the State Development and Redevelopment Plan to identify specific areas of the State to which strategies, policies and standards in the Plan have applicability.

SUBCHAPTER 2. PREPARATION OF PRELIMINARY STATE DEVELOPMENT AND REDEVELOPMENT PLAN

17:32-2.1 Functional state agency review of *[a]* ***the*** Draft Preliminary State Development and Redevelopment Plan

(a) At least 90 days prior to the initiation of the cross-acceptance process, the State Planning Commission shall *[authorize]* ***direct*** the Office of State Planning to distribute to each of the functional state agencies at least three copies of the Draft Preliminary State Development and Redevelopment Plan, together with three copies of supporting and background materials.

(b) Within 45 days after *[receipt]* ***the date of release*** of the Draft Preliminary State Development and Redevelopment Plan, each functional state agency shall transmit to the Office of State Planning comments about, and recommendations for amendments to, the Draft Plan.

17:32-2.2 Public comment on Draft Preliminary State Development and Redevelopment Plan

(a) ***A reasonable supply of* *[C]**c*** copies of the Draft Preliminary Plan ***and supporting and background materials*** will be available at the Office of State Planning for 45 days after the date of release, and will be available for inspection and copying thereafter at locations to be determined by the State Planning Commission.

(b) The Office of State Planning shall make at least three public presentations of the Draft Preliminary Plan within 10 working days after *[the date of release of the Draft.]* ***adoption of a resolution by the State Planning Commission authorizing release of the Draft.***

(c) Any written comments and recommendations of the general public on the Draft Preliminary Plan distributed in accordance with N.J.A.C. 17:32-*[2.5]**2.2(a)* shall be submitted to the Office of State Planning no later than 60 days after the date of release of the Draft.

17:32-2.3 Approval of the Preliminary State Development and Redevelopment Plan and authorization to transmit for cross-acceptance

(a) As soon as practicable after receiving and considering comments on the Draft Preliminary State Development and Redevelopment Plan, the Office of State Planning shall submit copies of written comments, summaries of public meetings and staff recommendations for revisions to the Draft Preliminary Plan to the State Planning Commission.

(b) The State Planning Commission shall, after due consideration, approve a Preliminary State Development and Redevelopment Plan for cross-acceptance and authorize its transmittal to each county and municipality and to *[others as it deems appropriate.]* ***other interested persons and organizations.***

SUBCHAPTER 3. PROCEDURES FOR CONDUCTING CROSS-ACCEPTANCE

17:32-3.1 Negotiating entities for county and municipal cross-acceptance

(a) With the distribution of the Preliminary State Development and Redevelopment Plan to the counties and municipalities, the Office of State Planning shall transmit to each county a copy of the

Cross-Acceptance Manual, an application form for financial assistance, and a request for either a Notice of Participation or a Notice of Waiver.

(b) Notices of Waiver or Participation shall be transmitted by each county to the Office of State Planning no later than 45 days after ***[receipt by the county]* *release*** of the Preliminary State Development and Redevelopment Plan.

1. A Notice of Participation shall be a duly adopted resolution of the governing body authorizing participation of the county in the cross-acceptance process.

2. A Notice of Waiver is a duly adopted resolution of the governing body stating its intent to forfeit and waive its statutory authority to participate in cross-acceptance.

(c) In the event that a county transmits a Notice of Waiver or fails to transmit a Notice of Participation within 45 days after ***[its receipt]* *the date of release*** of the Preliminary State Development and Redevelopment Plan, the State Planning Commission shall designate a negotiating entity for cross-acceptance for each such county.

17:32-3.2 Optional joint ***[municipal]* *county*** cross-acceptance agreements

The Office of State Planning shall encourage the governing bodies of the counties, especially those located within the purview of an existing regional planning agency or metropolitan planning organization, to enter into intergovernmental agreements for consolidated or coordinated participation in cross-acceptance. If a county notifies the Office of State Planning of that county's desire to enter into such an agreement or to involve a regional planning agency or metropolitan planning organization in cross-acceptance, the Office of State Planning shall provide, at the county's request, technical assistance in the preparation of appropriate intergovernmental agreements and designations of negotiating entities.

17:32-3.3 Designation of negotiating entity by the State Planning Commission in lieu of county participation

(a) In the event that a county advises the Office of State Planning that the governing body of the county has determined that the county will not participate in the cross-acceptance process, or fails to respond within the time period specified in N.J.A.C. 17:32-3.1, the State Planning Commission shall designate an appropriate entity to participate in cross-acceptance in the place of the non-participating county, after having first consulted with the entity to be designated and having secured that entity's commitment to participate in the cross-acceptance process.

(b) A county may request designation of a specific entity (including a joint program subject to an intergovernmental agreement) as the negotiating entity for that county within the 45 day notice period in N.J.A.C. 17:32-3.1.

1. The State Planning Commission shall accept the recommendation of the county and designate the recommended entity, unless the Commission finds that the recommended designation would interfere with the practical application of the spirit and intent of the State Planning Act.

17:32-3.4 Cross-acceptance work programs and grants-in-aid

(a) Within 45 days after receipt of the Preliminary State Development and Redevelopment Plan, each county serving as the negotiating entity shall submit to the Office of State Planning a proposed work program and, at the county's option, an application for a cross-acceptance grant-in-aid approved by the governing body.

(b) In the event that the negotiating entity is designated pursuant to N.J.A.C. 17:32-3.3, the negotiating entity shall submit to the Office of State Planning, within 30 days of the date of designation, a proposed work program and, at the entity's option, an officially approved application for a cross-acceptance grant-in-aid.

(c) In the event that the work program submitted to the Office of State Planning is determined to be inadequate in any way by the State Planning Commission, the Office of State Planning shall provide the negotiating entity with work program changes necessary to overcome the inadequacies and to ensure an effective and efficient cross-acceptance process.

17:32-3.5 Municipal participation in the cross-acceptance process

(a) Each municipality in the State shall participate in the cross-acceptance process by:

1. Providing to the negotiating entity the most up-to-date copies of municipal master plans, land development regulations and other information and materials necessary for an effective and efficient comparison of the State Plan with the plans and regulations of the municipality.

2. Participation through official representation at cross-acceptance meetings convened by the negotiating entity.

[(b) If a municipality fails to participate, the State Planning Commission shall take whatever steps are appropriate to carry out the provisions of this chapter and N.J.S.A. 52:18A-196 et seq.]

17:32-3.6 Public informational meetings in each County in regard to the Preliminary State Development and Redevelopment Plan

No later than 15 days after the distribution of the Preliminary State Development and Redevelopment Plan, the Office of State Planning shall transmit to each county, or the negotiating entity if known, a schedule for joint public informational meetings to be held in each county of the State. These meetings shall be held not less than 45 days and not more than 90 days after the date of distribution of the Preliminary State Development and Redevelopment Plan. The joint informational meetings shall be convened by the negotiating entity ***[.]* *and shall provide opportunity for the public to ask questions and make comments.***

17:32-3.7 Technical assistance from Office of State Planning during negotiation of cross-acceptance

(a) During the cross-acceptance process, the Office of State Planning shall provide technical assistance to the negotiating entities in regard to the negotiating entities' review and revision, of any ***[Implementation]* *Preliminary Plan*** Maps and in regard to their comparison of goals, objectives, strategies, policies and standards contained in the Preliminary State Development and Redevelopment Plan with those contained in municipal and county plans and regulations.

(b) Technical assistance shall be in the form of the provision of reproducible base maps at a scale of 1:24,000, a cross-acceptance manual, advice and consultation on tier delineation and issues of comparison, and other assistance as may be requested by the negotiating entity which is within the capability and expertise of the Office of State Planning.

17:32-3.8 Public participation in the cross-acceptance process

Cross-acceptance shall be carried out in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. Due consideration shall be given by the negotiating entity to the desirability of, and the need for, public participation in the process and a plan for public participation shall be included in each negotiating entity's work program. ***The State Planning Commission will accept written comments from the public throughout the cross-acceptance process.***

17:32-3.9 ***[Preparation]* *Review*** of ***[implementation]* *preliminary plan*** maps by the negotiating entities during the cross-acceptance process

During the cross-acceptance process each negotiating entity shall review and revise or otherwise complete a set of ***[Implementation]* *Preliminary Plan*** Maps at a scale of 1:24,000, delineating the boundaries of the tiers established and defined in the Preliminary State Development and Redevelopment Plan and using the tier descriptions and designation criteria set forth in the Preliminary Plan. ***The Preliminary Plan Map will be prepared by the Office of State Planning, on behalf of the State Planning Commission, and made available to each negotiating entity.***

17:32-3.10 Comparison of the preliminary state development and redevelopment plan with local and county plans

(a) To ensure that the cross-acceptance process achieves maximum consistency and compatibility among all governmental levels, the negotiating entity shall compare municipal and county plans and regulations with the goals, objectives, strategies, policies, standards

and ***[Implementation]* *Preliminary Plan*** Maps of the Preliminary State Development and Redevelopment Plan.

(b) The negotiating entity shall, taking into account any findings, recommendations, or objections from local and county planning bodies concerning the goals, objectives and strategies contained in the Preliminary Plan, identify areas of agreement and disagreement and, in the event of disagreement, the nature of the disagreement and recommendations for modification. The entity also may identify any additional goals, objectives and strategies which should be included in the State Plan.

(c) The negotiating entity shall, based on an assessment of municipal and county plans and regulations, and any findings, recommendations, or objections concerning the policies of the Preliminary Plan from local and county planning bodies, identify any inconsistencies between the policies of the Preliminary Plan and provisions of local and county plans and regulations, indicating whether:

1. Notwithstanding the inconsistency, compatibility exists because the provisions of local and county plans or regulations are as effective as the policies contained in the Preliminary Plan in meeting the goals, objectives and strategies of the Preliminary Plan (see definitions of "consistency" and "compatibility"); or

2. Compatibility should be achieved through the modification ***of the*** policies contained in the Preliminary Plan; or

3. Compatibility should be achieved through modification of local or county plans or regulations.

(d) The negotiating entity shall, based on an assessment of municipal and county plans and regulations, and any findings, recommendations, or objections concerning the standards of the Preliminary Plan from local and county planning bodies, identify any inconsistencies between the standards of the Preliminary Plan and provisions of local and county plans and regulations, indicating whether:

1. Notwithstanding the inconsistency, compatibility exists because the provisions of the local and county plans or regulations are as effective as the standards contained in the Preliminary Plan in meeting the policies of the Preliminary Plan (see definitions of "consistency" and "compatibility"); or

2. Compatibility should be achieved through the modification of the standards contained in the Preliminary Plan; or

3. Compatibility should be achieved through modification of local or county plans or regulations.

(e) The negotiating entity shall, based on an assessment of municipal and county plans and regulations, and any findings, recommendations, or objections concerning the tier delineations on the ***[implementation]* *preliminary plan*** maps from local and county planning bodies, identify any inconsistencies between tier delineations and any maps contained in local and county plans and regulations, indicating that:

1. The inconsistency is the result of a tier delineation which is based upon inaccurate or outdated information and should be resolved by redrawing the tier delineation based upon more accurate and up-to-date information; or

2. Consistency should be achieved through modification of ***the tier*** designation criteria contained in the Preliminary Plan; or

3. Consistency should be achieved through modification of maps contained in, or provisions of, local or county plans and regulations.

17:32-3.11 Negotiating entity reports

(a) Within six months of the date of ***[receipt]* *release*** of the Preliminary State Development and Redevelopment Plan, each negotiating entity shall prepare and file with the State Planning Commission a formal report of findings, recommendations and objections concerning the Plan in the form specified by the Office of State Planning in the Cross-Acceptance Manual and any amendments thereto.

(b) The final reports of each negotiating entity shall not be filed with the State Planning Commission until the governing body of each such county*, or the **designated negotiating entity***, shall have authorized the transmittal of the ***[Formal]* *Final*** Report^[.] ***at a public hearing.***

17:32-3.12 Individual municipal reports in regard to cross-acceptance

(a) If a municipality is not satisfied with the cross-acceptance report, in whole or in part, prepared by the negotiating entity, the municipality may file a separate report in the form specified by the Office of State Planning in the Cross-Acceptance Manual not later than 30 days after the negotiating entity for the county in which the municipality is located files its formal report of findings, recommendations and objections pursuant to N.J.S.A. 52:18A-202. ***The individual municipal report shall also be filed with the appropriate county or negotiating entity at the same time as it is filed with the State Planning Commission.***

(b) Should a municipality fail to participate in the negotiation of cross-acceptance and/or fail to file an individual municipal report, the municipality shall be deemed to have concurred and agreed in the final report filed by the negotiating entity and to have waived its statutory right to file a separate report under N.J.S.A. 52:18A-202.

17:32-3.13 Office of State Planning Report on cross-acceptance

(a) As soon as practicable after the deadline for receipt of negotiating entity final reports, the Office of State Planning shall prepare and transmit to the State Planning Commission for its consideration a staff report on cross-acceptance which includes proposed revisions, if any, on the ***Preliminary*** Plan ***[and Implementation]* Map*[s]*** and which summarizes the findings, recommendations and objections contained in the reports of the negotiating entities and municipalities in a manner sufficient for the State Planning Commission to effectively and efficiently consider appropriate revisions to the Preliminary Plan.

(b) The report shall include recommendations for amendments to the provisions and maps of the Preliminary Plan and shall describe any provision of existing state law, or the absence thereof, that poses an obstacle to achieving compatibility between state, regional, county and municipal plans.

17:32-3.14 Adoption of the State Development and Redevelopment Plan

(a) Upon receipt of the cross-acceptance report required by N.J.A.C. 17:32-3.11, the State Planning Commission shall give due public notice and shall hold no fewer than six public hearings at geographically dispersed sites throughout the State.

(b) As soon as practicable thereafter, the State Planning Commission shall consider and adopt the State Development and Redevelopment Plan.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE Notice of Extension of Commercial Shooting Preserve Season

Authority: N.J.S.A. 23:3-32

Take notice that the Commissioner, Department of Environmental Protection, hereby extends the commercial shooting preserve season from March 15, 1988 to April 15, 1988, upon the recommendation of the Director of the Division of Fish, Game and Wildlife, pursuant to statutory authority granted at N.J.S.A. 23:3-32.

HEALTH

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Filing Date for Next Certificate of Need Batching Cycle for Hospital Bed Additions/Modernization/ Renovation/New Construction Projects in Excess of \$10 million

Public Notice

Take notice that the Commissioner of Health, in cooperation with the Health Care Administration Board, has changed for one time only, the batching cycle scheduled to begin August 15, 1988 for Certificate of Need applications for hospital bed additions or modernization/renovation and new construction projects in excess of \$10 million.

The next batching cycle for major hospital capital projects shall begin on July 15, 1988. The August 15, 1988 batching cycle (N.J.A.C. 8:33) shall be combined with the July 15, 1988 batching cycle. Therefore the July 1, 1988 deadline for actual submission of applications shall be eliminated and the deadline for actual submission of applications shall be June 1, 1988.

The filing date of June 1, 1988 for the next major capital batch is being implemented pursuant to N.J.A.C. 8:43G (Capital Policy Rules) which guided the last hospital capital batch.

N.J.A.C. 8:43G-1.2(a)1 states:

"The processing of applications for conversion/renovation/modernization projects for cycles after October 15, 1986 is deferred until a date 60 days (to the nearest 1st of the month) following the effective date of amendments to the Hospital Policy Manual, N.J.A.C. 8:43E."

The new Hospital Policy Manual (N.J.A.C. 8:43I) becomes effective on March 21, 1988. Therefore, pursuant to N.J.A.C. 8:43G (repealed on March 21, 1988) the next filing date would be June 1, 1988. However, the next regularly scheduled filing date for major capital batch projects, pursuant to the Certificate of Need Rules (N.J.A.C. 8:33) is July 1, 1988.

The Department has determined that the combining of the August 5, 1988 batching cycle (deadline for actual submission of applications July 1, 1988) and the July 15, 1988 batching cycle (deadline for actual submission of applications June 1, 1988) into one cycle with a June 1 deadline for submission of applications, not only satisfies the regulatory directive of N.J.A.C. 8:43G in that sufficient advance notice of the filing date is afforded to potential applicants but also allows for comparative consideration of applications in the most equitable manner.

The change shall have no effect on subsequent batching cycles for Certificate of Need applications for hospital bed additions or modernization/renovation and construction projects. Pursuant to N.J.A.C. 8:33 the next batching cycle following the July 15, 1988 batching cycle which is the subject of this notice for hospital bed additions, modernization/renovation/new construction of \$10 million or more will begin on February 15, 1989 with a January 1, 1989 deadline for actual submission of applications.

Any inquiries should be addressed to:

John A. Calabria, Chief
Health Systems Review
New Jersey Department of Health
Room 604
CN 360
Trenton, NJ 08625

(c)

Renal Disease Program Availability of Grants; Revision of Information Chronic Renal Disease Services

Take notice that, in compliance with P.L. 1987, ch. 7, the Department of Health published notice of the availability of grants in the Directory of Department of Health Grant Programs (see 19 N.J.R. 2499(b)). **Take further notice** that the following revises information concerning Grant Program 89-19 CR, as listed in the above-noted Directory on page 15, by clarifying that the groups/entities which may apply for this grant program are limited to licensed New Jersey Chronic Renal Dialysis Centers. Relevant information concerning this grant is as follows:

Name of Grant Program: Chronic Renal Disease Grant Program No. 89-19-CR (Revised 1/26/88).

Purpose for which the grant program funds will be used: To extend financial assistance in obtaining medications and nutritional supplements to persons suffering from end-stage renal disease.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

Group or entities which may apply for the grant program: Licensed New Jersey Chronic Renal Dialysis Centers.

Qualifications needed by an applicant to be considered for the grant: Licensed as a New Jersey Chronic Renal Dialysis Center.

Procedures for eligible entities to apply for grant funds: Complete and timely submission of New Jersey State Department of Health application for Health Service grant.

For information contact:

Coordinator, Renal Program
Division of Epidemiology & Disease Control
CN 360, Trenton, NJ 08625-0360
609-588-7479

Deadline by which applications must be submitted: May 1, 1988.

Date by which applicant shall be notified whether they will receive funds: June 15, 1988.

INSURANCE

(d)

Petition for Rulemaking NJAFIUA Rule 4.2.C. Definition of Married Person Petitioner: John T. Paff.

Authority: N.J.A.C. 11:1-15.

Take notice that on December 9, 1987, petitioner filed a petition with the Department of Insurance requesting an amendment to the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA) Manual of Rules and Rates, Section 4.2.C., concerning the definition of a married person. Since the section cited by petitioner does not contain such a definition, it is noted here that the Department believes petitioner is referring to Section 4B.2.C.

Section 4B.2.C. defines "married" as follows:

"Married means a married person living with his or her spouse and includes a person widowed, divorced or legally separated only if such person has custody of one or more resident children."

MISCELLANEOUS NOTICES

Petitioner proposes that the above rule be amended to read as follows:
"Married means a married person living with his or her spouse and includes a single person only if such person has custody of one or more resident children."

Petitioner states that female automobile insureds who have borne children out of wedlock and who have custody of these children and have not yet attained age 25 are denied the lower married rate by a strict interpretation of NJAFIUA Rule 4.2.C. Petitioner feels that the denial of the "married" rate to a mother solely because her child was borne out of wedlock is not equitable, as he contends that the responsibilities of such a mother meet or exceed those of a married person.

This petition has been duly considered by the Department of Insurance pursuant to N.J.A.C. 11:1-15, and the Department has found that said petition must be denied.

Because the NJAFIUA is an unincorporated nonprofit association, and not a State agency subject to the rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a petition for rulemaking pursuant to the Department's rules is not the proper procedure for seeking an amendment to the NJAFIUA Manual.

It is suggested that petitioner contact the General Manager of the NJAFIUA, Nelson D. Ealey, at 293 Eisenhower Parkway, Livingston, New Jersey 07039, to request an amendment to the NJAFIUA Manual of Rules and Rates.

LAW AND PUBLIC SAFETY

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Notice of Application for Certificate of Public Convenience Permit

Take notice that Glenn R. Paulson, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed an application for a common carrier's Certificate of Public Convenience Permit.

COMMON CARRIER (NON-GRANDFATHER)

J.A. Quinn Sand & Stone

High Street

P.O. Box 134

Mauricetown, New Jersey 08329

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery St., Trenton, New Jersey 08666, within 20 days (April 11, 1988) following the publication of notice of an application.

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 February 1, 1988 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1988 d.1 means the first rule adopted in 1988.

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 JANUARY 19, 1988

NEXT UPDATE: SUPPLEMENT FEBRUARY 16, 1988

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
19 N.J.R. 431 and 476	March 16, 1987	19 N.J.R. 1759 and 1858	October 5, 1987
19 N.J.R. 477 and 586	April 6, 1987	19 N.J.R. 1859 and 1926	October 19, 1987
19 N.J.R. 587 and 672	April 20, 1987	19 N.J.R. 1927 and 2086	November 2, 1987
19 N.J.R. 673 and 794	May 4, 1987	19 N.J.R. 2087 and 2224	November 16, 1987
19 N.J.R. 795 and 898	May 18, 1987	19 N.J.R. 2225 and 2324	December 7, 1987
19 N.J.R. 899 and 1006	June 1, 1987	19 N.J.R. 2325 and 2510	December 21, 1987
19 N.J.R. 1007 and 1120	June 15, 1987	20 N.J.R. 1 and 124	January 4, 1988
19 N.J.R. 1121 and 1258	July 6, 1987	20 N.J.R. 125 and 220	January 19, 1988
19 N.J.R. 1259 and 1352	July 20, 1987	20 N.J.R. 221 and 320	February 1, 1988
19 N.J.R. 1353 and 1474	August 3, 1987	20 N.J.R. 321 and 434	February 16, 1988
19 N.J.R. 1475 and 1588	August 17, 1987	20 N.J.R. 435 and 570	March 7, 1988
19 N.J.R. 1589 and 1676	September 8, 1987	20 N.J.R. 571 and 692	March 21, 1988
19 N.J.R. 1677 and 1758	September 21, 1987		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1-14.1	Media coverage of public hearings
1:1-14.5	Ex parte communications and agency heads
1:30-1.2, 2.8	Use of appendices

PROPOSAL NOTICE (N.J.R. CITATION)

20 N.J.R. 127(a)	R.1988 d.115
19 N.J.R. 1761(b)	R.1988 d.78
19 N.J.R. 675(a)	

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

20 N.J.R. 642(a)
20 N.J.R. 385(a)

Most recent update to Title 1: TRANSMITTAL 1987-6 (supplement December 21, 1987)

AGRICULTURE—TITLE 2

2:32-2.1, 2.3, 2.5, 2.8,	Sire Stakes Program
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2.14, 2.19, 2.20,	
2.22, 2.25, 2.27,	
2.33	
2:71-2.4, 2.5, 2.6	Jersey Fresh Logo program
2:76-6.2, 6.5, 6.6, 6.9,	Farmland development easements: residual dwelling
6.15, 6.16	sites

20 N.J.R. 323(a)

19 N.J.R. 2327(b)	R.1988 d.97
20 N.J.R. 324(a)	

20 N.J.R. 525(a)

Most recent update to Title 2: TRANSMITTAL 1987-8 (supplement November 16, 1987)

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3:1-1.1	Maximum interest rate on first mortgages on residences with one to six units	19 N.J.R. 2089(a)
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	19 N.J.R. 1355(a)
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)
3:10-8, 9	Banks and savings banks: mortgage loan practices	19 N.J.R. 1356(a)
3:11-12	Commercial loans by savings banks	19 N.J.R. 1679(b)
3:13-2.2, 4.3, 4.4	Bank holding companies: financial filings	20 N.J.R. 127(b)
3:27-6, 7	Savings and loan associations: mortgage loan practices	19 N.J.R. 1358(a)
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices	19 N.J.R. 1360(a)
3:42	Pinelands Development Credit Bank: procedural rules	20 N.J.R. 128(a)

Most recent update to Title 3: TRANSMITTAL 1988-1 (supplement January 19, 1988)

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16.13		
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)
4:2-6.3, 11, 13, 14.1,	Repeal (see 4A:4)	20 N.J.R. 327(a)
15.1		
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)
4:3-6.4, 11.1, 13.2, 14	Repeal (see 4A:4)	20 N.J.R. 327(a)
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)

Most recent update to Title 4: TRANSMITTAL 1988-1 (supplement January 19, 1988)

PERSONNEL—TITLE 4A

4A:1-1.3	Definitions	20 N.J.R. 326(a)
4A:4	Selection and appointment	20 N.J.R. 327(a)
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)

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4A:8	Layoffs	19 N.J.R. 1363(a)		

Most recent update to Title 4A: TRANSMITTAL 1988-1 (supplement January 19, 1988)

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5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	19 N.J.R. 1861(a)	R.1988 d.49	20 N.J.R. 256(a)
5:14-1.1-1.4, 2.1-2.3, 3.1-3.23, 4.1-4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)	R.1988 d.60	20 N.J.R. 256(b)
5:19-6.3, 8	Continuing care retirement communities: application fees; nonbinding reservation agreements	20 N.J.R. 347(a)		
5:23	Uniform Construction Code	20 N.J.R. 223(a)		
5:23-2.23	UCC: use and occupancy of buildings undergoing alteration	20 N.J.R. 223(b)		
5:23-2.38, 3.11, 7.2, 7.3, 7.100-7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2	Uniform Construction Code: commercial farm buildings	19 N.J.R. 1778(a)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode: checkmetering in multifamily buildings; lighting efficiency in existing buildings	19 N.J.R. 1862(b)	R.1988 d.50	20 N.J.R. 268(a)
5:23-9.1, 9.2	UCC interpretations: Plumbing Subcode and manufactured housing	20 N.J.R. 224(a)		
5:24-2.3	Senior citizens and disabled protected tenancy: taxable income	20 N.J.R. 349(a)		
5:24-2.7	Senior citizen and disabled protected tenancy: appeal procedure	20 N.J.R. 437(a)		
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5:92-1.3, 6.1	Council on Affordable Housing: rehabilitation component and credits	19 N.J.R. 1863(a)		
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		
5:92-16	Council on Affordable Housing: accessory apartments	19 N.J.R. 2089(b)	R.1988 d.84	20 N.J.R. 385(b)
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly	19 N.J.R. 1686(a)	R.1988 d.101	20 N.J.R. 526(a)
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly: extension of comment period	19 N.J.R. 2090(a)		

Most recent update to Title 5: TRANSMITTAL 1988-1 (supplement January 19, 1988)

DEFENSE—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:3-1.23	Principal certification	20 N.J.R. 437(b)		
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6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 437(b)		
6:20-3.1	Reproposed: Determining tuition rates for sending and receiving districts	19 N.J.R. 2329(a)		
6:22-1.1-1.7, 2.1-2.5, 3.1, 3.4	School facility planning services	20 N.J.R. 3(a)		
6:28-11	Special education pilot project	20 N.J.R. 14(a)		
6:64	County and local library services	19 N.J.R. 1931(a)	R.1988 d.67	20 N.J.R. 386(a)

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ENVIRONMENTAL PROTECTION—TITLE 7

7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)	R.1988 d.89	20 N.J.R. 387(a)
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)	R.1988 d.90	20 N.J.R. 388(a)
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(b)		
7:11	Sanitary Landfill Facility Contingency Fund	20 N.J.R. 443(a)		
7:3-2	Management of privately-owned woodlands: approved foresters list	20 N.J.R. 137(a)	R.1988 d.139	20 N.J.R. 642(b)
7:6-3.10	Water-skiing on Lake Hopatcong	20 N.J.R. 138(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:7-2.1	Coastal Permit Program: CAFRA exemptions	19 N.J.R. 807(a)	R.1988 d.136	20 N.J.R. 643(a)
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7A	Freshwater Wetlands Protection Act rules	19 N.J.R. 2330(a)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)		
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		
7:8	Storm water management	19 N.J.R. 2227(a)	R.1988 d.99	20 N.J.R. 526(b)
7:9-1	Sewer systems and wastewater treatment plants	19 N.J.R. 2227(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:11	New Jersey Water Supply Authority: policies and procedures	20 N.J.R. 448(a)		
7:11-1	Use of Water Supply Authority property	19 N.J.R. 1274(a)	R.1988 d.100	20 N.J.R. 528(a)
7:11-2.2, 2.3, 2.9, 2.13	New Jersey Water Supply Authority rates and charges	20 N.J.R. 144(a)		
7:12	Shellfish growing waters	20 N.J.R. 450(a)		
7:13-7.1	Redelineation of Hackensack River in Oradell	19 N.J.R. 1935(a)	R.1988 d.138	20 N.J.R. 644(a)
7:13-7.1(b)	Redelineation of Jumping Brook in Neptune	19 N.J.R. 2233(a)		
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: repropose	19 N.J.R. 167(b)	R.1988 d.79	20 N.J.R. 391(a)
7:13-7.1(d)	Redelineation of Big Bear Brook, Mercer County	19 N.J.R. 1933(a)	R.1988 d.135	20 N.J.R. 644(b)
7:13-7.1(d)	Redelineation of Carter's Brook, Middlesex County	19 N.J.R. 1933(b)	R.1988 d.137	20 N.J.R. 645(b)
7:13-7.1(d)	Redelineation of Lawrence, Ireland, Mae, Harry's and Oakeys brooks in Mercer and Middlesex counties	19 N.J.R. 1934(a)	R.1988 d.134	20 N.J.R. 645(a)
7:14-8	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:14A-8	NJPDES permit program: public notice and comment	19 N.J.R. 1864(a)	R.1988 d.59	20 N.J.R. 269(a)
7:14A-11.1	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)	R.1988 d.57	20 N.J.R. 273(a)
7:19-6.14	Penalties and hearings concerning violations of Water Pollution Control Act	20 N.J.R. 455(a)		
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)		
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)		
7:25-2.20	Higbee Beach Wildlife Management Area	20 N.J.R. 460(a)		
7:25-18.5	Drifting and anchored gill net seasons: netting mesh in staked gill net fishery	19 N.J.R. 1609(a)		
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)		
7:26-1.4, 9.8-9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-1.9, 12.2, 17	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)	R.1988 d.57	20 N.J.R. 273(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)	R.1988 d.73	20 N.J.R. 393(a)
7:26-2.13	Recordkeeping at solid waste facilities: extension of comment period for proposal at 19 N.J.R. 171(a)	19 N.J.R. 2364(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.14	Ethylene bisdithiocarbamic acid (EBDC) production	19 N.J.R. 1938(a)	R.188 d.140	20 N.J.R. 645(c)
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)	R.1988 d.56	20 N.J.R. 276(a)
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		

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7:29B	Determination of noise from stationary sources	19 N.J.R. 1483(a)	R.1988 d.58	20 N.J.R. 278(a)
7:29B	Determination of noise from stationary sources: extension of comment period	19 N.J.R. 2092(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program: extension of comment period	19 N.J.R. 2092(b)		
7:31-2.12, 2.15, 5	Toxic Catastrophe Prevention Act program: confidentiality and trade secrets	20 N.J.R. 350(a)		
7:31-2.12, 2.15, 5	Confidentiality and trade secrets: correction and extension of comment period	20 N.J.R. 554(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 552(b)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		

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HEALTH—TITLE 8

8:7-1.2	Public Health Licensing and Examination Board	20 N.J.R. 364(a)		
8:24	Chapter XII, State Sanitary Code: retail food establishments	20 N.J.R. 365(a)		
8:25	Youth Camp Safety Act standards	20 N.J.R. 463(a)		
8:26-1.2, 1.3, 2.10, 3.15, 3.17, 4.3, 4.4, 5.1, 5.2, 5.3, 5.7, 5.10, 5.11, 6.4, 7.9, 8.9, 8.10	Public recreational bathing	20 N.J.R. 464(a)		
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-4.38	Hospital reimbursement: uncompensated care coverage for outpatient dialysis	19 N.J.R. 2092(c)		
8:31B-4.62	Hospital reimbursement: outpatient HealthStart maternal and pediatric care	19 N.J.R. 2365(a)		
8:33E-1.1, 1.2	Cardiac diagnostic facilities: complex electrophysiology studies	20 N.J.R. 467(a)		
8:33E-2.2, 2.3, 2.4	Cardiac surgery centers: complex electrophysiology studies	20 N.J.R. 468(a)		
8:33F-1.2, 1.4	Back-up and acute hemodialysis treatment: annual inpatient admissions for applicant hospital	19 N.J.R. 2093(a)	R.1988 d.88	20 N.J.R. 393(b)
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:39	Long-term care licensing standards	20 N.J.R. 469(a)		
8:43E-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)	R.1988 d.114	20 N.J.R. 645(d)
8:43E-4	Child and adolescent acute psychiatric beds	19 N.J.R. 2094(a)	R.1988 d.87	20 N.J.R. 394(a)
8:43G-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)	R.1988 d.114	20 N.J.R. 645(d)
8:43I-1	Hospital Policy Manual	19 N.J.R. 2365(b)	R.1988 d.114	20 N.J.R. 645(d)
8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b), 1644(a), 2278(b), 2400(a); 20 N.J.R. 191(a))	19 N.J.R. 615(a)	R.1988 d.118	20 N.J.R. 654(a)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a); 20 N.J.R. 190(a))	19 N.J.R. 1488(a)	R.1988 d.120	20 N.J.R. 655(a)
8:71	Interchangeable drug products (20 N.J.R. 191(b))	19 N.J.R. 1878(a)	R.1988 d.119	20 N.J.R. 654(b)
8:71	Interchangeable drug products	20 N.J.R. 146(a)		

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9:5-1.1	Independent student status	19 N.J.R. 2372(a)		
9:7	Student Assistance Board: scholarship and tuition aid programs	20 N.J.R. 33(a)	R.1988 d.128	20 N.J.R. 656(a)
9:7-2.3	Student assistance and foreign nationals	19 N.J.R. 2101(a)	R.1988 d.129	20 N.J.R. 661(a)
9:7-2.6	Independent student status	19 N.J.R. 2101(b)	R.1988 d.130	20 N.J.R. 661(b)
9:7-3.2	1988-89 Tuition Aid Grant Award Table	20 N.J.R. 147(a)	R.1988 d.127	20 N.J.R. 661(c)
9:7-9.9, 9.11, 9.12	Congressional Teacher Scholarship Program	19 N.J.R. 2102(a)	R.1988 d.131	20 N.J.R. 663(a)
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(a)	R.1988 d.116	20 N.J.R. 663(b)
9:11-1.1, 1.7, 1.8, 1.22, 1.23	EOF grant awards for approved part-time enrollment	19 N.J.R. 2373(a)		
9:11-1.3, 1.4	Educational Opportunity Fund: eligible non-citizens; independent student status	19 N.J.R. 2234(c)		
9:11-1.7	Equal Opportunity Fund grants: graduate awards	19 N.J.R. 1879(a)		
9:11-2	Martin Luther King Physician-Dentist Scholarship Program	19 N.J.R. 2374(a)		

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HUMAN SERVICES—TITLE 10				
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:49-1.1	Presumptive Medical eligibility for pregnant women	20 N.J.R. 367(a)		
10:49-1.1, 1.2	Medical assistance for aged, blind and disabled	Emergency (expires 4-2-88)	R.1988 d.96	20 N.J.R. 548(a)
10:49-1.3-1.6, 3	HealthStart: comprehensive maternity and pediatric care services	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-3.20	HealthStart Pediatric Care Registration: correction to HCPC codes	_____	_____	20 N.J.R. 401(a)
10:49-6.9	Medicaid providers and administrative charges and service fees	20 N.J.R. 518(a)		
10:50-1.1-1.5, 2.3-2.8, 3.1, 3.2	Livery service for ambulatory Medicaid patients	19 N.J.R. 2103(a)		
10:51-1.6, 1.11, 1.16, 1.18, 3.5, 3.10, 3.14, 5.14, 5.18	Pharmacy Manual: payment limits for Medicaid and PAAD reimbursement	19 N.J.R. 2203(a)	R.1988 d.48	20 N.J.R. 288(a)
10:51-5.6	Pharmaceutical Assistance to Aged and Disabled: income limits	19 N.J.R. 2375(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:52-1.7	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.6	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:54-1.1, 1.2	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:58-1.2, 1.3	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:61-2.4, 2.5	Independent laboratories: standardized claim form	19 N.J.R. 1779(a)		
10:64-1.4, 2.1, 2.2, 2.5, 2.6, 3.5	Hearing aid providers: standardized claim form	19 N.J.R. 1779(a)		
10:66-1.3, 1.6	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:66-3	Family planning services provided by independent clinics	19 N.J.R. 2376(a)		
10:69	Hearing Aid Assistance for Aged and Disabled (HAAAD)	20 N.J.R. 519(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled	20 N.J.R. 369(a)		
10:69A-1.2, 6.2, 6.6, 6.10	PAAD income limits	19 N.J.R. 2375(a)		
10:69C	Statewide Respite Care Program	19 N.J.R. 1712(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only computation amounts and income eligibility standards	Emergency (expires 3-4-88)	R.1988 d.55	20 N.J.R. 207(a)
10:72-1.1, 1.2, 2.1, 2.3, 2.7, 3.4, 3.5, 4.3, 4.4, 4.5	Medical assistance for aged, blind and disabled	Emergency (expires 4-2-88)	R.1988 d.96	20 N.J.R. 548(a)
10:72-6	Presumptive Medicaid eligibility for pregnant women	20 N.J.R. 367(a)		
10:81-8.22, 14.20	PAM: extension of Medicaid benefits to certain employed persons	19 N.J.R. 2206(a)	R.1988 d.47	20 N.J.R. 291(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:85-1.5	General Assistance Program audits	19 N.J.R. 2376(b)		
10:85-3.5	GAM: monthly case reviews	19 N.J.R. 2111(a)	R.1988 d.117	20 N.J.R. 663(c)
10:85-5.2	General Assistance: payment of inpatient hospital bills	20 N.J.R. 521(a)		
10:85-5.3	General Assistance Manual: deadline for medical bills	20 N.J.R. 162(a)		
10:85-6.3	General Assistance Program statement of refunds: preparation of Form GA-12	19 N.J.R. 2377(a)		
10:85-8.4	GAM: Pharmaceutical Assistance (PAAD) program information	20 N.J.R. 522(a)		
10:86	AFDC Work Incentive Program	20 N.J.R. 162(b)		
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-11.21, 11.28	Liability for overissuance of food stamp benefits	20 N.J.R. 162(c)		
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1	Home Energy Assistance program	19 N.J.R. 2208(a)	R.1988 d.46	20 N.J.R. 291(b)
10:100-3.7	Chargeable CWA for funerals and burials	20 N.J.R. 163(a)		
10:100, App. A	Supplemental Security Income payment levels	Emergency (expires 3-4-88)	R.1988 d.54	20 N.J.R. 208(a)
10:123-3.2	Residential health care facilities and boarding homes: personal needs allowance of residents	20 N.J.R. 225(b)		

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10A:1-2	Rulemaking and rule exemption authority of Commissioner	20 N.J.R. 493(a)		
10A:1-11	Personal property of inmates	20 N.J.R. 494(a)		
10A:3-4.1	Off-duty carrying of firearms: peace officer titles	20 N.J.R. 42(a)	R.1988 d.107	20 N.J.R. 532(a)
10A:4-1.2, 13	Inmate discipline: Boy's Unit at Skillman	20 N.J.R. 496(a)		
10A:4-9.18	Inmate discipline: suspending sanctions	19 N.J.R. 1717(b)	R.1988 d.61	20 N.J.R. 294(a)
10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)		
10A:9-4.5	Reduction of inmate custody status	19 N.J.R. 2235(a)	R.1988 d.106	20 N.J.R. 533(a)
10A:16-11	Special medical unit	20 N.J.R. 163(b)		
10A:17-2, 5, 6	Social services: Volunteer Service Program; religion; institutional chaplaincy	20 N.J.R. 167(a)		
10A:18-8.7	Use of telephone by inmates	20 N.J.R. 496(c)		
10A:71-3.2, 3.4, 3.18-3.23, 3.25-3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		
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11:1-8.1, 9, 12.1, 12.3, 12.4, 12.6, 14, 18, 19	Repeal (see 11:17-1, 2, 5)	20 N.J.R. 225(c)		
11:1-25	Official department mailing list: address information	19 N.J.R. 2236(a)	R.1988 d.64	20 N.J.R. 294(b)
11:2-1.1-1.6, 19.1-19.5	Repeal (see 11:17-3.1-3.5, 5.7)	20 N.J.R. 237(a)		
11:3-22.3	Submission of automobile coverage option survey	19 N.J.R. 2237(a)	R.1988 d.65	20 N.J.R. 295(a)
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)		
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.15	Real estate advertising practices	20 N.J.R. 497(a)		
11:5-1.23	Full cooperation among real estate brokers and waiver of cooperation	19 N.J.R. 1621(a)	R.1988 d.69	20 N.J.R. 402(a)
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:5-1.28	Certification as real estate instructor; classroom procedure	20 N.J.R. 498(a)		
11:12-1.3	Repeal (see 11:17-1, 2, 5)	20 N.J.R. 225(c)		
11:17-1, 2, 5	Insurance producer licensing	20 N.J.R. 225(c)		
11:17-3.1-3.5, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 237(a)		
11:17-3.2	Insurance producer preclicensing education: correction to proposal at 20 N.J.R. 237(a)	20 N.J.R. 370(a)		
11:18	New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge: pre-proposed new rules	20 N.J.R. 242(a)		
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12:60	Prevailing wages for public works	19 N.J.R. 345(b)	R.1988 d.113	20 N.J.R. 664(a)
12:100-4.2	Public employee safety and health: exposure to benzene	19 N.J.R. 2239(a)	R.1988 d.86	20 N.J.R. 403(a)
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12A:12-3	Tourism Matching Grant Program	20 N.J.R. 172(b)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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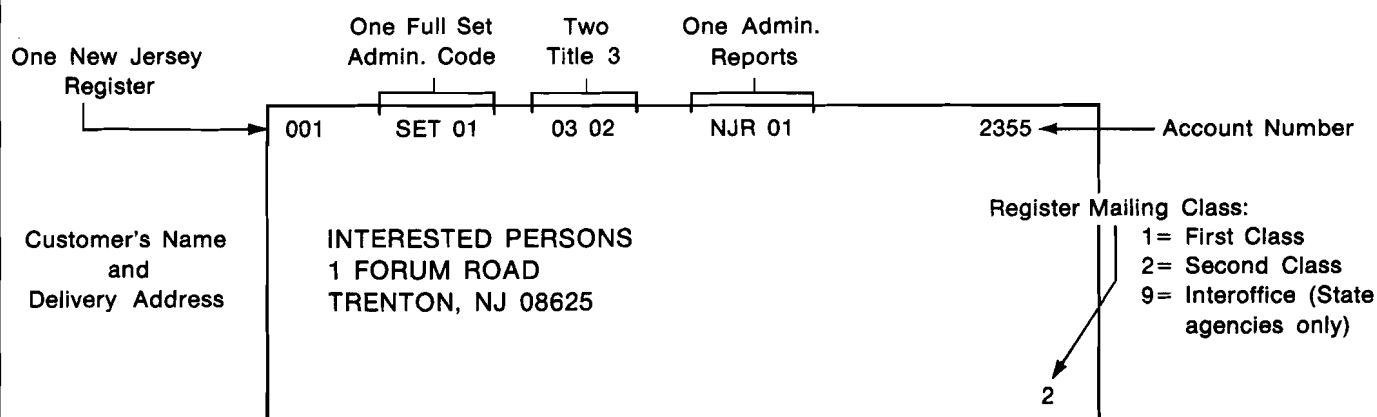
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